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AGENCY PROCUREMENT AND SURPLUS PROPERTY MANUAL

COMMONWEALTH OF VIRGINIA

Department of General Services
Division of Purchases and Supply
1111 East Broad Street
Richmond, Virginia 23219

PREFACE

AGENCY PROCUREMENT AND SURPLUS PROPERTY MANUAL

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The *Agency Procurement and Surplus Property Manual* (*APSPM*) is published under the authority of Section 2.2-1111of the *Code of Virginia*, and establishes the policies and procedures to be followed by State agencies and institutions in fulfilling procurement and related logistical responsibilities within their delegated limits. The Division of Purchases and Supply (DPS) of the Department of General Services (DGS) will from time to time issue Procurement Information Memorandums (PIMs) which are effective until included in a revision to the Manual or rescinded. Appendix C has been reserved for filing these memoranda. This edition of the *APSPM* applies to procurements initiated beginning September 15, 1998. It supersedes all previous editions and changes thereto.

The manual has been significantly reformatted, modernized and made more "user friendly." Incorporated are recommendations received from an interagency task force as well as agency users. Their contributions are gratefully acknowledged. Every effort has been made to keep foremost in our mind its readability -- from senior administrators to newly hired entry level personnel responsible for processing day-to-day procurement transactions. Changes are intended to facilitate and simplify access to the wide variety of topics for those public employees having official responsibility for procurement transactions as enunciated in Title 2.2, Chapter 43, the *Virginia Public Procurement Act*. Copies may be obtained from DPS, downloaded from the DPS Bulletin Board and from the DGS/DPS home page: http://www.dgs.state.va.us/dps.

Comments, suggestions, and questions of interpretation are always welcomed and should be addressed to the staff at the Division of Purchases and Supply.

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INTRODUCTION

As indicated in the Preface, the *APSPM* has been significantly reformatted. Regulatory issues have been distinguished from policies and procedures. Violation of rules and regulations may be handled in an administrative manner under the provision of *Code of Virginia*, § 2.2-1115. Violations of policies and procedures contained in this manual will be handled in accordance with *Code of Virginia*, § 2.2-1120.

For the purposes of this manual, the basic distinction between "regulatory" requirements and "policies and procedures" is that the regulatory requirements have their basis in the *Code of Virginia*.

Policies and procedures are administrative implementation intended to inject consistency and clarity in understanding and applying the regulatory requirements. In addition, they represent what is widely viewed in the purchasing profession as the application of sound, generally accepted good purchasing practices.

Every effort has been made to identify regulatory requirements. Users will note in the text of each chapter, references are made to appropriate sections of the *Code of Virginia*. In addition, to assist in identifying and distinguishing regulatory requirements from administrative requirements, i.e., policies and procedures, a new column, entitled "*Code of Virginia*" has been added in the index. Any subject which appears in the code column is considered regulatory in nature. **Text references may represent synopses or abbreviated portions of the applicable code. Precise language should be obtained by referring to the applicable portion of the *Code of Virginia*.**

Each chapter contains annexes. In most cases, the annexes consist of checklists, flowcharts, forms, formats and other types of suggested guidance for users. Throughout the chapters and annexes, every effort has been made to reduce the mandatory requirements, which are usually indicated by the words "shall", "must", "will", etc., to permit user option and flexibility by use of words such as "may", "should" and "recommended". Care has been taken to carefully draw the appropriate distinctions.

Your assistance is sought wherever clarification or corrections may be in order. They are certainly appreciated and, if appropriate, will be promptly announced through issuance of the DPS Director's Procurement Information Memorandums (PIMs).

The Virginia Information Technologies Agency (VITA) has the authority granted under § 2.2-2007 of the *Code of Virginia*, for the purchase of information technology goods and services. References made to the Department of Information Technology (DIT) or the Department of Technology Planning (DTP) are no longer valid, effective 7/1/03. Agencies and institutions must follow the guidance issued by VITA for information technology procurements.

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Code of Virginia

CHAPTER 1

PROCUREMENT AUTHORITY AND RESPONSIBILITY

In this Chapter look for . . .

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1. **General**. Public purchasing embraces a fundamental obligation to the general public to ensure that procurements are accomplished in accordance with the intent of the laws enacted by the appropriate legislative body. The intent of the Virginia General Assembly is set forth in the *Virginia Public Procurement Act (VPPA).*

To the end that public bodies in the Commonwealth obtain high quality goods and services at reasonable cost, that all procurement procedures be conducted in a fair and impartial manner with avoidance of any impropriety or appearance of impropriety, that all qualified vendors have access to public business and that no offeror be arbitrarily or capriciously excluded, it is the intent of the General Assembly that competition be sought to the maximum feasible degree, that procurement procedures involve openness and administrative efficiency, that individual public bodies enjoy broad flexibility in fashioning details of such competition, that the rules governing contract awards be made clear in advance of the competition, that specifications reflect the procurement needs of the purchasing body rather than being drawn to favor a particular vendor, and that the purchaser and vendor freely exchange information concerning what is sought to be procured and what is offered. Public bodies may consider best value concepts when procuring goods and nonprofessional services, but not construction or professional services. The criteria, factors, and basis for consideration of best value and the process for the consideration of best value shall be as stated in the procurement solicitation. (*Code of Virginia*, § 2.2-4300).

This statement of intent by the General Assembly highlights the use of competition to the maximum feasible degree. Competitive procurement requires time and administrative effort; it does not guarantee that an agency's preferred brand or vendor will be selected. Conducted properly, competitive procurement responds to user needs, results in public confidence in the integrity of public purchasing, and generally brings the most favorable prices.

The *Virginia Public Procurement Act (VPPA)* applies generally to every "public body" in the Commonwealth, which § 2.2-4301 of the *Code of Virginia* defines to include "any legislative, executive, or judicial body, agency, office, department, authority, post, commission, committee, institution, board or political subdivision created by law to exercise some sovereign power or to perform some governmental duty.…"

If there is to be a contract between a state agency and a nongovernmental vendor, the *Virginia Public Procurement Act (VPPA)* and the regulations set forth in this manual and the *Vendors Manual* apply regardless of the source of funds by which the contract is to be paid or which may or may not result in monetary consideration for either party. These documents also apply whether the consideration is monetary or nonmonetary and regardless of whether the public body, the contractor, or some third party is providing the consideration.

Changes to this manual will be announced through the issuance of Procurement Information Memorandums (PIMs) by DGS/DPS and should be filed in Appendix C for future reference purposes. Unless guidance accompanying a PIM states otherwise, solicitations issued on or after the effective date of the PIM shall be subject to the APSPM as revised by that PIM. Solicitations issued before the effective date of the PIM shall not be affected by the PIM unless the contracting officer chooses to issue an addendum to an outstanding solicitation or negotiate a contract change. Contract officers shall include any applicable, new or revised terms and conditions, and forms in solicitations affected by the PIM.

1.1 **DGS/DPS Authority and Responsibility**. **The Department of General Services, Division of Purchases and Supply (DGS/DPS)**. DGS/DPS is the centralized purchasing agency for materials, supplies, equipment, printing, and nonprofessional services required by any state agency or institution. All such purchases made by any department, division, officer or agency of the Commonwealth shall be made in accordance with the ***Code of Virginia***, Chapter 43, Title 2.2, and such rules and regulations as DGS/DPS may prescribe. Intentional violations of the centralized purchasing provisions of this article by any using agency, continued after notice from the Governor to desist, shall constitute malfeasance in office, and shall subject the officer responsible for violation to suspension or removal from office, as may be provided by law in other cases of malfeasance (*Code of Virginia*, § 2.2-1115 E.). The Comptroller shall not issue any warrant upon any voucher issued by any using agency covering the purchase of any material, equipment or supplies, when such purchases are made in violation of any provision of this article (*Code of Virginia*, § 2.2-1115 D.). Contracts awarded in violation of the ***VPPA*** are voidable. Contracts signed by individuals without authority to do so are void from the beginning. Individuals awarding contracts without the authority to do so may be held personally liable for payment to the contractor.

DGS/DPS has the authority to make, alter, amend or repeal regulations relating to the purchase of materials, supplies, equipment, nonprofessional services, and printing, and may specifically exempt particular agency purchases below a stated amount, or specific materials, equipment, nonprofessional services, supplies, or printing (*Code of Virginia,* § 2.2-1111).

DGS/DPS has the responsibility for the standardization of materials, equipment, and supplies purchased by or for any agency of the State (*Code of Virginia*, § 2.2-1112). DGS/DPS also has the authority to establish criteria and procedures to assure economical operation of all state-owned printing facilities (*Code of Virginia*, § 2.2-1113).

DGS/DPS is responsible for the procurement of all public printing, except as DGS/DPS may otherwise provide. This does not prohibit in-house printing. Except for purchasing from Corrections Print Shop (CORPRINT), an agency may not purchase printing from another state agency without DGS/DPS approval. To obtain approval, contact DGS/DPS State Procurement Supervisor at 804-786-5412, indicating the nature and extent of the request. In addition, DGS/DPS is authorized to establish criteria and procedures to obtain economical operation of all state printing facilities (*Code of Virginia*, § 2.2-1113).

1.2 **Agency Purchasing Authority**. Agency heads have the ultimate responsibility to ensure that the acquisition of goods and services does not violate or circumvent state law, executive orders, appropriations, regulations, or the provisions of this manual. Agencies shall develop local written procedures implementing the provisions of this manual. They may contain more restrictive requirements, but they must conform with the provisions of this manual and shall be available for public inspection and to DGS/DPS upon request. In addition, they must identify the chief purchasing official, e.g., the individual responsible for the day to day management of the purchasing function and those having delegated authority to bind the agency in making contractual commitments.

a. **Goods**. The general delegation threshold for the purchase of goods and printing is $50,000. Purchases from state contracts are unlimited except for limitations on specific contracts. All agency level purchase transactions should be initiated through the use of a requisition (electronic or a standard pre-printed form). DGS/DPS will not accept requisitions estimated to be less $5,000. Between $5,000 and $50,000 agencies have the option of forwarding requisitions to DGS/DPS for processing or handling them locally. Requirements for goods and printing over $50,000 shall be forwarded to DGS/DPS for processing. This does not affect those agencies that have higher delegation specifically authorized in writing by DGS/DPS; however, they may submit requisitions to DGS/DPS for processing. Agencies may request increased authority for the procurement of goods but must meet standards established by DGS/DPS. Increased authority must be requested in writing by the agency head. All requests will be reviewed for conformance with published standards. Annex 1-A contains the Agency Standards for Increased Delegated Procurement Authority. Annex 1-B contains the Agency/Institution Request for Increased Delegated Procurement Authority. For information concerning increased delegated procurement authority, call 804-786-1600.

b. **Services**. Agencies are authorized to contract for services up to any dollar amount subject to applicable laws, regulations, this manual and fiscal restraints; however, agencies may submit requisitions to DGS/DPS for processing.

c. **Purchase of Goods for Resale in State Operated Bookstores, Commissaries, Canteens, Gift Shops, and Similar Retail Outlets**. Agencies are delegated the authority for direct procurement of items for retail sale such as books, magazines, novelties, paper, pens, pencils, pre-packaged edibles, school supplies, souvenirs, tobacco products, toiletries, and wearing apparel. For resale purchases, an agency may establish its own small purchase procedures, if adopted in writing, for single purchases or term contracts not expected to exceed $50,000. Such small purchase procedures shall provide for competition wherever practicable. For purchases over $50,000, the *Virginia Public Procurement Act* and the applicable portions of this manual shall apply (see 4.15).

d. **Validity of Requirements**. It is the responsibility of the individual state agency to verify that items or services requisitioned or purchased are authorized and are applicable to that agency's mission and needs and have been properly funded. This includes any approvals required by law, regulation or policy.

e. **Authority to Sign Procurement Documents**.

(1) **Designations**. Agencies shall designate in writing those persons authorized to approve procurement documents. Dollar thresholds should be established, as applicable, for each signature authority. A copy of the written authorization shall be on file in the agency's purchasing office. Agency personnel having "official responsibility" as defined in *Code of Virginia*, § 2.2-4368, for procurement must comply with the *Virginia Public Procurement Act* and the policies and procedures set forth in the most recent editions of the *Vendors Manual* and this manual. Intentional violations could subject the responsible party or parties to suspension or removal from office under the provisions of *Code of Virginia*, § 2.2-1115.

(2) **Designated signature authority is required for the following documents:** purchase requisitions submitted to DGS/DPS, agency purchase orders, contracts, *VBO* waiver, multi-colored printing, waiver of a prebid or preproposal conference, contract modification, and written determinations to support the use of emergency and competitive negotiation procedures. The agency head may delegate approval authority in writing, for sole source procurements under $50,000 to the chief purchasing officer or a direct report to the agency head. Over $50,000 the agency head may delegate approval authority in writing, to a direct report to the agency head.

f. **Delegated Procurement Authority and eVA.** By statute, most direct purchases of goods and nonprofessional services by State agencies (other than technology purchases) require a delegation of purchasing authority from DPS (Code of Virginia, §§ 2.2-1110 and 2.2-1120).

DPS has granted agencies permission in certain circumstances to purchase non-technology goods and services directly, rather than through DPS. These grants of authority to make direct purchases include those set forth in general rules, such as Sections 1.2 and 1.4 of this Manual, as well as special orders issued by DPS to particular agencies.

On and after July 1, 2009, all of DPS's previous and future grants of direct purchasing authority shall be construed to allow direct purchasing only if the purchase is made through DPS's statewide electronic procurement system (eVA), beginning at the point of requisitioning, unless DPS gives or has given express written authorization for the purchase to be made through a non-eVA process or technology application.

Any agency desiring a grant of authority from DPS to make a non-technology purchase through any process or technology application other than eVA must request a specific, written exemption from DPS. Unauthorized direct purchases by officers or employees of using agencies shall be governed by Code of Virginia § 2.2-1115(D) and (E), including but not limited to, the directive that the "Comptroller shall not issue any warrant upon any voucher issued by any using agency covering the purchase of any material, equipment or supplies, when such purchases are made in violation of this article."

In addition, the delegated procurement authority of any agency whose officers or employees violate this provision will be reduced and/or DPS review and pre-approval of agency procurement awards may be required until DPS confidence is restored in the integrity of the agency's procurement operations.

Intentional violations of the above provision are required to be reported to the Department of General Services and Auditor of Public Accounts by the Agency Head.

1.3 **Statutory Exemptions**. Unless otherwise ordered by the Governor, purchasing through DGS/DPS is not mandatory in the following cases; (*Code of Virginia*, § 2.2-1119) **however, the purchases are subject to the *Virginia Public Procurement Act* and the policies and procedures set forth in this Manual.**

a. Materials, equipment, and supplies as are incidental to the performance of a service contract for labor or for labor and materials (see 4.21);

b. Manuscripts, maps, audiovisual materials, books, pamphlets and periodicals purchased for the use of The Library of Virginia or any other library in the Commonwealth supported in whole or in part by state appropriations;

c. Perishable articles, provided that no article except fresh vegetables, fresh fish, fresh meat, fresh fruits, fresh eggs and milk shall be considered perishable within the meaning of this clause, unless so classified by DGS/DPS;

d. Materials, equipment and supplies needed by the Commonwealth Transportation Board; however, this exception may include office stationery and supplies, office equipment, janitorial equipment and supplies, coal and fuel oil for heating purposes only when authorized in writing by DGS/DPS;

e. Materials, equipment and supplies needed by the Virginia Alcoholic Beverage Control Board; however, this exception may include office stationery and supplies, office equipment, janitorial equipment and supplies, coal and fuel oil for heating purposes only when authorized in writing by DGS/DPS;

f. Binding and rebinding of the books and other literary materials of libraries operated by the Commonwealth or under its authority;

g. Printing of records of the Supreme Court; and

h. Financial services, including without limitation, underwriters, financial advisors, investment advisors and banking services.

1.4 **Administrative Exemptions**. DGS/DPS may delegate purchasing authority or authorize exceptions from its rules and regulations for particular agencies or for specified goods, non-professional services and printing (*Code of Virginia*, § 2.2-1111). One-time exemption requests must be processed using the Procurement Exemption Request form (see Annex 13-D).

a. **Purchase of Goods and Nonprofessional Services Under Delegated Authority**. All State agencies may purchase goods within the dollar limits and categories delegated by DGS/DPS without requisitioning through DGS/DPS. The authority to purchase nonprofessional services without regard to dollar limit is delegated to all state agencies. Agencies must comply with the *Virginia Public Procurement Act*, this manual and any revisions thereto. Any agency making purchases in violation of the procedures set forth in this manual may have a part or all of the purchasing authority delegation granted by DGS/DPS withdrawn (see 1.2).

b. **Acquisition of Automated Data Processing (ADP) and Telecommunications Equipment Goods and Services**. VITA has oversight and procurement responsibility for all Spot purchases of ADP goods and services, including telecommunications equipment. See Appendix "A" for the definition of "Spot" and “ADP Equipment” acquisitions.

Acquisition of all state term contracts for ADP goods and services, to include all telecommunications equipment and services are the responsibility of the Virginia Information Technologies Agency’s Acquisition Services Division (VITA/ASD) as described in subparagraphs (3) through (6) below. Procurement of these commodities, as described in subparagraphs (4) and (5) below may be made by agencies and institutions within their level of authority delegated by DGS/DPS using the methods prescribed in this manual (see Appendix B, Section IV, for special terms and conditions relating to these procurements.)

Before any public body procures any computer system, equipment or software, it shall consider whether the proposed system, equipment, or software is capable of producing products which facilitate the rights of the public to access official records under the *Freedom of Information Act* (§ 2.2-3700 et seq.) or other applicable law.

NOTE: See Chapter 8 for sole source processing requirements for Information Technology (IT) goods and services.

(1) **ADP Equipment and Software** requirements, as defined in Appendix A, that exceed $100,000 require prior certification from the Department of Technology Planning (DTP) that the proposed procurement is in conformance with the statewide information management plan and the agency's/institution's information technology plan. DTP review is not necessary when the procurement of computer technology is an ancillary part of a major equipment purchase.

(2) **Computer Related Services** which exceed $100,000 require VITA's approval prior to purchase. In addition, any renewal of software or computer related maintenance services resulting from an existing contract executed on behalf of an individual agency or institution by a central purchasing authority must be approved by DGS/DPS 60 days prior to the effective renewal date. This action is necessary to verify the renewal features contained in the individual contract.

(3) **Telecommunications Equipment** requirements, as defined in Appendix A, are the responsibility of the Virginia Information Technologies Agency's (VITA) ASD and any request that exceeds $100,000 requires VITA's approval prior to purchase. VITA will publish minimum technical requirements and/or recommend standards for adoption by DTP, as appropriate, for telecommunications equipment, which must be incorporated into specifications for telecommunications procurements. Agencies and institutions may make spot purchases of telecommunications equipment without the prior written approval of VITA up to the delegated limits authorized by DGS/DPS. Purchases from state telecommunications equipment contracts may be made in accordance with the same delegation(s).

(4) **Telecommunications Services** purchases, as defined in Appendix A are the responsibility of VITA's Integrated Telecommunications Division (ITD) VITA/ITD.

Telecommunication services, are based on contracts between the Commonwealth and various telecommunications providers and are coordinated, managed, purchased, and provided through VITA. To acquire those services under contract, agencies, institutions or localities must submit a Telecommunications Service Request (TSR), which authorizes VITA to acquire the service on the agency, institution or locality's behalf. See Annex 1-C for a copy of VITA Form #300. All TSRs shall be submitted to VITA's Finance Division at FAX 804-371-6343 or e-mailed to VITA via an on-line form at www.vita.virginia.gov **NOTE**: Chapter 935, Section 4-5. 06 b.1 of the Appropriations Act requires all agencies and institutions to obtain the written approval of the Secretary of Technology prior to obtaining contracts for telecommunications services. Such requests may be sent to VITA/ITD via the facsimile number/web page listed above.

To acquire services that are not under a current VITA Telecommunications contract, agencies or institutions must submit a TSR to VITA's Finance Division as noted above. The TSR will describe the services (to include technical specifications) to be acquired, the length of contract requested, the approximate dollar value of the services being requested and a statement as to why the services currently available under an existing VITA contract does not meet the agencies or institutions requirements. The TSR will be reviewed by the Director, ITD. If the services are approved, VITA/ASD will obtain the services on the agencies, institutions or localities behalf. If the services are not approved for the agency or institution, TSR will be returned by the Director, ITD with the reason(s) why the request was denied. Requisitions exceeding $100,000 require DTP's approval prior to issuing a solicitation.

All facilities, equipment, and services requiring Federal Communications Commission (FCC) licensing, e.g. uplinks, television and radio broadcast frequencies, microwave, two-way radio, etc. are the responsibility of VITA to coordinate/acquire. Agencies must submit a TSR to the Integrated Telecommunications Division of VITA/ITD, FAX 804-786-4177 or e-mail phoppes@vita.virginia.gov with all supporting information to acquire any equipment or services. If the equipment or services are on a current VITA state contract, VITA/ITD will approve the request and return the appropriate written approval. If the equipment or services are not currently available via a VITA state contract, VITA/ITD will coordinate with VITA/ASD to acquire the requested goods or services on the agency's or institution's behalf.

(5) **For open-air broadcast, satellite, microwave and other wireless telecommunications services**, VITA is responsible for coordinating the Commonwealth's approach to providing these services unless exempted by statute. Agencies and institutions should submit a TSR to the Director, ITD describing the

desired services. The requisition will include the technical specifications, the length of contract requested and the approximate dollar value of the services. The Director, ITD will review the requisition and authorize ASD to proceed with the acquisition on behalf of the agency or institution or return the request with comments.

(6) **State ADP Equipment Contracts**. In addition to the requirements for telecommunications goods and services referenced above, VITA is responsible for the acquisition of all state contracts for ADP goods and services. VITA will coordinate all requirements for state ADP goods and services through the Council on Technology Services (COTS) and issue solicitations/negotiate contracts on behalf of all agencies, institutions and localities of the Commonwealth. Agencies, institutions and localities of the Commonwealth may order the goods and services represented by these agreements up to the dollar limits specified by DGS/DPS or as set forth in the individual agreements. Use of VITA's state contracts are generally not mandatory. However, most telecommunications services contracts require the agency or institution to utilize VITA's contracts. Questions regarding telecommunications services contracts may be addressed to the Director, ITD. If an agency or institution cannot fulfill their individual data processing requirement (excluding telecommunications) via a VITA state contract, they will be required to send all request(s), which exceed their delegated procurement authority to DGS/DPS for acquisition.

c. **DGS/DPS has delegated the authority to agencies and institutions to make bulk purchases of the following listed commodities**. Under $50,000 use small purchase procedures (see Chapter 5); over $50,000 use the applicable method of procurement. However, bulk purchases of commodities used in road and highway construction and maintenance, and aggregates shall not be made by online public auctions (§ 2.2-4303.I).

CC#	COMMODITY
040-All	Animal and Livestock
325-All	Animal Feed, All types
335-All	Fertilizer, All types
390-All	Foods, Perishable
540-78	Sawdust
595-All	Wood Chips & Bark, etc.
675-All	Poisons, Agriculture
690-All	Poultry, Live
745-07	Asphalt
745-14	Asphaltic Concrete, Cold Laid
745-21	Asphaltic Concrete, Hot Laid
745-70	Road Oil
745-77	Rock Asphalt, Cold Mix
45-84	Slurry Seal
750-07	Borrow and Soil
750-21	Cement, Truckload Lots
750-35	Crushed Stone
750-56	Lightweight Aggregate, all types
750-63	Local Option Materials, Gravel, Nonpotable Water, Pit Run, Sand, etc.
750-70	Ready-Mix Concrete
750-77	Sand and Gravel
750-95	White (Hydrated) Lime
770-06	Aggregate, Gravel, Marble, etc.
790-All	Seed, Sod, etc.

d. **Purchases of goods (except printing) from the federal government, other states and their agencies or institutions, and public bodies** are not required to be requisitioned through DGS/DPS (see 1.5).

e. **Purchase of Copyrighted Books and Copyrighted Audio-Visuals**. The purchase of copyrighted material such as books, written publications, standardized tests, answer sheets, and copyrighted audio/audio-visual film, diskettes, compact discs, and tapes are not required to be requisitioned through DGS/DPS. Under $50,000 use small purchase procedures; over $50,000 use the applicable method of procurement.

1.5 **Exceptions to Competitive Requirements**. DGS/DPS has determined that competition normally is either not practicable or available for purchases of the following goods or services, and purchase through DGS/DPS is not mandatory; however, one quote must be obtained and documented, and a purchase order must be issued for requirements over $5,000. Purchases using the Small Purchase Charge Card (SPCC) do not require a purchase order to be issued (see 4.12) Purchase orders are not required for items in 1.5b numbered 1, 3, 7, 11, and 13. When an order document is not issued, agencies are advised that proper verification of receipt or performance is essential for audit purposes.

a. Purchases up to $5,000.

b. The following selected categories of goods and services up to and including $50,000:

(1) Books, pre-printed materials, reprints and subscriptions (e.g., print or electronic), pre-recorded audio and video cassettes, compact discs, slide presentations, etc., when only available from the publisher/producer.

(2) Academic/research consulting services.

(3) Alcohol purchased from Alcohol Beverage Control stores.

(4) Honoraria, entertainment (speakers, lecturers, musicians, performing artists).

(5) Training that is specialized, proprietary, not typically available to the general public for which competition is generally unavailable, off-site, and requires a registration fee. Contact the Department of Human Resource Management, Training Manager, at 804-225-2016, to ascertain if the training being requested is available through an existing contract or another source.

(6) Royalties and film rentals when only available from the producer or protected distributors.

(7) Professional Organizational Membership dues.

(8) Writers.

(9) Artists (does not include graphic artists); original works of art; and original, or authentic antique period art frames (does not include newly created replacement or reproduction frames).

(10) Photographers other than for graduations and yearbooks, e.g., for official photographs/portraits.

(11) Contributions and donations made by a university.

(12) Advertisements such as in newspapers, magazines, journals, radio, television, etc.

(13) Utility charges.

(14) Conference facilities (to include conference support and related lodging and meals) only when the use of a specific facility is directed by an outside donor, sponsor, or organization (see 4.16 for the purchase of conference facilities under all other conditions).

(15) Accreditation fees and academic testing services.

(16) Exhibition Rental Fees for exhibitions of historical artifacts or original works of art. (The rental fee may include charges other than the rental of the exhibition, such as transportation costs.)

c. Purchases of used equipment up to and including $50,000 (see 4.17). This also includes used equipment purchased at a public or online auction, if determined in writing that the purchase would be in the best interest of the public.

d. Purchases from the federal government, other states and their agencies or institutions, and public bodies. Care must be exercised to be certain that the price is fair and reasonable.

e. Surplus property (see Chapter 12).

f. Purchases under $50,000 for testing or evaluation (limited to purchases of quantities considered necessary for complete and adequate testing).

g. Emergency purchases (competition obtained when practicable). DGS/DPS prior approval is required if personal property or safety are not impaired and the value of the procurement exceeds an agency's delegated authority (see Chapter 9).

Annex 1-A

AGENCY STANDARDS FOR INCREASED DELEGATED PROCUREMENT AUTHORITY

The Division of Purchases and Supply (DPS) is responsible for ensuring that state procurement activities in the Commonwealth meet the requirements of the *Virginia Public Procurement Act (VPPA)*. As a part of this responsibility, DPS has established the following standards to help agencies and institutions receive and maintain increased delegated procurement authority. The intent of these standards is to assure that delegated processes comply with the *VPPA*, using procedures that are consistent with the *Agency Procurement and Surplus Property Manual (APSPM)*. Agency written requests for increased delegated authority must be received from the agency or institution head. DPS will use these standards to consider all requests.

ORGANIZATION STANDARDS

COMPLIANCE. An organization must maintain an acceptable standard of compliance evidenced by a satisfactory Procurement Management Review. To gain increased delegated authority, a satisfactory review must have been completed within the previous 12-month period. Inability to correct areas noted as deficient will be reason to consider whether continued delegated procurement authority is warranted. If not, such authority may be rescinded or reduced, as appropriate.

DELEGATION WITHIN AN AGENCY. Agency and institution heads have the ultimate responsibility to ensure that the acquisition of goods or services does not violate or circumvent state law, executive orders, appropriations, regulations or the provisions of the *APSPM*. The Chief Procurement Officer is responsible for purchasing activities. Subsequent delegation within an agency must be consistent with the agency's ability to manage and monitor procurement activity according to these standards, and the procedures outlined in the *APSPM*. If an agency delegates procurement authority to an end-user for amounts over the level for oral quotations, then DPS approval is required. An agency must designate in writing, with dollar thresholds, individuals authorized to approve procurement documentation.

MANAGEMENT. The Chief Procurement Officer shall report no lower than hierarchical level three from the agency head and have full responsibility and commensurate authority for the agency's procurement-related policy and procedure development, implementation and administration. The grade, classification and title of the Chief Procurement Officer must be commensurate with the experience necessary to meet the responsibilities of the level of increased delegation.

ORGANIZATIONAL LOCATION. An agency's procurement activity should be separate from the accounting activity. If an agency cannot meet this standard, then the individual charged with responsibility and authority for organizational procurement must be classified in the purchasing classification skill series.

PURCHASING PROGRAM STANDARDS

AUTOMATION. An agency must be able to produce detailed reports of its expenditures, track releases against term contracts and produce solicitation and award documents. An agency must maintain an initiative to automate procurement processes and assist DPS efforts to create and set up a statewide procurement system.

CONTRACT OPPORTUNITIES. An agency must analyze expenditures and procurements annually to assess contract opportunities.

CONTRACTED PURCHASING. An agency's authority to procure goods and services will not be contracted to a private entity to act on the agency's behalf for the procurement of goods and services under any circumstances.

PURCHASING POLICIES AND PROCEDURES. An agency must have adequate, up-to-date purchasing procedures, approved by the agency head, with applicable surplus, storage and distribution procedures. A policy statement by the agency head must be included to introduce any unique mission-oriented requirements, establish overall guidance and indicate the position responsible for procurement.

VIRGINIA BUSINESS OPPORTUNITIES (VBO) ADVERTISING. Virginia Business Opportunities (VBO) Advertising. An agency must advertise all procurements that exceed $50,000 (goods, services, or construction) in the VBO on the eVA web site (www.eva.virginia.gov).

STAFFING STANDARDS

PROCUREMENT RESPONSIBILITY AND AUTHORITY. The individual designated by the agency head as Chief Procurement Officer must have authority that is commensurate with the responsibility for managing the procurement of goods and services.

PROCUREMENT STAFF. An agency must have sufficient, trained and classified purchasing staff to support the number, frequency and complexity of the agency's procurement requirements, including capital outlay and risk management.

STAFF SUPERVISION. The position designated with responsibility for procurement must also have responsibility for managing and supervising the purchasing staff. A staff reduction exceeding 25% will be reason to consider a modification to an agency's delegated procurement authority.

PROFESSIONAL STANDARDS

ETHICS. An agency must comply with Ethics in Public Contracting (*VPPA* § 2.2-4367 to 2.2-4377), the *State and Local Government Conflict of Interests Act*, and the *Virginia Government Frauds Act.* Additionally, annual refresher training classes must be provided to all who have authority to bind the agency or institution with non-government entities.

DPS ORIENTATION. Classified buyers or individuals within the purchasing or materiel management series must visit DGS/DPS central office for an orientation. Newly assigned buyers must receive orientation within six months of employment.

TRAINING STANDARDS

END-USER TRAINING. An agency must conduct annual training for end-users and contract administrators that is commensurate with agency efforts to subsequently delegate procurement authority within the agency.

PROFESSIONAL TRAINING. An agency's purchasing staff must maintain a standard of active participation and attendance at training conducted at DGS/DPS and/or other professional purchasing associations.

PROFESSIONAL ASSOCIATIONS. An agency must maintain a professional affiliation through membership in at least one professional purchasing association, e.g., CAPA, VAGP, NIGP, ISM, NASPO, etc.

TRAINING RECORDS. An agency must maintain records to show training that is received and provided, and a plan for future training of professional purchasing staff.

VIRGINIA CONTRACTING OFFICER (VCO) CERTIFICATION. An agency's Chief Procurement Officer and lead buyer must be VCO certified. Other procurement staff should achieve VCO certification within two years of increased delegated authority or within two years of hiring.

To request increased delegated authority, an agency/institution head must submit a request in accordance with the attached format and include the required documentation to outline the implementation methodology to: Director, DPS, P. O. Box 1199, Richmond, VA 23218-1199. The agency should refer to these standards when applying for an increase in delegated authority. An on-site review may be scheduled.

D. B. Smit, Deputy Director
Department of General Services
July 1, 1998

Annex 1-B

COMMONWEALTH OF VIRGINIA
DGS/DIVISION OF PURCHASES AND SUPPLY
AGENCY/INSTITUTION REQUEST FOR
INCREASED DELEGATED PROCUREMENT AUTHORITY

TO: Director, DGS/DPS
1111 East Broad Street
P. O. Box 1199
Richmond, VA 23218-1199

Date:_____

Contact Name: _____ Telephone Number:_____

Agency Code: _____

Mailing Address: _____
_____
_____

Requested delegation. *(Check appropriate blank/s)*

1. Goods: _____ ***$100,000*** _____***Unlimited***
2. Printing: _____ ***$100,000*** _____***Unlimited***

Agency Head Approval:

_____ _____
(Print/Type Name) (Signature)

JUSTIFICATION
Provide justification for the agency's /institution's request for increased delegated procurement authority.

ORGANIZATION STANDARDS
1. Compliance. Outline actions taken to remedy noncompliance issues in the most recent Procurement Management Review.

2. Delegation Within An Agency
- Identify all current delegation to departments, end-users, and facility management positions within the agency/institution. Include any planned changes to internal delegation if increased delegated procurement authority is received.
- Attach list of individuals and/or position titles with authority to approve procurement documents.

3. Management
Chief Procurement Officer: _____
Grade: _____
Class Title: _____
Working Title (if different): _____
Provide a brief synopsis of the individual's relevant professional background and experience.

4. Organizational Location
- Attach an organizational chart depicting the location of the Procurement Office within the agency/institution.
- Attach any master plan or describe any anticipated agency development that may impact purchasing (i.e., additional agency locations, changes in personnel policy or levels, revised agency missions/goals, etc.).

PURCHASING PROGRAM STANDARDS
5. Automation
- Describe standard expenditure reports and how these are produced.
- Describe current automation in procurement activities and initiatives to further automate agency procurement processes, and how the agency/institution would be willing to assist and participate in DPS statewide initiatives.

6. Contract Opportunities

- Describe how contract opportunities are assessed.
- Attach list of all agency awarded term contracts, with expiration dates and names of contract administrators for each.

7. Purchasing Policies and Procedures

- Attach current written purchasing procedures, approved by the agency/institution head, which include applicable surplus, storage, and distribution procedures.
- Provide a copy of the agency/institution head's procurement policy statement.

8. *Virginia Business Opportunities* (*VBO*) Advertising. Describe use, or intended use, of *VBO* advertising.

STAFFING STANDARDS

9. Procurement Responsibility and Authority. Provide a brief description of how the individual designated by the agency/institution head, as Chief Procurement Officer, has authority commensurate with procurement management responsibilities.

10. Procurement Staff

- Identify purchasing staff classifications and scope of responsibilities and attach position descriptions.
- Describe any additional responsibilities handled by procurement staff (e.g., facility management, capital outlay, security, transportation, etc.).

11. Staff Supervision

- Describe the extent to which the Chief Procurement Officer manages and supervises the purchasing staff.
- If not provided in No. 4, attach an organizational chart of the purchasing staff depicting structure, level, and classifications of professional purchasing staff; and separately identify accounting function.

PROFESSIONAL STANDARDS

12. Ethics. Describe the agency's/institution's plan to provide annual refresher and ethics training classes to all who have the authority to bind the agency or institution with non-governmental entities.

13. DPS Orientation. Indicate when the agency's/institution's classified buyers or individuals with purchasing or materiel management responsibilities attended, or plan to attend, the DGS/DPS central office orientation.

TRAINING STANDARDS

14. End-User Training. Describe the agency's/institution's annual training for end-users and contract administrators, commensurate with agency efforts to subsequently delegate procurement authority within the organization.

15. Professional Training. Describe how the agency's purchasing staff will maintain a standard of active attendance and participation in DGS/DPS training, and/or other professional purchasing associations.

16. Professional Associations. Describe how the agency will maintain professional affiliations through memberships in at least one professional purchasing association (e.g. CAPA, VAGP, NIGP, ISM, NASPO, etc.).

17. Training Records. Describe the agency's/institution's records showing training that has been received and provide a plan for future training of professional purchasing staff.

18. VCO Certification. Attach copy of VCO certificates for the Chief Procurement Officer and lead buyer. Describe how procurement staff will achieve VCO certification within two years of increased delegated authority or of hiring.

Annex 1-C

Telecommunications Form #300

Virginia Information Technologies Agency
110 South Seventh Street, Richmond VA 23219

Telecommunications Service Requisition

Agency Information:

Agency/Activity Code: _____ Agency: _____

Agency Telecommunications Coordinator:_____

Address:_____

City: _____ Zip:_____

Telephone Number:_____

Date: _____ Agency Log No.: _____

Location of Service:

Address:_____

City: _____ Zip:_____

Contact: _____ Telephone Number:_____

Account No. (if billed directly by Telco):_____

(VITA use only)

OGTS: _____ LG: _____

Account No.: _____ Order Writer:_____

Instructions to VITA/Telco/Vendor. Note: Changes to this Service Requisition are not authorized.

Provide service as follows: Requested due date: _____

_____

_____

_____

_____

_____

_____

_____

Certification:

I hereby certify that sufficient funds are available for this requisition.

Submitted: _____ _____ _____

(Date) Agency Telecommunications Coordinator Name Signature

(VITA use only)

Date: _____ Approval:_____ Approval No.: _____

Telecommunications Service Requisition

(Continuation Sheet)

Agency/Activity Code:_____Agency Log No.:_____

CHAPTER 2

SOURCES OF SUPPLY

In this Chapter look for . . .

2. General
2.1 Mandatory Sources
- Term Contracts
- Virginia Correctional Enterprises
- Department for the Blind and Vision Impaired
- Virginia Distribution Center (VDC)
- DGS/DPS Office of Graphic Communications
- Virginia Information Technologies Agency (VITA)

2.2 Non-Mandatory Sources
- Optional Use Term Contracts
- Surplus Property
- Sheltered Workshops

2.3 Source Lists
2.4 Suppliers' Catalogs
2.5 Contact with Vendors
2.6 Other Sources of Supply

Annexes
2-A Deleted.
2-B Deleted.
2-C Deleted.
2-D Deleted.

2. **General**. This chapter discusses mandatory and non-mandatory sources of supply. All agencies and institutions are required to use the mandatory sources under the conditions outlined in each subsection of paragraph 2.1. The non-mandatory sources identified in Section 2.2 are recommended for the products/services indicated and agencies and institutions are encouraged to use them. The remaining sections of this chapter offer guidance on use of supplier source list, catalogs and seeking assistance from vendors.

2.1 **Mandatory Sources**.

a. **Term Contracts**. To obtain more favorable prices through volume purchasing and to reduce lead-time and administrative cost and effort, DGS/DPS and other agencies/institutions within their delegated authority, may establish mandatory use term contracts for goods or services. Written notices of contract awards are issued notifying participants (agencies or institutions or organizational elements within) of the existence of such contracts. In accordance with the terms and conditions, purchase orders shall be issued in any amount for any goods or service on a term contract available to that participant. Agencies and institutions shall place all orders on mandatory use contracts through eVA. If an item is available on a mandatory contract, participants may not use their local purchasing authority to purchase from another source unless the purchase is exempt by contract terms such as not meeting the contract's minimum order requirement. Vendors who intentionally sell or attempt to sell goods or services to an authorized participant who is under a mandatory contract with another vendor may be suspended and/or debarred by DGS/DPS. The purchase by agency personnel of goods or services that are on DGS/DPS mandatory contracts from non-contract sources may result in reduction or withdrawal of that agency's delegated purchasing authority by DGS/DPS (see 13.7). An exception from a mandatory state contract may be granted by the DGS/DPS contract officer responsible for the contract. The Procurement Exemption Request form

located in Annex 13-D should be used to request an exception. Approved exemption requests must be attached to the purchase transaction file either electronically or by hard copy.

Term contracts are for the benefit of the Commonwealth of Virginia, its agencies and institutions. They do not apply to State employees or other individuals, and ordering from state contracts or individual state agency/institution contracts by individuals directly or by using agency orders with subsequent reimbursement to the agency is prohibited.

b. **Virginia Correctional Enterprises (VCE).** Goods and services produced or manufactured by state correctional facilities shall be purchased by all departments, institutions, and agencies of the Commonwealth, which are supported in whole or in part with state funds. VCE products may also be purchased by any county, district of any county, city or town and by any nonprofit organization, including volunteer lifesaving or first aid crews, rescue squads, fire departments, sheltered workshops and community service organizations (*Code of Virginia* §53.1-47.) Products include, but are not limited to, Wood and Metal Case goods, Seating, Office Systems, Shoes, Clothing, Embroidery, Silk Screening, Vinyl Binders, Pad holders, Sign, Microfilming and Data Storage, Optical, Plastic Bags, Dentures, Laundry, Wooden Pallets, Warehousing, License Tags, Janitorial Products, and VCE Digital Works (*Corprint). Special or unique products or services requiring extensive production runs in volume are available.

Agencies may submit agency purchase orders directly to VCE through eVA. If an agency has a critical need, they should contact the VCE Customer Service Department by telephone (804) 743-4100 or VCE Digital Works (Corprint) at (804) 225-3574 to discuss product availability and delivery. Additional information concerning goods and services available from VCE is contained in the Virginia Correctional Enterprises catalog.

The following goods and services are available through VCE for purchases by state agencies, institutions, municipalities and local governments, and Not-for-Profit organizations:

1. **VCE Digital Works (Corprint):** Services include black and white and laser color copying, single color to four-color printing, bindery and finishing services. Maximum print area is 12” X 109”, prints 600 dpi and 170 lpi with offset quality rosette. Printing also includes flat forms; NCR-type forms up to five-part (not snap-apart or continuous); padded forms; envelopes (regular and window) including long Kraft envelopes; color booklets up to 9” X 12”; and color brochures with no more than two folds. Desk-top publishing software supported includes: QuarkXPress, Adobe PageMaker, Adobe Illustrator, Adobe Photoshop Macromedia Freehand, CorelDraw. Images should be saved in CMYK format, not RGB or indexed color. Scanned image resolution need not exceed 300 dpi. Grayscale images should have a tonal range from 5% to 90% open mid-tones slightly. Perform all image manipulation in Photoshop, not in the layout program. Convert Duotones to CMYK before final placement. Do not save images in PICT format. Convert DSC files to TIFF format.

   Convenient pick up and delivery services are available upon request. Document files storage for future access, update, re-purposing and reprinting is also available. Customers are able to submit jobs via the web, eVA, e-mail or deliver in person at the VCE Downtown Digital Print Shop located in the John Tyler Building, 1300 East Main Street, Richmond VA.

2. **Wood and Metal Case Goods**: Total offering of Office, Lounge, Dormitory, and Occasional Furniture. This includes but is not limited to: desks, credenzas, bookcases, bridges, hutches, lateral files, storage cabinets, shelving, filing cabinets, beds, sofas, loveseats, chairs, stools, and table. Custom metal and wood products are available.

3. **Seating:** A comprehensive offering of office, conference room, reception area, dormitory, lounge, and laboratory seating.

4. **Office Systems:** VCE offers a broad spectrum of component office systems including, panels, work surfaces, filing systems, table, cable management, and keyboard trays.

5. **Shoes:** All-purpose 6” and 10” top work boots made of full and corrected grain leather, Goodyear welt with cushioned insole, rubber heels.

6. **Clothing and Textiles:** A wide selection of clothing items which includes, but is not limited to shirts, pants, jackets, coats hospital scrubs, lab coats, blankets, sheets, pillowcases, laundry bags, full dress uniforms, food-service clothing, health-care provider clothing.

7. **Embroidery:** VCE provides all services needed to embroider logos or special graphics to any piece of apparel or textiles.

8. **Silk Screening:** Full service silkscreen and/or foil stamping services.

9. **Vinyl Binders, Pad Holders and Sign Products:** Full range of three ring binders, pad holders, plastic signs and decals.

10. **Microfilming and Data Storage:** Full service microfilming which includes document preparation, photography, developing, duplicating, and film delivery. Data conversion from hard copy to microfilm and DVD formatted disks.

11. **Optical:** VCE's prescription eyewear is a full service lab. The product offering includes single vision, bi-focal, and tri-focal lenses, tinting, and a large number of frames.

12. **License Tags:** State and municipal license plates are quoted on an individual design and quantity basis.

13. **Dentures:** From full dentures to simple mouth guards. VCE dental prosthetics are made to the most exacting standards. Services include: soft mouth guards, relines of upper and lower, acrylic splints, space maintainers, surgical trays, surgical splints and hard mouth guards.

14. **Laundry Services:** Laundry services may include par cart packing, pick-up and delivery, assistance with linen inventory control, water conservation. Each laundry customer has unique requirements; contact VCE for a quotation on the service required.

15. **Pallets manufacture and Repair:** Wooden shipping pallets.

16. **Warehousing:** Contact VCE for dry storage services.

17. ***Plastic Bags:** VCE manufactures a wide variety of plastic bags of various widths and lengths. Specialized bags are available in bulk directly from VCE.

18. ***Janitorial Products:** See the VCE digital catalog or web site for details.

* Order through the VCE. See 2.1e.

Written Concurrences: Concurrences may be granted by VCE if they do not offer the desired products, do not offer a compatible product, or are unable to meet a reasonable required delivery date. Written concurrences may be given by facsimile transmission if the agency requests. Requests for concurrences are normally processed within 24 hours. When concurrences are granted, the resulting procurement, if it is within the agency's delegated authority, may be made directly by the agency using the appropriate procurement method. If it exceeds the delegated authority, it shall be forwarded to the appropriate purchasing office (e.g., DGS/DPS).

Waivers: The Director of DGS/DPS may exempt purchasing from VCE when, in the Director's opinion, an article produced or manufactured does not meet the reasonable requirements of the agency. A written concurrence will normally be requested from VCE under these circumstances. In any case, where the Director of DGS/DPS grants an exception, the Director shall submit a copy of the written justification for the exception to the Director of the Department of Corrections.

Intentional Violations: Intentional violations of the requirement to purchase from VCE, after notice from the Governor to desist, shall constitute malfeasance in office and shall subject those responsible for such violations to suspension or removal from office (*Code of Virginia*, § 53.1-47, 53.1-48, 53.1-49, and 53.1-51).

VCE Joint Ventures: VCE enters into joint ventures with private sector firms as partners in the sale, distribution, service, and development of products manufactured by VCE.

Prison Industry Enhancement: VCE enters into agreements with public or private sector firms as partners in the sale, distribution, service, development and production of products that may be sold in interstate trade. Prison Industry Enhancement (PIE) is a federally chartered and administrated program. Inmate labor must be paid

minimum or prevailing wage from which deductions for victims' restitution, family support, taxes, etc. must be made.

c. **Department for the Blind and Vision Impaired (DBVI)**. Department for the Blind and Vision Impaired (DBVI). The DBVI Enterprise Division is composed of two enterprises, both of which are mandatory sources of supply unless exempted by DGS/DPS or DBVI Enterprises Managers. All such services, articles, and commodities as are required for purchase by DGS/DPS or by any person authorized to make purchases on behalf of the Commonwealth and their departments, agencies and institutions; are performed or produced by persons, or in schools or business activities under the supervision of the DBVI; are available for sale by the DBVI; and, conform to the standards established by DGS/DPS shall be purchased from the DBVI at a fair market price without competitive procurement.

(1) Virginia Industries for the Blind (VIB). VIB provides employment opportunities for individuals who are blind or visually impaired by employing them in a variety of service and manufacturing occupations, providing services and producing quality products at competitive prices. The following goods and services are among those available through VIB for purchase by state agencies, municipalities and institutions:

(a) Contract Office Services (does not include temporary employment services) - Administrative Support Personnel, Clerical, Secretarial, Order Takers, Customer Service Representatives, etc.

(b) Mailing Services - Inserting, addressing, sorting, order fulfillment - express delivery or postal

(c) Pillows

(d) Mattresses - Innerspring, Cellular Foam, Cotton Felt, Silicone Foam, cots

(e) Writing Instruments

(f) * Mop Heads and Handles

(g) * Spices, Tea

(h) Gloves, Exam non-sterile medical grade - Latex, Vinyl, Nitrile, High Risk EMS

* Order through the Virginia Distribution Center (VDC). See 2.1e

For information or questions, contact VIB Marketing in Charlottesville at 434-295-5168. Represented on the web at www.dbvi.org/vib/.

(2) **DBVI Business Enterprises**. When any vending stand or other business enterprise operated in a public building becomes vacant or a vacancy is created through the construction or acquisition of new public buildings or renovation or expansion of existing public buildings, the existence of such vacancies shall be made known to the Department for the Blind and Vision Impaired at 804-371-3103. The DBVI acting on behalf of the blind shall have first priority in assuming the operation of such vending stand or other business enterprise through the placement of a properly trained blind person in such vacancy (*Code of Virginia* § 51.5-79 and 51.5-89).

(a) In addition to food service opportunities such as snack bars, cafeterias, and vending machine supplements, enterprises such as bookstores and other over the counter operations are also included.

(b) Opportunities amounting to estimated annual sales of less than $5,000 are exempt from this requirement.

(c) In all cases for consideration the enterprise must be sent to the Business Enterprise program of the DBVI in the form of a statement or scope of work at least sixty (60) days prior to publication of a solicitation.

(d) The Business Enterprise division of the DBVI will evaluate the opportunity and either make a proposal to operate the enterprise or decline the opportunity.

When convenience or emergency requires it, the Commissioner of the DBVI may, upon request of the purchasing officer, release the purchasing officer from the obligations of this section. Any purchasing officer who violates its provisions shall be guilty of a misdemeanor and upon conviction shall be punished accordingly (*Code of Virginia*, § 2.2-1117).

d. Deleted.

e. **Virginia Distribution Center (VDC)**. The VDC purchases, stores, and distributes staple goods, canned foods, frozen foods, janitorial supplies, paper products, and other selected items for state agencies and institutions and political sub-divisions. To achieve optimal savings for the entire Commonwealth, the VDC purchases products in volume and ensures consistent quality through an extensive Quality Assurance Program, which includes an on-site VDC Laboratory. An agency may not use its local purchasing authority to purchase an item from another source that is available from the VDC without a written waiver from the VDC Director or designee.

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Orders: Public bodies should submit orders directly to VDC through eVA, preferably via the VDC Punch-out Catalog. Those with special ordering needs may call the VDC Customer Service Team at 804-328-3232 ext. 0 for assistance. Additional information concerning goods and services available from VDC is contained in the VDC Dynamic Catalog (http://shopvdc.dgs.virginia.gov/catalog/).

Products: To view the VDC product line, please go to the VDC Dynamic Catalog at http://shopvdc.dgs.virginia.gov/catalog/. An up-to-date catalog can be printed at any time. Customers may contact the VDC Customer Service Team at 804-328-3232 ext. 0 to request assistance and discuss product availability and delivery.

Agency Unique Stocked Items: If the VDC stocks a high volume item solely for one agency, that agency is asked to notify the VDC immediately when there is no further demand for the product.

Waiver Requests: If an item is available from the VDC, a state agency may not use its local purchasing authority to purchase the item from another source without written approval from the VDC Director or designee. To request a mandatory source waiver from VDC, e-mail or fax requests to vdcweb@dgs.virginia.gov or 804-328-3222. The request must include the following: item for which a waiver is requested, justification, time duration for which the waiver is needed and product quantity.

Specific Guidance: For VDC policies and procedures related to ordering, backorders, pickup orders, shipping and delivery, pallet exchange, exceptions and invoicing please see the sections; **Ordering and Billing Instructions**, **Deliveries** and **General Terms and Conditions** in the VDC Dynamic Catalog, http://shopvdc.dgs.virginia.gov/catalog/.

Special Assistance: Special assistance or problems can be discussed by calling the VDC Director at 804-328-3233 or the VDC Customer Service Team 804-328-3232 ext. 0.

f. **DGS/DPS Office of Graphic Communications (OGC).** OGC is a mandatory source for graphic communication services in excess of $750. OGC offers consultation, project management, design and production for a wide variety of graphic design projects which include web and print communications.

Services include concept and marketing strategies, creative writing, graphic design, desktop publishing, web graphics, photography research and art direction, illustration, and production management.

Typical projects include promotional, informational and public educational campaigns; logos and identity systems; internet sites, annual reports and strategic plans; economic development and travel publications; magazines and newsletters; training and conference materials, interactive .PDF files, PowerPoint presentations, calendars and posters; museum catalogs and brochures, etc.

All agencies planning to procure graphic communication services in excess of $750 must first contact OGC to determine if their requirements can be provided by that office and, if not, the agency must receive written authority from OGC to procure from another source. This requirement does not apply to agencies utilizing existing in-house capabilities; however, if any portion of these services will be contracted with the private sector, or another public body, the agency must first contact OGC. To contact OGC, email paris.ashton@dgs.virginia.gov or call 804-371-8359.

If OGC gives authority to contract out the service, the vendor solicitation should specify the following vendor requirements, as applicable: research, concept, design and layout, copywriting, editing, proofreading, photography, illustration, format, management of the production process and time frame for deliverables, ownership and archive of work, billing process and hourly rate for alterations.

g. **Virginia Information Technologies Agency (VITA)**. Telecommunications services, as defined in Appendix A, must be procured through VITA.

h. **DGS/Office of Fleet Management.** For the purchase or lease (exceeding thirty days) of motor vehicles, agencies must submit OFMS Form OFMS - 1 "Application for Assignment/Purchase/Lease of State Vehicle" (Replaces CP-3 and CP-15) to the DGS Office of Fleet Management for approval to initiate the purchase process for all vehicles (*Code of Virginia* § 2.2-1176). OFMS approval of a form OFMS - 1 to purchase a vehicle does not constitute a waiver of purchasing procedures set forth in this manual or the Code of Virginia.

Additional information on OFMS can be obtained at the website.
http://www.dgs.virginia.gov/OFMSHome/tabid/173/Default.aspx

2.2 **Nonmandatory Sources**.

a. **Optional Use Term Contracts**. Optional use term contracts may be established by DGS/DPS or other agencies and institutions within their delegated authority. This type of contract may be appropriate because of the unique nature of the commodity or service being procured and when the demand base encompasses all agencies and institutions. An example would be office supplies that generally are ordered in low dollar increments by users at the lowest organizational level and when local storage and distribution costs exceed any bulk purchase savings. Optional use contracts may also be appropriate when erratic or rapidly dropping prices are encountered such as in the personal computer and related peripheral equipment industries. Market conditions in these limited applications create an incentive for the contractors to retain business by publishing revised price lists against which fixed discount rates can be applied throughout the contract's term. Agencies and institutions shall place all orders on DGS/DPS optional use term contracts through eVA.

b. **Surplus Property**. DGS/DPS has statutory responsibility for administering the surplus property program for state-owned personal property, as well as the federal surplus property program which makes surplus federal property available to eligible state participants. These programs are optional use sources of supply and should always be considered prior to initiating purchase action. Substantial sums of money can be saved for goods that are often in "like new" condition. To avoid unnecessary purchases of new materials or equipment, the agency or institution's Fixed Asset Accounting and Control System (FAACS) coordinator should ensure that assets being procured are first screened against available assets from within their own agency and from other agencies and institutions by reviewing FAACS screening reports FAC30020 (agency) and FAC301 (statewide). Copies of these reports are available on request by contacting the Department of Accounts (DOA) at 804-225-2646.

c. **Nonprofit Sheltered Workshops and Nonprofit Organizations**. (See definition in Appendix A.) State agencies may purchase selected goods and services from nonprofit sheltered workshops and nonprofit organizations serving the handicapped without competition if the goods or services:

(1) are of acceptable quality;

(2) can be supplied within the time required;

(3) are not produced by schools or workshops under the supervision of the Virginia Department for the Blind and Vision Impaired or by inmates confined in State correctional institutions; and,

(4) can be purchased within ten percent (10%) of fair market value. DGS/DPS deems fair market value to be the lowest purchase price paid by the purchasing agency or other governmental entity for like items or services purchased in a similar quantity within the last six months. If this information is not available, then obtain at least one additional quote to determine fair market value.

A commodities list of available goods and services provided by nonprofit sheltered workshops and nonprofit organizations of Virginia serving the handicapped is accessible from a link on the eVA home page, www.eva.virginia.gov.

Purchase of goods from nonprofit sheltered workshops and nonprofit organizations should be accomplished by utilizing an appropriate agency purchase order. Contracts may be negotiated with individual nonprofit workshops and nonprofit organizations serving the handicapped for nonprofessional services (*Code of Virginia*, § 2.2-1118). When establishing contracts for goods or services that involve the manual packaging of bulk supplies or the manual assemblage of goods where individual items weigh less than 50 pounds buyers should include the Nonprofit Sheltered Workshop and Nonprofit Organizations special term and condition, Appendix B, Section II .

2.3 **Source Lists**. Care should be taken to solicit sources capable of providing, as a regular part of their business, the goods or services needed. The maintenance and use of appropriate and current source lists are essential to competitive procurement. Personnel at all levels should make a concerted effort to identify responsible vendors as sources of supply for goods and services. Special emphasis should be placed on including Virginia vendors and DMBE-certified small, women-owned and minority-owned businesses on all solicitation lists. Agency source lists may also be furnished to DGS/DPS for its use as well as for use by other agencies. DGS/DPS maintains an automated list of registered vendors by commodity and service (see 3.10a, 13.3 and the Bidders List tool in eVA). For information on selection of bidders/offerors, see 4.1 of the *Vendors Manual*.

2.4 **Suppliers' Catalogs**. Suppliers' catalogs are an excellent source of descriptive information and current technology. Purchasing offices should keep current catalogs and make them available to agency personnel to assist them in identifying functional characteristics of supplies, materials, and equipment. Caution must be exercised when using suppliers' catalogs to be sure that information is taken from current editions.

2.5 **Contact with Vendors**. Suppliers' and manufacturers' representatives are valuable sources of information and may be contacted when developing purchase requirements. Vendors' visits should be arranged in a manner that will assure a full, courteous, and mutually beneficial exchange of information. Such assistance must be considered normal sales effort and does not entitle a vendor to any preference. Buying offices should caution agency personnel that commitments cannot be made which would lead a supplier to believe they will subsequently receive an order. If agency personnel receive vendor assistance in preparing a specification, a written notification to that effect must accompany the requisition to the purchasing office, or to DGS/DPS, as applicable. Under no circumstances shall a bidder or offeror be permitted to evaluate or assist in evaluating competitors' bids or offers (see 3.16b and 4.4d).

2.6 **Other Sources of Supply**. Sources of supply can be identified through a variety of methods. Some methods include DGS/DPS vendor source lists (see 2.3), trade journals, trade shows and exhibitions, Yellow Pages, Thomas Register, and through networking with other purchasing offices. Other State agencies and organizations such as the Department of Economic Development, Department of Minority Business Enterprise (DMBE, 800-223-0671), Virginia Minority Supplier Development Council (VMSDC) and local Chambers of Commerce are also possible vendor information sources. The Internet provides a good source of possible vendor and product information. Search on "business" or particular industries or products. Sites such as www.virginiabusiness.com or www.wiznet.net may offer information on sources of supply. National purchasing organizations such as the National Institute of Governmental Purchasing (NIGP) at www.nigp.org or the Institute for Supply Management (ISM) at www.ism.ws also provide resource information.

Annexes 2-A, 2-B, 2-C, 2-D

(DELETED)

CHAPTER 3

GENERAL PROCUREMENT POLICIES

In this Chapter look for . . .

3. General
3.1 Bid Invitations, Requests for Proposals and Responses
3.2 Bonds
3.3 Computer Equipment Performance Specifications
3.4 Contractor License Requirements
3.5 Contract/Purchase Order Modification Restrictions
3.6 Contract Pricing Arrangements
3.7 Cooperative Procurement Among State Agencies
3.8 Documentation of Files
3.9 Federal Grants
3.10 Small, Women-Owned and Minority Businesses
3.11 Multiple Awards
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3.13 Petitioning for Less Toxic Goods or Products
3.14 Preferences
3.15 Procurement Methods
3.16 Prohibited Participation
3.17 Public Access to Procurement Records
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3.19 Recycled Goods Purchase Program
3.20 Responsible Bidder or Offeror
3.21 Responsive Bid
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3.24 Tie Bids
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3.26 Prohibited Contracts
3.27 Protection of Personally Identifiable Information
3.28 Authorization to Transact Business in The Commonwealth

Annexes
3-A Procurement Methods Flowchart
3-B Summary of Procurement Policies
3-E Bond Documentation Review Checklist
3-F Form ST-12 - Sales and Use Tax Certificate of Exemption
3-G Standard Bid Bond for Non-Construction
3-H Standard Labor and Material Payment Bond for Non-Construction
3-I Standard Performance Bond for Non-Construction
3-J Certification of Compliance with Prohibition Of Political Contributions And Gifts During The Procurement Process

3. **General**. The policies contained in this chapter are applicable to the procurement of goods and nonprofessional services and have been developed to clarify and implement the various provisions of the *Code of Virginia*. Annex 3-A provides a flowchart depicting the methods of procurement and when each method should be used. Annex 3-B contains a summary of procurement policies.

3.1 **Bid Invitations, Requests for Proposals and Responses**.

a. **Adequate Competition**. A sufficient number of sources must be solicited for the procurement of goods or services consistent with the method of procurement used (see Chapters 5, 6, 7, and 9 for further discussion). The *Vendors Manual*, 4.1 offers further information on the Selection of Bidders or Offerors.

b. **Return Envelopes/Labels**. Return envelopes or labels indicating the date and the time responses are due should be furnished with the solicitation for sealed bids or sealed proposals. If return envelopes are not furnished, instructions for identifying and addressing bids or proposals shall be included with the solicitation.

c. **Amending a Solicitation**. If it is necessary to amend a solicitation, prepare, post, and send an addendum to all potential bidders or offerors who received a copy of the solicitation or who attended a prebid or preproposal conference. Signed acknowledgment of addenda must be returned to the purchasing office prior to the date and time of the opening or with the bid or proposal. Failure to return the addendum may be grounds for declaring the bid nonresponsive [see *Vendors Manual*, 5.13c(1)(c)]. When an addendum is issued that extends the time for the vendor to prepare a solicitation response, the opening date should be extended not less than ten (10) days after the issue date of the addendum (see Annex 6-F for example addendum).

d. **Canceling a Solicitation**. An Invitation for Bids, a Request for Proposal, any other solicitation, or any and all bids or proposals, may be canceled or rejected. When canceling a written solicitation not created in eVA, all vendors who have been issued a solicitation must notified, and the notice must be publicly posted. When canceling a Quick Quote solicitation in eVA, the purchasing office is not required to notify vendors of the cancellation. When canceling an eProcurement solicitation in eVA, the cancellation shall be made through eProcurement which will update the posting on VBO Buyer. All premium vendors registered for the commodity code used for the solicitation will be automatically notified. Other vendors may view the status of the solicitation in the VBO to see that the solicitation has been cancelled. If the solicitation was posted on the VBO, the solicitation must be cancelled by the issuing purchasing office using VBO Buyer in order to notify vendors of the cancelled solicitation. The reason for cancellation shall be made a part of the contract file. A public body shall not cancel or reject an Invitation for Bids, a Request for Proposal, any other solicitation, bid or proposal solely to avoid awarding a contract to a particular responsive and responsible bidder or offeror (*Code of Virginia*, § 2.2-4319). Personnel responsible for opening bids or proposals must be notified of the cancellation to prevent responses from being inadvertently opened. Return sealed bids or proposals on canceled programs unopened if hard copy bids or proposals were received. If a program is canceled after receipt and opening of bids or proposals, original documents will remain a part of the procurement transaction file. Bidders or Offerors should be notified in writing that the program has been canceled and that duplicate proposals, if provided, will be destroyed unless the Offeror requests their return.

e. **Receipt of Bids or Proposals**. Bids or proposals should be received at one central location. A clock, publicly displayed, or an electronic date/time stamp machine should be used to establish receipt times. When bids or proposals are received, the bids or proposals shall be date stamped and the time noted or stamped on the envelope showing the time of receipt. The bid or proposal receipt time deadline must strictly comply with the date and time stated in the solicitation. The purchasing officer shall be responsible for deciding when the receipt deadline has arrived and should announce wording to the effect that, "Bids/Proposals for solicitation number ___ are now closed. No further bids/proposals will be accepted." It is the responsibility of the bidder or offeror to have the bid or proposal at the specified location by the appointed time.

Sealed Bids. Sealed bids must be held unopened in a secure area until the date and time established for opening in the solicitation. They shall then be publicly opened, and only the following information is read aloud:

- bidders' names;
- unit prices or lot prices, as may be applicable;
- discount terms offered, if discount terms are to be considered in making the award (see 4.7); and
- brand names and model numbers, if requested by the attendees.

Questions on other bid contents should not be answered until after evaluation is complete and an award decision has been made.

Sealed Proposals. Public openings are not required by law for proposals submitted under competitive negotiation, but doing so avoids the appearance of impropriety. If a public opening of proposals is conducted, only the names of the firms submitting proposals shall be disclosed. Questions on the proposals of other offerors should not be answered until after evaluation and negotiations are complete and an award decision has been made.

Late Bids or Proposals. Bids or proposals received after the date and time specified for receipt in the solicitation, shall not be considered. Late **sealed** bids or proposals shall not be accepted or shall be marked "late" and returned unopened to the bidder or offeror. Late **unsealed** bids or proposals, those solicited for requirements under $50,000, may be marked "late" and placed in the contract file, or they may be returned to the bidder or offeror.
If bids or proposals are scheduled to be received during a period of suspended state business operations, schedule the receipt and opening for the same time on the next regular business day.

f. **Facsimile Bids or Proposals**.

(1) **Unsealed Bids/Unsealed Proposals**. Facsimile bids or proposals may be accepted when using small purchase procedures requesting unsealed bids or unsealed proposals. Facsimile bids or proposals must be completely received in the office that issued the unsealed solicitation prior to the date and time specified for receipt. The original copy of the facsimile transmission may be requested. If requested it must be received within five (5) business days (see Annex 5-I for sample Fax Back form).

(2) **Sealed Bids/Sealed Proposals**. Facsimile bids or proposals will be accepted from a third party or an agent of the bidder or offeror for sealed programs provided that the bids or proposals are submitted in sealed envelopes prior to the date and time specified for receipt. The bidder/offeror is responsible for arranging the third party involvement in sealed bid/proposal programs and for faxing the complete bid/proposal to the third party, not just a summary or the cover sheet. The original bid or proposal and addenda may be requested and, if requested, must be received within five (5) business days.

NOTE: Agency personnel, including end users, should not be involved in accepting facsimile bids/proposals on the bidder's/offeror's behalf and offering to place the bid/proposal in a sealed envelope.

g. **Acceptable Bid/Proposal Signatures**. The bid or proposal and all addenda returned by the bidder or offeror by facsimile must be signed. The original bid or proposal must be signed in ink. The person signing the bid or proposal must be a person authorized by the bidder or offeror to sign bids or proposals. Typewritten or stamped signatures are not acceptable. The person signing must include his or her title, and if requested, must verify his or authority to bind the company to the contract. <u>Failure to sign the face of the bid/proposal in the space provided will result in rejection of the bid/proposal unless the unsigned bid/proposal is accompanied by other signed documents indicating the bidder's/offeror's intent to be bound</u> [see *Vendors Manual*, 5.13c(1)(b)].

h. **Withdrawal/Amending/Altering/Mistakes in Bids**. Sections 5.11 through 5.15 of the *Vendors Manual* provide policies and procedures for these areas. Consistent and impartial application of these policies and procedures is essential to the maintenance of bidder understanding and faith in the integrity of the state procurement system. In regard to mistakes in bid, if the lowest apparent responsive bid is 25% or more lower than the next low bid, the bidder should be contacted to confirm the bid price. This does not relieve a bidder from the responsibility for the submission of a correct bid. If the bidder then alleges a mistake in bid and can verify to the purchasing office's satisfaction that it was a nonjudgmental mistake, the bid may be withdrawn.

i. **Bid Evaluation**. As soon as practical after the opening, the bids should be evaluated and an award made to the lowest responsive and responsible bidder. Any bidder who, despite being the apparent low bidder, is determined not to be a responsible bidder shall be notified in writing (*Code of Virginia*, § 2.2-4359). (See 11.2c.)

j. **Alternate Bids**. An alternate bid is a bid submitted in knowing variance from the specifications and must be clearly distinguished as an alternate by the bidder. Frequently, alternate bids incorporate the latest in technology and can result in substantial savings, not only in monetary terms, but also in system-wide operational efficiencies. Buying offices may not accept alternate bids; however, they may reject all bids and rebid the requirement with a revised specification incorporating features of the alternate.

k. **Single Response to a Solicitation**. There are occasions when only one bid or proposal is received for a solicitation, even though multiple sources are solicited. When considered to have a significant budgetary impact and competitive sources are known to exist, the buyer should investigate to determine why other bidders or offerors did not respond and make a determination whether to award or to reject the bid or proposal and resolicit. If it is determined to make the award based on a single response, the buyer must make a written determination that the price is fair and reasonable (see 4.10).

3.2 **Bonds**

a. **Bid Bonds**. Except in cases of emergency, all bids or proposals for nontransportation-related construction contracts in excess of $100,000 or transportation-related projects authorized under § 33.1-12 that are in excess of $250,000 and partially or wholly funded by the Commonwealth shall be accompanied by a bid bond from a surety company selected by the bidder that is legally authorized to do business in Virginia, as a guarantee that if the contract is awarded to such bidder, that bidder will enter into the contract for the work specified in the bid. The amount of the bid bond shall not exceed five percent of the amount bid (*Code of Virginia*, § 2.2-4336).

(1) No forfeiture under a bid bond shall exceed the lesser of (i) the difference between the bid for which the bond was written and the next low bid, or (ii) the face amount of the bid bond.

(2) Nothing in this section shall preclude the state from requiring bid bonds to accompany bids or proposals for construction contracts anticipated to be less than $100,000 for nontransportation-related projects or $250,000 for transportation-related projects authorized under § 33.1-12 and partially or wholly funded by the Commonwealth.

b. **Performance and Payment Bonds**.

(1) Upon the award of any (i) public construction contract exceeding $100,000 awarded to any prime contractor, (ii) construction contracts exceeding $100,000 awarded to any prime contractor requiring the performance of labor or the furnishing of materials for buildings, structures or other improvements to real property owned by a public body; or (iii) transportation-related projects exceeding $250,000 that are partially or wholly funded by the Commonwealth, the contractor shall furnish to the public body the following bonds (*Code of Virginia*, § 2.2-4337):

(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. For transportation-related projects authorized under § 33.1-12, such bond shall be in a form and amount satisfactory to the public body.

(b) A payment bond in the sum of the contract amount. The bond shall be for the protection of claimants who have and fulfill contracts to supply labor or materials to the prime contractor to whom the contract was awarded, or to any subcontractors, in the furtherance of the work. For transportation-related projects authorized under § 33.1-12 and partially or wholly funded by the Commonwealth, such bond shall be in a form and amount satisfactory to the public body. "Labor or materials" shall include public utility services and reasonable rentals of equipment, but only for periods when the equipment rented is actually used at the site.

(2) Each of the bonds shall be executed by one or more surety companies selected by the contractor that are authorized to do business in Virginia and filed with the purchasing office that awarded the contract or a designated official thereof within 10 days after receipt of the purchase order or notice of award. See 3.2f on bond documentation review and Annex 3-E for guidance on processing and verifying the bonds validity.

(3) Nothing in this section shall preclude the state from requiring payment or performance bonds for construction contracts below $100,000 for nontransportation-related projects or $250,000 for transportation-related projects authorized under § 33.1-12 and partially or wholly funded by the Commonwealth.

(4) Nothing in this section shall preclude the contractor from requiring each subcontractor to furnish a payment bond with surety thereon in the sum of the full amount of the contract with such subcontractor

conditioned upon the payment to all persons who have and fulfill contracts which are directly with the subcontractor for performing labor and furnishing materials in the prosecution of the work provided for in the subcontract (*Code of Virginia*, § 2.2-4337).

c. **Bonds on Construction Contracts**. Upon award of a nontransportation-related construction contract exceeding $100,000, the contractor shall furnish a Performance Bond and a Payment Bond, each in the sum of the contract. Each bond shall be executed by one or more surety companies that are legally authorized to do business in Virginia. Form CO-10 Commonwealth of Virginia Standard Performance Bond, form #DGS-30-084, and Form CO-10.1 Commonwealth of Virginia Standard Labor and Material Payment Bond, form #DGS-30-088, shall be used. (Forms may be downloaded from the DGS/Division of Engineering & Buildings website, http://deb.dgs.virginia.gov).

d. **Bonds on Other Than Construction Contracts**. State agencies may require bid, payment, or performance bonds for contracts for goods or services if provided in the Invitation for Bids or Request for Proposal. (See Annexes 3-G, 3-H, and 3-I)

e. **Alternative Forms of Security**. A certified check or cash escrow may be accepted in lieu of a bid, payment, or performance bond. If approved by the Attorney General, a bidder may furnish a personal bond, property bond, or bank or savings and loan association's letter of credit on certain designated funds in the face amount required for the bid, payment, or performance bond. Approval shall be granted only upon a determination that the alternative form of security proffered affords protection to the public body equivalent to a corporate surety's bond. The Virginia Department of Transportation is exempt from the requirements of this provision.

f. **Bond Documentation Review.** Any procurement exceeding $100,000, which specifies the issuance of bid, performance, and payment surety bonds, may necessitate the purchasing authority review of surety bond documentation in the absence of legal assistance to ensure the bond's validity (see checklist, Annex 3-E).

3.3 **Computer Equipment Performance Specifications**. Should any agency or institution elect to procure personal computers and related peripheral equipment pursuant to any type of blanket purchasing arrangement under which public bodies, as defined in § 2.2-4301, may purchase such goods from any vendor following competitive procurement but without the conduct of an individual procurement by or for the using agency or institution, it shall establish, with the cooperation of the Virginia Information Technologies Agency (VITA), performance-based specifications for the selection of equipment. Such performance-based specifications shall include (i) vendor stability, service, and support; (ii) appropriate specifications regarding a vendor's warranties, network compatibility, performance, and when available, mean time between failure ratings; and (iii) a vendor's formal quality assurance program drafted in accordance with nationally or internationally recognized standards. No certification, however, by a private organization that the personal computer meets such national or international standards shall be required. Any equipment which meets such specifications shall be added to the solicitation for the blanket purchase arrangement at the request of any potential bidder (*Code of Virginia*, § 2.2-1121).

No contract award(s), that allow users to choose from more than one contractor to obtain personal computers and related peripheral equipment resulting from a blanket purchase arrangement, may be issued by any agency or institution of the Commonwealth, under its procurement authority, without meeting this requirement. For the purposes of this Code section, the term "blanket purchasing arrangement" is defined as a written solicitation that will result in the award of a Contract, Requirements Type as defined in Appendix A, and which award would permit the user to choose from more than one contractor.

The requirements of § 2.2-1121 are not applicable to the following:

a. solicitations for one time individual procurement of personal computers and related peripheral equipment;

b. blanket purchase arrangements which will result in a contract award to a single contractor;

c. orders issued against contracts awarded prior to July 1, 1996; or

d. the exercise of other options under contracts awarded prior to July 1, 1996, such as extensions, change order options and the like.

Assistance from the Virginia Information Technologies Agency (VITA) may be obtained by contacting the Technology Acquisitions Manager at 804-371-5948.

3.4 **Contractor License Requirements**.

a. **Contractor Licensing and Registration**. State statutes and regulatory agencies require that some contractors be properly registered and licensed, or hold a permit, prior to performing specific types of services. Those services include but are not limited to the following:

Service	Regulatory Agency
Construction-Type (See Chap.4.24)	Department of Professional & Occupational Regulation
Pesticide Application	Department of Agriculture & Consumer Services
Asbestos Service, Security Alarm System Installation Fire Alarm System Installation	Department of Professional & Occupational Regulation
Private Security Services Locksmith Services	Department of Criminal Justice Services
Treatment, Storage, Handling, Transportation, or Disposal of Hazardous Waste or Hazardous Radioactive Material	Department of Environmental Quality

It is the contractor's responsibility to comply with the rules and regulations issued by state regulatory agencies. The following statement should appear on solicitations for services regulated by the various agencies of the Commonwealth:

> By my signature on this solicitation, I certify that this firm/individual is properly licensed for providing the goods/services specified.
>
> License # _____ Type_____

b. **Construction, Removal, Repair or Improvement**. If a procurement of $1,000 or more involves construction, removal, repair or improvement of any building or structure permanently annexed to real property or any other improvement to such real property, the contractor must possess one of the following licenses issued by the State Board for Contractors for the type of work involved (*Code of Virginia*, §§ 54.1-1103 and 54.1-1115):

> **Contractor License A** - If the contract is $120,000 or more or if the contractor does $750,000 or more business within a 12-month period.
>
> **Contractor License B** - $7,500 - $120,000 or if the contractor does between $150,000 and $750,000 in business within a 12-month period.
>
> **Contractor License C** - $1,000 - $7,500 or if the contractor does less than $150,000 in business in a 12-month period. Note: The Board shall require a master tradesmen license as a condition of licensure for electrical, plumbing and heating, ventilation and air conditioning contactors.

An unlicensed vendor submitting a bid or proposal where such license is required is nonresponsive and is in violation of state law. Any buyer who knowingly receives or considers a response from an unlicensed vendor when a license is required is in violation of state law (*Code of Virginia*, § 54.1-1115). Contractors must be licensed in the proper classification and specialty to perform the work required by the solicitation. If there is any question as to whether a licensed contractor is required for a specific procurement, call the State Board for Contractors at 804-367-8511 for policy interpretation.

c. **Private Security Services**. All solicitations for the installation, service, maintenance, or design of security equipment, security officer service, central station alarm condition monitoring service, and/or private investigator service, require that the successful bidder or offeror to have a Private Security Services Business

License issued by the Department of Criminal Justice Services (see *Code of Virginia*, § 9.1-139). This applies regardless of the dollar value of the resulting contract. Assistance may be obtained from the Department of Criminal Justice Services at 804-786-0460. A sample clause for use in the solicitation can be found in Appendix B.

3.5 **Contract/Purchase Order Modification Restrictions**. A contract or purchase order may not be modified or renewed unless provided for in the original contract or solicitation. No additional consideration or increase in contract price may be paid to the contractor because of renewal unless specifically authorized under the original contract. The issuance of a change order or contract modification is required when the purchasing office has issued an agency purchase order or contract or eVA order and the approved change exceeds $500. This limitation applies to cumulative change orders in a contract or purchase order. The DPS Purchase Order Change (Annex 10-E), Agency Purchase Order Change (Annex 10-F), and Contract Modification Agreement (Annex 10-G), are the recommended forms to be used for all modifications to contracts and purchase orders awarded outside of eVA. Use the eVA Change Order functionality to make changes to orders issued in eVA (see 14.6).

a. **Purchases Up to $50,000** - Cumulative contract modifications to purchases made under small purchase procedures shall not exceed 25% of the original contract price without advance written approval of the agency head or his/her designee (see also *Vendors Manual*, 7.17 for exception).

b. **Purchases Over $50,000** - A public contract may include provisions for modification of the contract during performance, but no fixed-price contract may be increased by more than 25% of the original amount of the contract or $50,000, whichever is greater, without the advance written approval of the Governor or his designee (*Code of Virginia*, § 2.2-4309A). By executive order this is the Director of the Department of General Services. This limitation applies to the aggregate change orders in a contract. In no event may the amount of any contract, without adequate consideration, be increased for any purpose, including, but not limited to, relief of a bidder or offeror from the consequences of an error in its bid or offer (see 10.12).

3.6 **Contract Pricing Arrangements**. Contracts may be awarded on a fixed price or cost reimbursement basis or on any other basis that is not prohibited. For a discussion of contract types, see 4.3d. No public contract shall be awarded on the basis of cost plus a percentage of cost except in case of an emergency affecting the public health, safety or welfare and in the case of certain insurance policies (*Code of Virginia*, § 2.2-4331).

3.7 **Cooperative Procurement.** The *Code of Virginia*, § 2.2-4304 authorizes public bodies to utilize cooperative procurement to satisfy requirements for goods and non-professional services; however, state agencies and institutions must comply with the following requirements, and all such purchases shall be made through eVA. Additional agencies and institutions not specifically named in the solicitation desiring to purchase from another public body's contract may do so if the original solicitation specified that the procurement was being conducted on behalf of other public bodies and the issuing public body modifies the contract in writing with concurrence from the contractor to add the specific agency or institution.

a. **Sponsoring a Cooperative Procurement**: No state agency or institution may sponsor, conduct or administer a cooperative procurement arrangement when the total value of the contract is expected to exceed their delegated purchasing authority without advance approval from the Director of the Division of Purchases and Supply. An agency or institution initiating a procurement and desiring to allow its use by other public bodies must include the ADDITIONAL USERS clause found at Appendix B, Section II, and shall serve as the lead agency (contracts manager) and shall administer the program in accordance with Chapter 10 of this manual. Vendor complaints and disputes will be managed by the ordering entity, but the lead agency should be provided copies of any such complaints or disputes.

b. **Use of Other Cooperative Contracts**: Agencies and institutions desiring to participate in a cooperative procurement arrangement for non-telecommunications and non-technology goods and nonprofessional services as set forth in §2.2-4304 may do so without regard to their delegated purchasing authority; however, the use of cooperative contracts is not authorized when there are DMBE-certified small businesses available to provide the goods or furnish the services at fair and reasonable prices, unless the contractor is a DMBE-certified small business, or the cooperative contract was awarded by a Commonwealth Agency or Institution, or approved by DPS. *APSPM* General Terms and Conditions shall apply.

General Services Administration (GSA) or other U.S. Government Contracts: Except as authorized by the United States Congress and consistent with applicable federal regulations, the direct placement of an order against a federal GSA contract is not permissible. The United States Congress has authorized use of certain contracts by specific entities under the 1122 Program. Information on contracts and entities authorized to use

those contracts is available from the State Police website, www.vsp.virginia.gov. Click on "About VSP" then scroll to "Doing Business With VSP" then click on "State and Local Law Enforcement Equipment Procurement Program (1122), State. For additional information, contact the 1122 Program Manager, at 804-674-2153. The requirement to modify the original contract to add additional specific agencies or institutions to the contract does not apply to any contract awarded by the U.S. General Services Administration (GSA) or any other agency of the U.S. government that has been authorized for use by the U.S. Congress.

3.8 **Documentation of Files**. A complete file should be maintained in one place for each purchase transaction, containing all the information necessary to understand the why, who, what, when, where and how of the transaction (see 10.3).

3.9 **Federal Grants**. Federal granting agencies typically require state agencies and institutions to include specific terms and conditions in contracts funded in whole or in part by federal grants. The state agency must coordinate with the Federal granting agency to ensure that applicable federal grant terms and conditions are included in such contracts. If federal grant or contract funds contain conditions that are in conflict with the *VPPA*, the state agency must request and obtain a written determination from the Governor that the acceptance of the grant or contract funds is in the public interest. Such determination shall state the specific provision(s) of the *VPPA* in conflict with the conditions of the grant or contract (*Code of Virginia*, § 2.2-4343.B). Guidance on purchases funded in whole or in part by the American Recovery and Reinvestment Act of 2009 (ARRA) will be posted on the eVA website, eva.virginia.gov and is incorporated by reference.

3.10 **Small, Women-Owned & Minority Businesses**

a. **Agency Plans.** Each executive branch agency and institution of the Commonwealth shall prepare and adopt an annual SWAM (Small, Women and Minority-owned businesses) plan that will specify that agency's or institution's SWAM plans and small business goals for procurement in accordance with Executive Order 33, dated August 10, 2006. Executive branch agencies and institutions shall submit an annual SWAM plan to the Department of Minority Business Enterprise (DMBE) and the appropriate cabinet secretary, in a form specified by the DMBE, on September 1 of each fiscal year. The plan shall include the annual designation of a SWAM champion to ensure nondiscrimination in the solicitation and awarding of contracts.

Agencies shall establish internal procedures consistent with the provisions of the *VPPA* and this manual to facilitate the participation of small businesses and businesses owned by women and minorities in procurement transactions. The procedures established shall be in writing and shall comply with the provisions of any enhancement or remedial measures authorized by the Governor pursuant to § 2.2-4310C of the *VPPA*, and shall include specific plans to achieve any goals established therein (*Code of Virginia*, § 2.2-4310B).

Agencies and institutions should not accept a bad business deal or a lower quality vendor, product or service in order to meet SWAM business goals. Quality, price and contractual terms should not be sacrificed in any meaningful way in order to achieve SWAM procurement goals.

b. **Certified Vendors.** No vendor shall be considered a Small Business, a Women-Owned Business or a Minority-Owned Business unless certified as such by the Department of Minority Business Enterprise (DMBE) by the due date for receipt of bids or proposals. DMBE-certified women- and minority-owned businesses shall also be considered small businesses when they have received DMBE small business certification. Definitions for Women-Owned Business, Small Business, and Minority-Owned Business, are found in Appendix A.

c. **Contract Sizing/Assessing Bundled Contracts.** The size of a proposed procurement can limit the potential participation by small business vendors. The following rule is designed to address that issue, while preserving the cost-savings and other benefits that the Commonwealth has achieved through bundling contracts and other procurement initiatives.

For goods provided under statewide or regionally bundled contracts for which there are qualified DMBE-certified small businesses, but with respect to which the size of such contract appears to limit DMBE-certified small businesses from bidding or being awarded such contracts, the contracting agency or institution shall seek to reduce the size of the contracts to increase the pool of potential bidders/offerors to include DMBE-certified small businesses. If the effect of reducing the size of such contracts is to cause a meaningful increase in price, a significant degradation in terms and conditions, a significant decrease in administrative efficiency or non-compliance with applicable federal contracting requirements or funding conditions, then the contracting agency or institution shall not be obligated to reduce the contract size.

d. **Consultation with the Department of Minority Business Enterprise (DMBE) and the Department of Business Assistance (DBA)**. Each contracting agency or institution, in consultation with DMBE and DGS where practical, shall seek to identify those purchases in which contract sizing may influence the availability of purchasing opportunities to small business vendors (a "Size-Related Contract"). Where these purchases are identified, the agency shall determine whether there are small businesses capable of meeting the purchasing requirements. If the agency identifies no DMBE-certified small businesses capable of performing the contract requirements, then the agency shall consult with DMBE to seek to identify available vendors unless contract timing issues require the agency or institution to complete the contract process before DMBE input can be obtained. For any Size-Related Contract for which the agency or institution determines that contract timing issues require contract award without identifying any small business vendors or consultation with DMBE, the agency or institution shall consult with DMBE promptly after award of the contract to develop potential small business vendors for the next similar procurement. State agencies and institutions shall work together with DMBE and DBA to seek to increase the number of DMBE certified SWAM businesses that are available to do business with the Commonwealth.

e. **Competitive Requirements**. All employees with purchasing responsibility who are involved in procurement decisions for goods and services are expected to notify and give every consideration to using qualified small business suppliers of procurement opportunities in a manner that is consistent with state and federal laws and regulations and with the provisions set forth in this manual. Whenever the agency or institution engages in a solicitation or request for quotes, it will include businesses selected from the list of certified small businesses maintained on the DMBE and eVA web sites, www.dmbe.virginia.gov and www.eva.virginia.gov. This shall include DMBE-certified women-owned and minority-owned businesses that have received the DMBE small business certification.

f. **Award to Other than the Lowest Priced Bidder or Highest Ranking Offeror Over $50,000.** Procurements over $50,000 may be awarded to a reasonably priced or reasonably ranked DMBE-certified small business bidder or offeror that is other than the lowest priced bidder or highest ranking offeror. Include the award clause in Appendix B, Section II, 7 J. or K., as applicable, in the solicitation. The decision to make an award to other than the lowest priced bidder or highest ranking offeror must be approved in writing by the agency or institution's Chief Procurement Officer; this approval authority cannot be delegated. If the award is made to other than the lowest priced bidder or highest ranking offeror, the award shall be made to the lowest responsive and responsible or highest ranking DMBE-certified small business bidder or offeror.

g. **Set-asides.** The goal of the Commonwealth is that 40% of its purchases be made from small businesses. Small businesses shall include businesses that have received the DMBE small business certification, which shall not exclude women-owned and minority-owned businesses when they have received DMBE small business certification. Procurements up to $50,000 shall be set-aside exclusively for DMBE-certified small businesses. However, the procurement is exempted from the set-aside requirement if exempted from competitive requirements in 1.5 b, c, d and e; or in 14.9 b items 1-4, 6-16, and 18-28; or is available from mandatory sources or non-mandatory sources in 2.1 and 2.2, such as the Virginia Industries for the Blind, Virginia Correctional Enterprises, nonprofit sheltered workshops, as well as purchases made from existing mandatory or optional statewide contracts. Small businesses shall be identified on the vendor mailing list.

(1) Procurements up to $5,000 shall be set-aside exclusively for DMBE-certified small businesses. If prices do not appear to be fair and reasonable the agency shall document the procurement file to that effect, including stating the basis for the determination, and then additional quote(s) shall be obtained from at least one additional DMBE-certified small business, if available.

If the agency or institution is unable to obtain a fair and reasonable price from a DMBE-certified small business up to $5,000, the set-aside may be withdrawn and the procurement awarded to other than a DMBE-certified small business. The reason shall be documented in the procurement file.

(2) Procurements over $5,000 and up to $50,000 shall be set-aside exclusively for DMBE-certified small businesses unless there is not a reasonable expectation that the agency or institution will receive at least two competitive bids or offers from DMBE-certified small businesses and the agency documents the procurement file that the procurement does not qualify for a set-aside. All set-aside procurements shall designate in the title of the solicitation that the procurement is set-aside for small businesses. Use the following format (in all capital letters): "SET-ASIDE FOR SMALL BUSINESSES" followed by the title of the commodity or service being procured (e.g., SET-ASIDE FOR SMALL BUSINESSES - Security Services). Note: Placing a check in the "Set-Aside" checkbox on the Quick Quote header information

screen will automatically add properly formatted set-aside text to the beginning of the Quick Quote title. The user checks the box then types the commodity or service in the Quick Quote Title area and eVA will format the Quick Quote accordingly.

If the agency or institution receives only one acceptable bid or offer as a result of the set-aside, the award should be made to that bidder or offeror if the price or offer is fair and reasonable. The agency or institution is responsible for determining price reasonableness (see 4.10). If the agency or institution receives no acceptable bids or offers, the set-aside may be withdrawn and the requirement resolicited using competitive, non-set-aside, procedures described in Chapter 5.

If the agency or institution is unable to proceed with the set-aside for small business up to $50,000, the reason shall be documented in the procurement file. Documentation may be made on the requisition.

(3) Procurements over $50,000 may be set-aside for DMBE-certified small businesses, in whole or in part, when there is a reasonable expectation that the agency or institution will receive at least two competitive bids or offers from DMBE-certified small businesses. If the agency or institution receives no acceptable bids or offers, the set-aside may be withdrawn and the requirement resolicited using competitive, non-set-aside, procedures described in Chapters 6, or 7, as applicable.

h. **Prime Contractor Small Business Subcontracting Plan**. Unless the procurement has been set-aside for DMBE-certified small businesses or a determination, signed by the chief purchasing officer and supported by factual evidence explaining in sufficient detail why no subcontracting opportunities exist, all agencies and institutions shall include in the terms and conditions, the requirement for a Small Business Subcontracting Plan for the award of any prime contract in excess of $100,000 (see Annexes 6-I and 7-G). A DMBE-certified small business, which shall not exclude women-owned and minority-owned businesses when they have received DMBE small business certification, who serves as prime contractor will receive full credit for subcontracting for work performed by such prime. See Appendix B, Section II, 36 for the special term and condition that shall be included in solicitations requiring the plan and the contractor to provide evidence of compliance with this requirement.

Each prime contractor who wins an award in which provision of a small business subcontracting plan is a condition of the award, shall deliver to the contracting agency or institution timely reports substantiating compliance in accordance with the small business subcontracting plan (subject only to insubstantial shortfalls and to shortfalls arising from subcontractor default). See Appendix B., Section II. 36. When such business has been subcontracted to these firms, the contractor agrees to furnish the purchasing office at a minimum, the following information: name of firm, phone number, total dollar amount subcontracted, category type (small; small and women-owned; or small and minority-owned), and type of product/service provided, at the frequency required in the contract. Final payment under the contract in question may be withheld until such certification is delivered and, if necessary, confirmed by the agency or institution, or other appropriate remedies may be assessed in lieu of withholding such payment. No prime contractor or subcontractor shall be considered a Small Business, a Women-Owned Business or a Minority-Owned Business unless certified as such by the Department of Minority Business Enterprise (DMBE) by the due date for receipt of bids or proposals.

3.11 **Multiple Awards**. When the terms and conditions of multiple awards are so provided in the Invitation for Bids or Request for Proposal, awards may be made to more than one bidder or offeror. Unless otherwise specified in the solicitation, purchasing offices may award a multi-line item procurement in whole or in part or on an individual line item basis. In determining whether to make separate line item awards on a multi-line item solicitation, consideration should be given to the administrative costs to the agency of processing individual purchase documents, and separate invoices and checks.

3.12 **Nondiscrimination**.

a. In the solicitation, awarding or administration of contracts, no agency shall discriminate because of the race, religion, color, sex, age, disability, or national origin of the bidder, offeror, or contractor (*Code of Virginia*, § 2.2-4310A). Agencies and institutions shall prominently display a nondiscrimination statement in all invitations to bid, requests for proposals, contracts, and purchase orders indicating that the public body does not discriminate against faith-based organizations (*Code of Virginia*, § 2.2-4343.1D).

b. In the solicitation or awarding of contracts, no state agency, department or institution shall discriminate against a bidder or offeror because the bidder or offeror employs ex-offenders unless the state agency, department or

institution has made a written determination that employing ex-offenders on the specific contract is not in its best interest (Code of Virginia, § 2.2-4310.C).

Whenever a state agency, department or institution is issuing a solicitation and has determined in writing that it is not in its best interest for a bidder or offeror to employ ex-offenders on the specific contract, the state agency, department or institution shall state these restrictions in the solicitation. These restrictions, as determined by the state agency, department or institution must be reasonable.

3.13 **Petitioning for Less Toxic Goods or Products**. Any vendor who manufactures, sells or supplies goods or products may petition purchasing offices to include requirements for less toxic goods and products into its procurement process. The vendor shall submit, prior to or during the procurement process, documentation which establishes that the goods or products meet the applicable performance standards. If agencies determine that the documentation establishes that the less toxic goods or products meet the performance standards set forth in the applicable specifications, they shall incorporate the specifications for the less toxic goods and products into their procurement process. Agencies are instructed to revise their procedures and specifications on a continuing basis to encourage the use of less toxic goods and products; however, agencies are not required to purchase, test or evaluate any particular good or product other than those that would be purchased under regular purchasing procedures (*Code of Virginia*, § 2.2-4314).

3.14 **Preferences**

a. **Reciprocal Preferences**. Whenever the lowest responsive and responsible bidder is a resident of any other state and such state under its laws allows a resident contractor of that state a percentage preference, a like preference shall be allowed to the lowest responsible bidder who is a resident of Virginia and is the next lowest bidder (*Code of Virginia*, § 2.2-4324B). If the lowest bidder is a resident contractor of another state with an absolute preference, the bid shall not be considered. DGS/DPS will post and maintain a listing of preference laws provided by other states on the eVA website. (Absolute preference defined, see Appendix A.) See www.eva.virginia.gov for a listing of state preference laws.

b. **Virginia Vendors and Products.** Preference is given to goods produced in Virginia, goods or services or construction provided by Virginia persons, firms or corporations, in the event of a tie bid (see 3.24a).

c. **Recycled Paper and Paper Products Preference**. In determining the award of any contract for paper and paper products to be purchased for use by agencies of the Commonwealth, DGS/DPS, or agencies under their delegated purchasing authority, shall procure using competitive sealed bidding and shall award to the lowest responsible bidder offering recycled paper and paper products of a quality suitable for the purpose intended, so long as the bid price is not more than 10% greater than the bid price of the low responsive and responsible bidder offering a product that does not meet the EPA Recommended Content Standards. (*Code of Virginia*, § 2.2-4326; see also 3.24b). Agencies shall purchase only recycled paper for use in office equipment except where equipment limitations preclude the use of recycled paper

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d. **Coal**. There is a preference for Virginia-mined coal used in state facilities. In determining the award of any contract for coal purchased for use in state facilities with state funds, DGS/DPS shall procure using competitive sealed bidding and shall award to the lowest responsive and responsible bidder offering coal mined in Virginia, so long as its bid price is not more than 4% percent greater than the bid price of the low responsive and responsible bidder offering coal mined elsewhere (*Code of Virginia*, § 2.2-4325).

e. **Recycled Oil and Recycled Antifreeze Preference**. The preference applies to lubricating oils containing re-refined oil or reprocessed oil, including engine lubricating oils, hydraulic fluids, and gear oils, excluding marine and aviation oils and reclaimed engine coolants, excluding coolants used in non-vehicular applications. It also applies to recycled antifreeze and other lubricants such as transmission, hydraulic and specialty oils, brake fluid and greases. Recycled oils shall meet American Petroleum Institute (API) and original equipment manufacturer's (OEM) standards and shall be API or equivalently certified. Recycled antifreeze (ethanol glycol) shall meet OEM standards and shall meet the cooling, freeze protection and corrosion resistance requirements of gasoline, diesel, propane, and natural gas engines with or without aluminum blocks.

In developing the specifications for oil and antifreeze products as defined above, preference shall be given to products containing recycled oil and/or antifreeze, so long as the price is not more than 10% greater than the price of a non-recycled oil and/or antifreeze meeting specification and certification requirements.

f. **Use of Recycled Goods or Products.** Any person who believes that particular goods or products with recycled content are functionally equivalent to the same goods or products produced from virgin materials may petition the procuring agency or institution to include the recycled goods or products in its procurement process. The petitioner shall submit documentation which establishes that the goods or products (i) contain recycled content and (ii) can meet the performance standards set forth in the applicable specifications prior to bid/proposal due date. If the procuring agency or institution which receives the petition request determines that the documentation demonstrates that the goods or products with recycled content will meet the performance standards set forth in the applicable specifications, it shall incorporate such goods or products into its procurement process. (See *Code of Virginia*, § 2.2-4313.)

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g. **Appliances and Equipment.** Commonwealth agencies and institutions shall purchase or lease Energy Star or equivalent rated appliances and equipment for all classifications for which an Energy Star or equivalent rating is available in accordance with Executive Order 19, dated July 1, 2010. The classifications may be found on Energy Star's website at: http://www.energystar.gov/. All new office equipment purchased or leased by the Commonwealth that uses paper shall be recycled paper-compatible.

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h. **Biodiesel Fuel.** Beginning on September 1, 2010, agencies and institutions shall procure only diesel fuel, taking into consideration availability and variability in cost of biodiesel fuel with respect to unblended fuel, containing, at a minimum, two percent, by volume, biodiesel fuel or green diesel fuel, as defined in §45.1-394 of the *Code of Virginia*. This requirement shall only apply to procurements of diesel fuel for use in on-road internal combustion engines and #2 fuel burned in a boiler, furnace, or stove for heating, and shall not apply if supply is not readily available or the cost of such procurement exceeds the cost of unblended diesel fuel by 5 percent or more. (See *Code of Virginia* § 2.2-1111.B.8 and Executive Order 19, dated July 1, 2010)

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i. Deleted.

3.15 **Procurement Methods**. Section 2.2-4303 of the *VPPA* recognizes six methods of procurement:

- Small Purchase procedures
- Competitive Sealed Bidding (The preferred method.)
- Competitive Negotiation
- Sole Source
- Emergency
- Reverse Auctioning (Interim policies and procedures for this method will be developed by DGS/DPS and issued in the future)

Annex 3-A contains a flowchart depicting each method and when it should be used. In addition, a separate chapter is dedicated to each method of procurement. See chapters 5, 6, 7, 8, and 9 for the methods described above.

3.16 **Prohibited Participation**.

a. **From Architect or Engineer**.

(1) No building materials, supplies, or equipment for any building or structure constructed by or for a public body shall be sold by or purchased from any person employed as an independent contractor by the public 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*, § 2.2-3101 and § 2.2-4374A.

(2) No building materials, supplies, or equipment for any building or structure constructed by or for a public body shall be sold by or purchased from any person 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 public body to furnish architectural or engineering services in which such person has a personal interest as defined in *Code of Virginia*, § 2.2-3101 and § 2.2–4374B.

(3) The provisions of (1) and (2) above shall not apply in cases of emergency or for transportation-related projects conducted by the Department of Transportation.

(4) These provisions do not apply to persons supplying architectural or engineering services under design/build contracts (*Code of Virginia*, § 2.2-4306).

b. **Other Contractors**. An independent contractor employed or otherwise paid by a state agency to design a project, develop a scope of work, write specifications or otherwise define contract requirements is not eligible to compete for or receive the resulting contract, except in cases of emergency, when only one source is practicably available for both the defining of contract requirements and the performance of those requirements or when the public body determines in writing that the exclusion of such vendor would limit the number of potential qualified bidders or offerors in a manner contrary to the best interests of the public body. In addition the contractor may not be a subcontractor or supplier for the entity which is awarded the contract or any of that entity's subcontractors, however far removed (see 4.4d). A vendor may offer, without consideration, assistance to agency personnel in developing specifications for a requirement and compete on that requirement; however, it is incumbent upon the agency buying staff to assure vendor provided specifications reflect the procurement needs of the purchasing body rather than being drawn to favor a particular vendor.

c. **Subsequent/Additional Bid/Proposal for Same Procurement**. Submission of a subsequent bid/proposal, unless specifically identified as an amendment to a previously submitted bid/proposal, shall constitute an additional bid/proposal submitted by the same bidder or offeror on the same solicitation. (See 3.1 h for information on amending or withdrawing bids/proposals and *Code of Virginia*, § 2.2-4330 C. for Withdrawal of bid due to error.)

3.17 **Public Access to Procurement Records**. Records are open to the public in accordance with the *Virginia Freedom of Information Act*, subject to the following:

a. Cost estimates relating to a proposed procurement transaction prepared by or for an agency shall not be open to public inspection (*Code of Virginia*, § 2.2-4342B).

b. Any bidder upon request, shall be given an opportunity to inspect bid records within a reasonable time after opening and evaluation of bids, but prior to award, except in the event the agency decides to reject all bids or offers and rebid (*Code of Virginia*, § 2.2-4342C). Information read aloud at a public bid opening will be furnished upon request.

c. Any offeror who responds to an RFP, upon request shall be afforded the opportunity to inspect proposal records within a reasonable time after the evaluation and negotiation of proposals are complete but prior to award, except in the event the buying agency decides not to accept any of the proposals and to resolicit.

d. Bids and proposal records shall be open to the public only after award.

e. Any inspection of procurement records shall be subject to reasonable restrictions to ensure the security and integrity of the records.

f. Trade secrets or proprietary information submitted for a procurement transaction shall not be subject to public disclosure under the *Virginia Freedom of Information Act*; however, the bidder or offeror must invoke the protection of *Code of Virginia*, § 2.2-4342F, in writing, prior to or upon submission of the data or other materials, and must identify the data or other materials to be protected and state the reasons why protection is necessary. It is an agency's responsibility to establish and enforce procedures to protect vendor proprietary information with the same degree of protection that would be provided for confidential information of the Commonwealth. The classification of an entire bid or proposal document, line item prices and/or total bid or proposal prices as proprietary or trade secrets is not acceptable. If, after being given reasonable time, the bidder or offeror refuses to withdraw an entire classification designation, the bid will be considered nonresponsive or the proposal will be rejected.

g. To protect the Commonwealth and its employees from possible claims for damages because of the improper release of information, agencies and institutions shall not release any information that a bidder, offeror, or contractor has claimed to be a trade secret or proprietary information, unless ordered to do so by a court of competent jurisdiction. If a party seeking information disagrees with the designation of it as proprietary or a trade secret, upon concurrence of the agency's attorney advisor, the party seeking the information may be advised that they will have to obtain a court order and request to be named as a defendant in the suit involving the bidder, offeror, or contractor which designated the information as proprietary as well as the agency or institution.

h. **Small Purchase Records.** Unsealed bids and unsealed proposal records shall be open to the inspection of any citizen, or any interested person, firm or corporation in accordance with the Virginia Freedom of Information Act only after award of the contract.

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3.18 **Publicly Posted Notices**. All solicitation, addenda and award actions (including emergency and sole source awards) for goods and non-professional services over $50,000 shall be posted on the DGS single electronic procurement web site (*Code of Virginia*, § 2.2-4301). Professional service procurements must be posted over $50,000. The designated web site is www.eva.virginia.gov. Notices shall be posted on the eVA web site under VBO Ads. Awards shall be posted on the Awards page. Once the advertisement has been created and the solicitation uploaded, the advertisement will be available for viewing within one (1) business day. The agency must post the solicitation notice on the eVA web site and include access to an electronic version of the solicitation. Public notices may also be posted under $50,000 and in other locations, such as notice boards, or web sites; however, sufficient time should be allowed if advertising procurements under $50,000 to allow adequate time for competition. The eVA web site provides instructions on posting solicitation and award notices.

a. Written solicitation notices up to $50,000 are not required to be posted. Sufficient time should be established in the solicitation for receipt of Quick Quotes, unsealed bids or unsealed proposals.

b. IFB solicitation notices over $50,000 may also be published in a newspaper of general circulation, at least ten (10) days prior to the date set for receipt of bids. Prebid conferences or site visits should be indicated when applicable. When canceling or amending a solicitation, a copy of the notice or addendum must be publicly posted on the eVA web site under VBO Ads.

c. When issuing RFPs estimated to be over $50,000, the solicitation notice shall be posted on the DGS/DPS eVA web site at least 10 days and published in a newspaper or newspapers of general circulation in the area in which the contract is to be performed. The newspaper notice need only be a brief summary of essential elements of information (*Code of Virginia*, § 2.2-4301). Preproposal conferences or site visits should be indicated on the cover sheet of the solicitation when applicable. When canceling or amending a solicitation, a copy of the notice or addendum must be publicly posted on the eVA web site under VBO Ads.

d. Award Notices over $50,000 must be posted for a ten (10) day period immediately following the actual time of award. If used, the Notice of Intent To Award must be posted ten days prior to the actual time of award (see also 4.12d). Emergency notices must state that the contract is being issued on an emergency basis while sole source notices must state that only one source was determined to be practicably available and both must also state that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. Routine award notices may be a copy of the bid tabulation sheet revealing bidders prices and indicating the bidder receiving the award. IFB and RFP solicitations must contain the General Term and Condition on Announcement of Award (see Appendix B, Section I. U.). The award notice shall be posted on the eVA web site and in any additional locations as prescribed in the solicitation for a ten (10) day period immediately following the actual time of award (*Code of Virginia*, § 2.2-4360).

NOTE: The procurement records must be available for review by any bidder or offeror at the time a Notice of Intent To Award or an Award Notice is posted.

e. Documentation to support the posting/advertising requirements over $50,000 must be contained in or attached electronically to the procurement record. It is not necessary to date/time stamp routine award notices or to file them when they are removed from posting; however, the agency or institution must ensure that the posting requirement is met and be able to withstand protest/challenge pertaining to compliance with the posting requirement. It is recommended that the procedure for posting and removing notices be made a part of the agency's or institution's written internal policies and procedures (see 1.2). If a protest is anticipated, the Notice of Intent to Award should be date/time stamped when it is posted and removed, and it should be made part of the procurement file.

f. In addition to its normal contract postings, each agency and institution shall post or provide accessible links to future anticipated contract opportunities on the eVA home page under the "Future Procurements" link (http://dps.dgs.virginia.gov/apps/contracts/FutureProcurements.aspx). These postings should include:

(1) All existing term contracts with expiration dates, with such expiration dates clearly identified;

(2) Anticipated IFBs and RFPs that have not yet been developed including a best estimate of the date of issue of such IFBs and RFPs and contact information for potential vendors for pre-issuance contract information; and

(3) Other anticipated contract opportunities.

3.19 **Recycled Goods Purchase Program**. Agencies are encouraged to promote the use of recycled goods. Through its programs, the Department of Environmental Quality shall increase agency awareness of the benefits of using such products. Information on the availability of recycled goods, including those which use post-consumer and other recovered materials processed by Virginia-based companies may be obtained by calling the DGS contact at 804-786-0103. Agencies shall, to the greatest extent possible, adhere to any recycled products procurement guidelines established by DGS (*Code of Virginia*, § 2.2-4323D).

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

a. be a regular dealer, supplier, or when required in the solicitation an authorized dealer of the goods or services offered;

b. have the ability to comply with the required delivery or performance schedule, taking into consideration other business commitments;

c. have a satisfactory record of performance;

d. have a satisfactory record of integrity; and

e. have the necessary facilities, organization, experience, technical skills, and financial resources to fulfill the terms of the purchase order or contract (see *Vendors Manual*, 3.7).

Assistance in making this determination (preaward surveys, etc.) is available from DGS/DPS Contract Compliance Section at 804-225-4045.

3.21 **Responsive Bid**. To be considered for an award, a bid must comply in all material respects with the Invitation for Bids. Responsiveness relates to compliance with the provisions of the solicitation, including specifications and terms and conditions. Failure to comply with the requirements set forth in the Invitation for Bids may result in a bid being declared nonresponsive, e.g., failure to sign a bid, failure to return the required bid documents, substitution of vendor's terms, deletion of terms and conditions stated in the Invitation for Bids, failure to offer a product or service that meets the requirements of the Invitation for Bids, etc. A bidder who fails to provide prices for all categories of labor in the pricing schedule of a time and materials service contract is considered nonresponsive. This is true whether the price was left blank or the bidder entered a figure of $0. To avoid inconsistent treatment of bidders the following statement should be included in the pricing schedule of such solicitations, "Any bidder who enters $0 on a pricing blank or leaves it blank shall be considered nonresponsive." Bidders who provide multiple prices for performing a service where a single price was solicited are also nonresponsive. For bid evaluation and award procedure guidance see Annex 6-B, Step three, V. D. If a bid is found to be nonresponsive, a notation as to why it is nonresponsive shall be made and signed by the buyer/contract officer and be included in the contract file.

3.22 **Standards of Conduct**. The laws of this Commonwealth dictate a higher standard of conduct for procurement officials than for public employees generally because of the extraordinary trust and responsibility exercised by public officials conducting procurement transactions, and because of the legitimate expectation by the public that this trust and responsibility be exercised properly. Procurement officials and vendors must be cognizant of these laws which include the *VPPA*, the *State and Local Government Conflict of Interests Act*, and the *Governmental Frauds Act*. All state employees having official responsibility for procurement transactions shall conduct business with vendors in a manner above reproach in every respect. Transactions relating to the expenditure of public funds require the highest degree of public trust.

a. Except as specifically allowed by subdivisions A2 and A3 of § 2.2-3112, no public employee having official responsibility for a procurement transaction shall participate in that transaction on behalf of the public body when the employee knows that:

(1) The employee is contemporaneously employed by a bidder, offeror, or contractor involved in the procurement transaction; or,

(2) The employee, the employee's partner, or any member of the employee's immediate family holds a position with a bidder, offeror, or contractor such as an officer, director, trustee, partner or the like, or is employed in a capacity involving personal and substantial participation in the procurement transaction, or owns or controls an interest of more than five percent; or

(3) The employee, the employee's partner, or any member of the employee's immediate family has a pecuniary interest arising from the procurement transaction; or

(4) The employee, the employee's partner, or any member of the employee's immediate family is negotiating, or has an arrangement concerning prospective employment with a bidder, offeror, or contractor (*Code of Virginia*, § 2.2-4369).

An immediate family member is defined as a spouse, children, parents, brothers and sisters, and any other person living in the same household as the employee. The Attorney General has advised that the definition of immediate family includes siblings not living in the same household as the employee (*Code of Virginia*, § 2.2-4368).

b. No state employee having administrative or operating authority, whether intermediate or final, to initiate, approve, disapprove, or otherwise affect a procurement transaction, or any claim resulting therefrom:

(1) 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 (*Code of Virginia*, § 2.2-4371);

(2) shall accept employment from any bidder, offeror, or contractor with whom the employee dealt in an official capacity concerning procurement transactions for a period of one year from the cessation of employment by the state unless the employee or former employee provides written notification to the head of the state agency prior to commencement of employment by that bidder, offeror, or contractor (*Code of Virginia*, § 2.2-4370).

c. In some situations it may be necessary for personnel to make site visits in conjunction with a solicitation to evaluate vendor capability and equipment. If site visits are required for evaluation purposes, the state, and not the vendors being evaluated, should pay for such visits. Exceptions to this policy may be made by the agency head or his/her designee. Any exception must be made on a case by case basis. If an exception is made a written determination signed by the agency head or his or her designee shall be included in the contract file. A statement that this is a mandatory provision of the procurement will be included in the solicitation along with the maximum number of employees who will participate in the site visit. State employees making such site visits will incur and recover travel costs from the agency for which the procurement is being conducted in accordance with state travel regulations. No direct reimbursement of individuals by a vendor is permitted. The procuring agency will determine all costs incurred by state employees in connection with the site visit and bill the appropriate vendor for reimbursement of costs by means of a check payable to the agency.

d. State employees having official responsibility for procurement transactions may attend vendor-sponsored seminars or trade shows where they will benefit from receiving product information and learning of new techniques and product or service trends. Food, drinks and give-away items offered to all participants at such functions may be accepted by state employees attending.

e. All personnel having official responsibility for procurement transactions shall be knowledgeable about the provisions of Article 6, *Code of Virginia*, §§ 2.2-4367 through 2.2-4377, entitled "Ethics in Public Contracting." "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 the same to contain any false, fictitious or fraudulent statement or entry" (*Code of Virginia*, § 2.2-4376). "Willful violation of any provision of this article shall constitute a Class 1 misdemeanor. Upon conviction, any public employee, in addition to any other fine or penalty provided by law, shall forfeit his employment" (*Code of Virginia*, § 2.2-4377). Agencies and institutions "may require public employees having official responsibility for procurement transactions in which they participated to annually submit for such transactions a written certification that they complied with the provisions of this article" (*Code of Virginia*, § 2.2-4375).

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f. No state agency shall solicit or accept any donation, gift, grant, or contract without the written approval of the Governor except under written guidelines issued by the Governor which provide for the solicitation and acceptance of nongeneral funds (2010 *Appropriation Act*, § 4-2.01.a.) Monetary or non-monetary sponsorships exceeding nominal value by vendors in support of conferences and other events are considered donations and must comply with the 2010 *Appropriation Act*, § 4-2.01.a.

g. Vendors and employees of the Commonwealth are prohibited from exchanging anything exceeding nominal value at expo events, which includes distributions by vendors at exhibit booths where the vendors are educating buyers about their products.

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h. **Political Contributions Prohibited During Procurement Process**

1. Pursuant to *Code of Virginia* § 2.2-3104.01, neither the Governor, his political action committee, or the Governor's Secretaries, if the Secretary is responsible to the Governor for an agency with jurisdiction over the matters at issue, shall knowingly solicit or accept a contribution, gift, or other item with a value greater than $50 from any bidder, offeror, or private entity, or from an officer or director of such bidder, offeror, or private entity, who has submitted a bid or proposal pursuant to the *Virginia Public Procurement Act* (*Code of Virginia* § 2.2-4300 et seq.) during the period between the submission of the bid/proposal and the award of the contract.

2. Pursuant to *Code of Virginia* § 2.2-3104.01, the provisions of this section shall apply only where the stated or expected value of the contract is $5 million or more. The provisions of this section shall not apply to contracts awarded as the result of competitive sealed bidding as defined in *Code of Virginia* § 2.2-4301.

3. Pursuant to *Code of Virginia* § 2.2-4376.1, no bidder or offeror who has submitted a bid or proposal to a state agency for the award of a public contract pursuant to the *Virginia Public Procurement Act* (*Code of Virginia* § 2.2-4300 et seq.), and no individual who is an officer or director of such a bidder or offeror, shall knowingly provide a contribution, gift, or other item with a value greater than $50 or make an express or implied promise to make such a contribution or gift to the Governor, his political action committee, or the Governor's Secretaries, if the Secretary is responsible to the Governor for an agency with jurisdiction over the matters at issue, during the period between the submission of the bid and the award of the public contract pursuant to *Virginia Public Procurement Act* (*Code of Virginia* § 2.2-4300 et seq.) The provisions of this section shall apply only for public contracts where the stated or expected value of the contract is $5 million or more. The provisions of this section shall not apply to contracts awarded as the result of competitive sealed bidding.

4. Pursuant to *Code of Virginia* § 2.2-3104.01 and § 2.2-4376.1 respectively, any person who violates the aforementioned code sections shall be subject to a civil penalty of $500 or up to two times the amount of the contribution or gift, whichever is greater. The attorney for the Commonwealth shall initiate civil proceedings to enforce the civil penalties. Any civil penalties collected shall be payable to the State Treasurer for deposit to the general fund.

5. Agencies shall include the form contained in *APSPM* Annex 3-J, "Certification of Compliance with Prohibition of Political Contributions and Gifts During the Procurement Process" in solicitations/contracts where the stated or expected value of the contract is $5 million or more except those awarded as the result of competitive sealed bidding.

3.23 **Taxes**.

a. **Excise**. The Commonwealth of Virginia is generally exempt from paying federal excise taxes, except it must pay excise taxes for air transportation, the cost of which is generally defined as any amount paid within the United States for transportation of any person by air. Certain vaccines require that an excise tax be paid by the purchasing activity.

b. **State Sales**. The Commonwealth of Virginia is generally exempt from paying Virginia's sales taxes on purchases of tangible personal property for its use or consumption. Buyers may receive requests for a Tax Exemption Certificate (Form ST-12, see Annex 3-F) or exemption number. The certificate is available through Department of Taxation channels or may be obtained from DGS/DPS. When it is evident on the face of the bid that taxes were improperly included, the bidder will be given the opportunity to delete them. If further

interpretive assistance is required, contact the Department of Taxation, Office of Customer Service at 804-367-8037.

c. **Sales and Use Tax - State Government and Political Subdivisions**. Virginia's Sales and Use tax does not apply to sales of tangible personal property to the Commonwealth of Virginia or to its political subdivisions, for their use or consumption, if the purchases are pursuant to required official purchase orders to be paid for out of public funds. The tax applies when such sales are made without the required purchase orders and are not paid for out of public funds. No exemption is provided for state or local government employee purchases of meals or lodging whether purchases are pursuant to required official purchase orders or not. The following examples are offered to show that taxes apply to lodging and conference facilities under a variety of circumstances:

Sales and Use Taxes apply:

Example 1: A state employee takes an overnight trip. All state taxes apply to lodging and meals in this transient situation.

Example 2: A state employee registers for a conference and decides to pay for lodging and nonconference meals that were charged with a personal credit card and later get reimbursement from the agency. All state taxes apply to the expenses incurred.

Example 3: A state employee registers for a conference, seminar, DPS Procurement Forum, etc., making reservations with the facility by submitting a PO for payment. All state taxes for lodging and meals charged against the PO would apply. If an employee pays out of the pocket for meals, the tax would apply.

Example 4: The agency is sponsoring a conference or seminar, sets a master account, and provides the facility with a PO. All state taxes would apply to lodging, facilities, meals, AV, and other taxable services charged to the master account.

Note: The following exceptions from the *Code of Virginia* (§58.1-3833 E.) must be taken into consideration when applying the above examples to determine to what extent taxes may apply: "E. Notwithstanding any other provision of this section, no locality shall levy any tax under this section upon (i) that portion of the amount paid by the purchaser as a discretionary gratuity in addition to the sales price; (ii) that portion of the amount paid by the purchaser as a mandatory gratuity or service charge added by the restaurant in addition to the sales price, but only to the extent that such mandatory gratuity or service charge does not exceed 20% of the sales price; or (iii) alcoholic beverages sold in factory sealed containers and purchased for off-premises consumption or food purchased for human consumption as "food" is defined in the Food Stamp Act of 1977, 7 U.S.C. § 2012, as amended, and federal regulations adopted pursuant to that act, except for the following items: sandwiches, salad bar items sold from a salad bar, prepackaged single-serving salads consisting primarily of an assortment of vegetables, and nonfactory sealed beverages."

d. **Sales and Use Tax - Contractors**. Persons who contract with the Commonwealth or its political subdivisions to perform a service and in conjunction therewith furnish some tangible personal property are deemed to be the consumers of all such property and are not entitled to exemption on the grounds that a governmental entity is a party to the contract. This is true even though title to the property provided may pass to the government and/or the contractor may be fully and directly reimbursed by the government. The same principle applies to persons who enter into contracts with a governmental entity to perform real property construction or repair.

3.24 **Tie Bids**

a. **Virginia Products and Firms.** In the case of a tie bid, preference shall be given to goods produced in Virginia, goods or services or construction provided by Virginia persons, firms or corporations, if such choice is available (see 3.14b); otherwise the tie will be resolved by the toss of a coin. The coin toss must be witnessed and the results recorded by a supervisor above the level of the buyer. Award(s) are to be made in favor of the Virginia bidder for tie line items and multiple purchase orders or contracts placed as required. Copies of tie bids resulting from competitive sealed bidding shall be forwarded to the Anti Trust Section of the Office of The Attorney General.

b. **Recycled Content**. In the case of a tie bid in instances where goods are being offered and existing price preferences have already been taken into account, preference then shall be given to the bidder whose goods contain the greatest amount of recycled content (see also 3.14c).

3.25 **Electronic Commerce.** Deleted.

3.26 **Prohibited Contracts**

A. No state agency except for institutions of higher education as defined by §2.2-4321.1 H. shall contract for goods or services with a nongovernmental source if the source, or any affiliate of the source, is subject to the provisions of *(i)*§ 58.1-612 and fails or refuses to collect and remit the tax on its sales delivered by any means to locations within the Commonwealth or *(ii)* Article 2 (§ 58.1-320 et seq.) or Article 10 (§58.1-400 et seq.) of Chapter 3 of Title 58.1 and fails or refuses to remit income tax due thereunder. The provisions of clause *(ii)* shall not apply to any person that has (a) entered into a payment agreement with the Department of Taxation to pay the tax and is not delinquent under the terms of the agreement or (b) appealed the assessment of the tax in accordance with law and such appeal is pending.

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

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

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

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

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

3.27 **Protection of Personally Identifiable Information.** Commonwealth agencies are responsible for safeguarding personally identifiable information of their clients, employees, vendors, contractors and any other individuals providing information to the Commonwealth. Personally identifiable information includes, but is not limited to, Social Security Numbers, financial account numbers, and any other such information protected from disclosure by federal law or the Code of Virginia. The Commonwealth and its contractors shall safeguard personally identifiable information from disclosure to the public. Include Special Term and Condition 61 from Appendix B, II in contracts when the contractors utilize, access, or store personally identifiable information.

Agency procurement officers must ensure that any Social Security Numbers are redacted from contract files before files are disclosed to the general public or inspected by any other individuals, firms or other interested parties who are granted access to information.

3.28 **Authorization to Transact Business in The Commonwealth**

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a. In accordance with the *Code of Virginia* § 2.2-4311.2, all public bodies shall include in every written contract a provision that a contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 or as otherwise required by law. General Term and Condition BB shall be included in all contracts to meet this requirement. (See General Term and Condition **BB: AUTHORIZATION TO CONDUCT BUSINESS IN THE COMMONWEALTH**, Appendix B, Section I.)

b. The *Code of Virginia* § 2.2-4311.2 subsection B requires that "Pursuant to competitive sealed bidding or competitive negotiation, all public bodies shall include in the solicitation a provision that requires a bidder or offeror organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 to include in its bid or proposal the identification number issued to it by the State Corporation Commission. Any bidder or offeror that is not required to be authorized to transact business in the Commonwealth as a foreign

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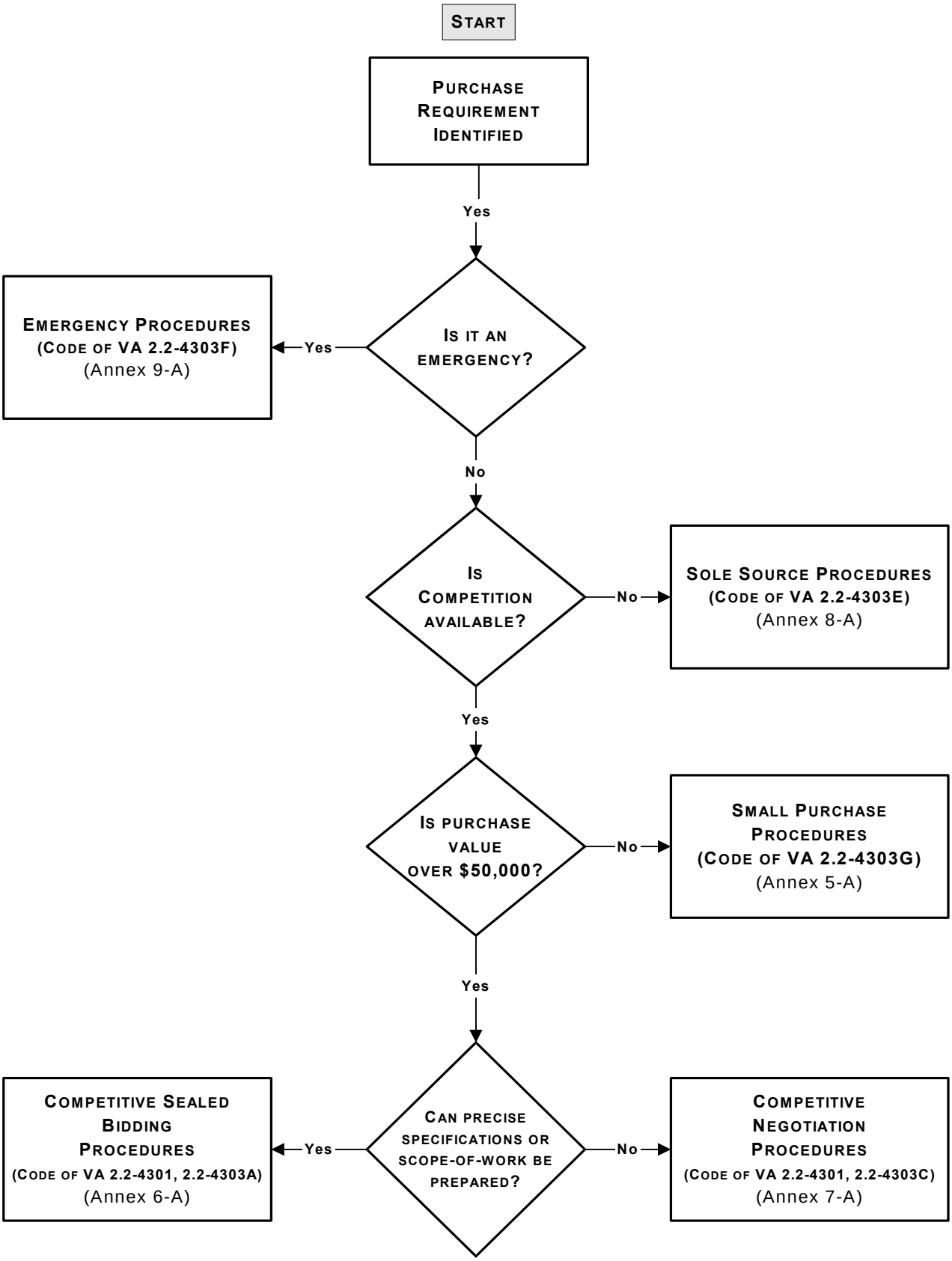
business entity under Title 13.1 or Title 50 or as otherwise required by law shall include in its bid or proposal a statement describing why the bidder or offeror is not required to be so authorized." Accordingly, Special Term and Condition **64: STATE CORPORATION COMMISSION IDENTIFICATION NUMBER** shall be included in all Invitations for Bids or Requests for Proposals.

c. Any bidder or offeror described in *Code of Virginia* § 2.2-4311.2 subsection B that fails to provide the required information shall not receive an award unless a waiver is granted by the Director of the Department of General Services or his designee in accordance with *Code of Virginia* § 2.2-4311.2.

Annex 3-A

PROCUREMENT METHODS FLOWCHART

Commonwealth public procurement process - Basic decisions and procedures



Annex 3-B

Summary of Procurement Policies

I. Small Purchases - Goods and Services, other than Professional Services

Thresholds	Procedures
Set-aside for Small Businesses:	
Up to $5,000	Obtain a minimum of one (1) quote from a DMBE-certified small business, if available. (Use of the Small Purchase Charge Card is encouraged up to $5,000.)
Over $5,000 to $50,000 (See 3.10 g)	Solicit a minimum of four (4) DMBE-certified small business sources, if available, in writing or electronically. Use Quick Quote for bids or quotes; or Unsealed Proposal methods to request proposals over $5,000 to $50,000.

II. Competitive Sealed Bidding or Competitive Negotiation (*Code of Virginia,* § 2.2-4301 and §2.2-4303)

Threshold	Procedures
Over $50,000; may be used for lesser amounts.	Unless set-aside for small businesses only (see 3.10 g), solicit a minimum of six (6) sources, including a minimum of four (4) DMBE-certified small businesses, in writing, including electronically through eVA. If set-aside, solicit a minimum of six (6) DMBE-certified small businesses, if available. Use one of the following methods for purchases over $50,000 unless an exception (see III. below).: 1 - Competitive sealed bidding. 2 - Two-step competitive sealed bidding. 3 - Competitive negotiation, including Best Value Acquisition. A written justification is required.

III. Exceptions To Competitive Procurement (*Code of Virginia,* § 2.2-4303 E and F)

Thresholds	Procedures
Emergency (See Chapter 9)	Take immediate action if required to protect personal safety or property. Other emergencies, seek competition to the extent practicable. Requires written determination signed by the agency/institution head or designee.
Sole Source (Unlimited dollar amounts) (See Chapter 8)	Over $5,000, a written quotation must be obtained from the vendor. Requires written justification approved in advance by the agency/institution head. Over $50,000 requires approval from DGS/DPS. Agencies and institutions may make contract awards after appropriate approval. Purchase using noncompetitive negotiation.
Used Equipment up to $50,000	Competition not required. See 1.5 c & 4.17.

IV. Exemption from Purchasing through DGS/DPS

Thresholds	Procedures
Various	See 1.5.

Note: Public posting by advertising in the *Virginia Business Opportunities* (*VBO*) on eVA (www.eva.virginia.gov) is required over $50,000 for goods and nonprofessional services. For Competitive Negotiation over $50,000 notice is also required to be advertised in a newspaper (see 3.18).

Annex 3-E

Bond Documentation Review Checklist

When an agency's Attorney General representative is not available to review and determine the validity of a bond, the following guidance is offered in authenticating the validity of a surety bond, once received:

_____(1) First time approvals may take bidder/contractor several weeks - there is an extensive prequalification process.

_____(2) Return bid deposits to unsuccessful bidders as soon as possible.

_____(3) If letters of credit are used, they should be "irrevocable" and be sure to verify the financial soundness of the issuer. The use of letters of credit is not recommended.

_____(4) Contact the issuing surety company directly, in writing, to authenticate the bond immediately after it is presented and verify that the bond is correct and valid.

_____(5) Check the name of surety on the bond - it should be identical to the name appearing in the State Corporation Commission (SCC) *Fidelity and Surety Report*. This report may be obtained by calling the SCC at 804-371-9636.

_____(6) Check the wording. Look for strikeover, white out, etc. Be sure that form CO-10, *Commonwealth of Virginia Standard Performance Bond*, and form CO-10.1, *Commonwealth of Virginia Standard Labor and Material Payment Bond*) are used. These forms are specifically intended for bid, performance and payment (labor and material) bonds and contain the most appropriate language. These forms are available on the DEB web site: http://deb.dgs.virginia.gov .

_____(7) Unlike other property and casualty insurance companies, fidelity, and surety companies are excluded from guarantee fund coverage, so it is important to check surety's status. Call the SCC's Bureau of Insurance at 804-371-9636 to insure that the surety is licensed and in good standing.

_____(8) A single bond cannot exceed 10% of the net worth shown on the SCC list. You may need more than one company on a major project.

_____(9) Sureties must have a minimum of $4 million in net worth.

_____(10) Make certain the surety is furnished all copies of addenda and of all change orders issued, after award.

_____(11) Do not delay if you must call in a bond. The surety who issued the bond should be copied on correspondence to the contractor when cure attempts are initiated.

_____(12) If you get a "Notice To Owner" (NTO) from a subcontractor, send the subcontractor a copy of the performance and payment bond and stay out of the issue. If you get a lot of "NTO's" - tell the surety as well.

_____(13) Do not recommend issuing of "joint checks" (contractor and subcontractor) check payment. If required to do it, be sure the letter accompanying the payment states that such practice does not place owner in position of guaranteeing payment.

Department of Taxation
Form ST-12

Annex 3-F

COMMONWEALTH OF VIRGINIA
SALES AND USE TAX CERTIFICATE OF EXEMPTION

(For use by the Commonwealth of Virginia, a political subdivision of the Commonwealth of Virginia, or the United States)

To: _____ Date _____,20_____
(Name of Dealer)

_____ _____ _____
(Number and street or rural route) (City, town, or post office) (State and ZIP Code)

The Virginia Retail Sales and Use Tax Act provides that the Virginia Sales and Use Tax shall not apply to tangible personal property for use of consumption by this State, any political subdivision of this State, or the United States. (This exemption does not apply to sales or leases to privately owned financial and other privately owned corporations chartered by the United States.)

The undersigned, for and on behalf of the governmental agency named below, hereby certifies that all tangible personal property purchased or leased from the above dealer on and after this date will be for use or consumption by a governmental agency, that each such purchase or lease will be supported by the required official purchase order, and that such tangible personal property will be paid for out of public funds: (Check proper box below.)

☐ 1. Tangible personal property for use or consumption by the Commonwealth of Virginia.
☐ 2. Tangible personal property for use or consumption by a political subdivision of the Commonwealth of Virginia.
☐ 3. Tangible personal property for use or consumption by the United States.

_____
(Name of governmental agency)

(Number and street or rural route) (City, town, or post office) (State) (ZIP Code)

I certify that I am authorized to sign this Certificate of Exemption and that, to the best of my knowledge and belief, it is true and correct, made in good faith, pursuant to the Virginia Retail Sales and Use Tax Act.

By_____ _____
(Signature) (Title)

Information for dealer. -- A dealer is required to have on file only one Certificate of Exemption properly executed by the governmental agency buying or leasing tax exempt tangible personal property under this Certificate.

COMMONWEALTH OF VIRGINIA
STANDARD BID BOND FOR NON-CONSTRUCTION

KNOW ALL MEN BY THESE PRESENTS:
That _____ ("Principal")
(insert legal name of the contractor – should match name on contract)

whose principal place of business is _____,
(insert street address)

and _____ ("Surety"), whose principal place of business is

_____, are held
(insert street address)

and firmly bound unto the Commonwealth of Virginia, _____
(name of agency or institution)

("Obligee"), in the amount of _____% of the total bid by Principal (the Bid Guarantee) for the payment whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, in response to IFB No. _____, Principal has submitted a bid to Obligee dated _____, 200__ for _____ (the "Bid"),
(insert brief description of bid)

which Bid is by reference expressly made a part hereof;

NOW THEREFORE, THE CONDITION OF THIS OBLIGATION is as follows: This Bid Bond shall guarantee that the Principal will not withdraw his Bid during the period of _____ days following the opening of the bids; that if his Bid is accepted, Principal will enter into a formal contract with the Obligee in accordance with the Invitation for Bids; that Principal will submit a properly executed and authorized Standard Performance Bond and a Standard Labor and Material Payment Bond in a form matching those included in the Invitation for Bids; and that in the event of the withdrawal of the Bid within the said period, or failure to enter into a contract and give said bonds within ten days after Principal has received notice of acceptance of his Bid, Principal and Surety shall jointly and severally be liable to the Obligee for the difference between the amount specified in the Bid and such larger amount for which the Obligee may contract with another party to perform the work covered by the Bid, up to the amount of the Bid Guarantee. This amount represents the damage to the Obligee on account of the default of the Principal in any particular thereof.

The Surety represents to the Principal and the Obligee that it is legally authorized to provide these services in the Commonwealth of Virginia.

This Bid Bond shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect hereto shall be brought in the courts of the Commonwealth.

Signed and sealed this ___ day of _____, 200__.

_____(SEAL)
Principal

_____ By:_____
Witness

Title: _____

_____(SEAL)
Surety

By:_____
Attorney-in-Fact

Typed Name:_____

AFFIDAVIT AND ACKNOWLEDGEMENT OF ATTORNEY-IN-FACT

COMMONWEALTH/STATE OF _____
CITY/COUNTY OF _____

I, the undersigned notary public, hereby certify that _____, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is signed to the foregoing bid bond in the amount of ___% of the total bid amount, which is dated _____, 200___ and which names the Commonwealth of Virginia, _____ as Obligee, personally appeared before me today in the above jurisdiction and, being duly sworn, stated that s/he is the attorney-in-fact of _____, a _____ corporation which is the Surety in the foregoing bond, that s/he is duly authorized to execute on the above Surety's behalf the foregoing bond pursuant to the power of attorney that is dated _____ and attached hereto, and that on behalf of the above Surety, s/he executed the foregoing bond and acknowledged the foregoing bond before me as the above Surety's act and deed. S/he has further stated under oath before me at this same time and place that the attached power of attorney has not been revoked and that s/he has not and had not, at the time of signing and delivering the bond or doing any other act pursuant to the power of attorney, received actual knowledge or actual notice of the revocation or termination of the power of attorney, by death, disability or otherwise, or notice of any facts indicating the same.

Given under my hand this __ day of _____, 200__.

_____(SEAL)
Notary Public

Print name: _____

My commission expires: _____

APPROVED AS TO FORM

_____
Assistant Attorney General Date

COMMONWEALTH OF VIRGINIA
STANDARD LABOR AND MATERIAL PAYMENT BOND FOR NON-CONSTRUCTION

This bond is issued simultaneously with a Performance Bond in favor of the Obligee, conditioned on the full and faithful performance of the contract.

KNOW ALL MEN BY THESE PRESENTS: That _____

_____
(Insert full name or legal title of Contractor and address)

as Principal, and _____
(Insert full legal title of the Surety)

as Surety, are held and firmly bound unto the Commonwealth of Virginia

_____
(name of the Agency or Institution of the Commonwealth)

as Obligee, in the amount of _____
Dollars $_____, for the payment whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns jointly and severally, firmly by these presents.

WHEREAS,

Principal has by written agreement dated _____ 20__, entered into a contract with

_____ for _____

_____
which contract (the "Contract") is by references expressly made a part hereof.

NOW THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if Principal shall promptly make payment to all claimants as hereinafter defined, for labor performed and material furnished in the prosecution of the work provided for in the Contract, then this obligation shall be void; otherwise it shall remain in full force and effect, subject however, to the following conditions.

The Principal and Surety hereby jointly and severally agree as follows:

1. A claimant is defined as one having a direct Contract with the Principal or with a subcontractor of the Principal for labor, material, or both for use in the performance of the Contract. A "subcontractor" of the Principal, for the purposes of this bond only, includes not only those subcontractors having a direct contractual relationship with the Principal, but also any other contractor who undertakes to participate in the work which the Principal is to perform under the aforesaid Contract, whether there are one or more intervening subcontractors contractually positioned between it and the Principal (for example, a subcontractor). "Labor" and "material" shall include but not be limited to, public utility services and reasonable rentals of equipment, but only for periods when the equipment rented is actually used at the work site.

2. Subject to the provisions of paragraph 3, any claimant, who has performed labor or furnished material in accordance with the Contract documents in the prosecution of the work provided in the Contract, who has not been paid in full therefore before the expiration of ninety (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 claims payment, may bring an action on this bond to recover any amount due him for such labor or material, and may prosecute such action to final judgment and have execution on the judgment. The Obligee need not be a party to such action and shall not be liable for the payment of any costs or expenses of any such suit.

3. Any claimant who has a direct contractual relationship with any subcontractor of the Principal from whom the Principal has not required a subcontractor payment bond, but who has no contractual relationship, express or implied, with the Principal, may bring an action on this bond only if he has given written notice

to the Principal within one hundred eighty (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 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 as furnished. Notice to the Principal shall be served by registered or certified mail "Return Receipt Requested," postage prepaid, in an envelope addressed to the Principal at any place where his office is regularly maintained for the transaction of business. Claims for sums withheld as retainages with respect to labor performed or materials furnished shall not be subject to the time limitations stated in this paragraph 3.

4. No suit or action shall be commenced hereunder by any claimant:
   a. Unless brought within one year after the day on which the person bringing such action last performed labor or last furnished or supplied materials, it being understood, however, that if any limitation embodied in this bond is prohibited by any law controlling the construction hereof, the limitation embodied within this bond shall be deemed to be amended as to be equal to the minimum period of limitation permitted by such law.

   b. Other than in a Virginia court of competent jurisdiction, with venue as provided by statute, or in the United States District Court for the district in which the project, or any part thereof is situated.

5. The amount of this shall be reduced by and to the extent of any payment or payments made in good faith hereunder.

Signed and sealed this ___ day of _____, 200__.

_____(SEAL)
Principal

_____
Witness

By:_____

Title: _____

_____(SEAL)
Surety

By:_____
Attorney-in-Fact

Typed Name:_____

AFFIDAVIT AND ACKNOWLEDGEMENT OF ATTORNEY-IN-FACT

COMMONWEALTH/STATE (strike one) OF _____

CITY/COUNTY (strike one) OF _____

I, the undersigned notary public, hereby certify that _____, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is signed to the foregoing payment bond in the sum of _____, which is dated _____ and which names the Commonwealth of Virginia, _____ as Obligee, personally appeared before me today in the above jurisdiction and, being duly sworn, stated that s/he is the attorney-in-fact of _____, a _____ corporation which is the Surety in the foregoing bond, that s/he is duly authorized to execute on the above Surety's behalf the foregoing bond pursuant to the power of attorney that is dated _____ and attached hereto, and that on behalf of the above Surety, s/he executed the foregoing bond and acknowledged the foregoing bond before me as the above Surety's act and deed. S/he has further stated under oath before me at this same time and place that the attached power of attorney has not been revoked and that s/he has not and had not, at the time of signing and delivering the bond or doing any other act pursuant to the power of attorney, received actual knowledge or actual notice of the revocation or termination of the power of attorney, by death, disability or otherwise, or notice of any facts indicating the same.

Given under my hand this __ day of _____, 200__.

_____(SEAL)
Notary Public
My name (printed) is:

_____
My commission expires:

_____

APPROVED AS TO FORM

_____
Assistant Attorney General Date

COMMONWEALTH OF VIRGINIA
STANDARD PERFORMANCE BOND FOR NON-CONSTRUCTION

KNOW ALL MEN BY THESE PRESENTS: That _____, the Contractor ("Principal") whose principal place of business is located at _____, and _____ ("Surety"), whose address for delivery of notices is located at _____, are held and firmly bound unto the Commonwealth of Virginia, _____ ("Obligee"), in the amount of _____dollars **($_____)** (the "Bonded Sum") for the payment whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal has by written agreement dated _____ entered into Contract No. _____ with Obligee for _____, which contract (the "Contract") is by reference expressly made a part hereof;

NOW THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if the Principal shall promptly and faithfully perform all its obligations under said Contract in strict conformity with the plans, specifications and conditions of the Contract during the time specified in the Contract and any extensions thereof as may be granted by the Obligee with or without notice to Surety, and shall also promptly and faithfully perform all requirements of any amendment to the Contract made as provided in the Contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

Any amendments which may be made in the terms of the Contract, or in the work to be done under it, or the giving by the Obligee of any extension of time for the performance of the Contract, or any other amendments, extensions or forbearance on the part of either or both of the Obligee or the Principal to the other shall not in any way release the Principal and the Surety, or either of them, their heirs, executors, administrators, successors or assigns from their liability hereunder, notice to the Surety of any such amendment, extension, or forbearance being hereby waived.

Whenever the Principal is in breach of the Contract and the Obligee has given Surety written notice of such breach and written demand for Surety to act under this paragraph, the Surety shall contact the Obligee in writing and arrange an in-person or telephone conference to be held with Obligee within ten days of such written demand to discuss methods of remedying the breach. Within forty days after such written demand, the Surety shall take one of the following actions: (1) fully remedy the breach; (2) unconditionally pay the Bonded Sum to the Obligee; (3) if acceptable to Obligee (in Obligee's sole discretion), enter into a written takeover agreement with Obligee by which Surety (through specified agents or independent contractors) undertakes to perform all of Principal's obligations under the Contract and pay all damages for which Principal is liable under the Contract; or (4) agree to pay Obligee all amounts (not exceeding the Bonded Sum) by which Obligee is damaged as a result of Principal's breach, as such damages are or were incurred, including without limitation, the net cost of obtaining some or all of the Contract performance from an alternative source through the Public Procurement Act or other legally available procedure, plus all damages resulting from the nonperformance or from the delay between the Contract deadline(s) and the actual completion of the Contract performance.

The time required for the above conference or to complete the above actions shall not toll any Contract deadlines or operate as a waiver of any of the Obligee's rights under the Contract or under this Performance Bond. If Surety fails to take one of the four specified actions within forty days after such written demand, Surety shall, within such time, provide Obligee with a written statement of any basis upon which it denies obligation to take such action, and at any time after such forty day period, Obligee may proceed to complete the work in any reasonable manner without further notice to Surety and recover from Surety (up to the Bonded Sum) the damages caused by Principal's breach.

No action shall be brought on this bond unless brought within one year after (a) completion of the Contract, including the expiration of all warranties and guarantees, or (b) discovery of the defect or breach of warranty that gave rise to the action.

No other delay by Obligee in exercising rights under this bond shall operate as a waiver of such rights. The validity, interpretation, and enforcement of this Bond shall be governed in all respects by Virginia law. Any suit in connection with this Bond shall be brought solely in the appropriate circuit court of the Commonwealth of Virginia.

Signed and sealed this ___ day of _____, 200__.

_____(SEAL)
Principal

_____
Witness

By

Title: _____

_____(SEAL)
Surety

By:_____
Attorney-in-Fact

Typed Name:_____

AFFIDAVIT AND ACKNOWLEDGEMENT OF ATTORNEY-IN-FACT

COMMONWEALTH/STATE (strike one) OF _____

CITY/COUNTY (strike one) OF _____

I, the undersigned notary public, hereby certify that _____, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is signed to the foregoing performance bond in the sum of _____, which is dated _____ and which names the Commonwealth of Virginia, _____ as Obligee, personally appeared before me today in the above jurisdiction and, being duly sworn, stated that s/he is the attorney-in-fact of _____, a _____ corporation which is the Surety in the foregoing bond, that s/he is duly authorized to execute on the above Surety's behalf the foregoing bond pursuant to the power of attorney that is dated _____ and attached hereto, and that on behalf of the above Surety, s/he executed the foregoing bond and acknowledged the foregoing bond before me as the above Surety's act and deed. S/he has further stated under oath before me at this same time and place that the attached power of attorney has not been revoked and that s/he has not and had not, at the time of signing and delivering the bond or doing any other act pursuant to the power of attorney, received actual knowledge or actual notice of the revocation or termination of the power of attorney, by death, disability or otherwise, or notice of any facts indicating the same.

Given under my hand this __ day of _____, 200__.

_____(SEAL)
Notary Public

My name (printed) is:

_____

My commission expires:

_____

APPROVED AS TO FORM:

_____

Assistant Attorney General Date

Annex 3-J
CERTIFICATION OF COMPLIANCE
WITH PROHIBITION OF POLITICAL CONTRIBUTIONS AND GIFTS DURING THE PROCUREMENT PROCESS

For contracts with a stated or expected value of $5 million or more except those awarded as the result of competitive sealed bidding

I, _____, a representative of _____,
Please Print Name *Name of Bidder/Offeror*

am submitting a bid/proposal to _____ in response to
Name of Agency/Institution

_____, a solicitation where stated or expected contract value is
Solicitation/Contract #

$5 million or more which is being solicited by a method of procurement other than competitive sealed

bidding as defined in § 2.2-4301 of the *Code of Virginia*.

I hereby certify the following statements to be true with respect to the provisions of §2.2-4376.1 of the *Code of Virginia*. I further state that I have the authority to make the following representation on behalf of myself and the business entity:

1. The bidder/offeror shall not knowingly provide a contribution, gift, or other item with a value greater than $50 or make an express or implied promise to make such a contribution or gift to the Governor, his political action committee, or the Governor's Secretaries, if the Secretary is responsible to the Governor for an agency with jurisdiction over the matters at issue, during the period between the submission of the bid/proposal and the award of the contract.

2. No individual who is an officer or director of the bidder/offeror, shall knowingly provide a contribution, gift, or other item with a value greater than $50 or make an express or implied promise to make such a contribution or gift to the Governor, his political action committee, or the Governor's Secretaries, if the Secretary is responsible to the Governor for an agency with jurisdiction over the matters at issue, during the period between the submission of the bid/proposal and the award of the contract.

3. I understand that any person who violates § 2.2-4376.1 of the *Code of Virginia* shall be subject to a civil penalty of $500 or up to two times the amount of the contribution or gift, whichever is greater.

_____
Signature

_____
Title

_____
Date

CHAPTER 4

GENERAL PROCUREMENT GUIDELINES & PLANNING

In this Chapter look for . . .

4. General
4.1 Lead-Time
4.2 Selection of Procurement Method
4.3 Preparing the Written Solicitation
4.4 Specifications
4.5 Qualified Products Lists (QPL) or Qualified Contractor's Lists (QCL)
4.6 Computer Hardware - Site Preparation
4.7 Prompt Payment Discounts
4.8 Advance Payments
4.9 Commodity Codes
4.10 Price Reasonableness Determination
4.11 Order Splitting Prohibition
4.12 Award Documents
4.13 Freight
4.14 Insurance
4.15 Bookstore, Commissary, Canteen, Gift Shop, and Similar Retail Outlet Purchases
4.16 Conference Planning
4.17 Used Equipment
4.18 Rental/Lease, Installment Purchases
4.19 Maintenance/Repair of Equipment
4.20 Printing
4.21 Services
4.22 Non-Professional Services
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4.24 Construction
4.25 Make-or-Buy Analysis
4.26 Use of Contractor's Standard Contract Form
4.27 Samples
4.28 Vendor Advertising Prohibition
4.29 Virginia Business Opportunities Advertising
4.30 Antitrust Violations
4.31 Debarment
4.32 Unsolicited Proposals
4.33 General Services Administration (GSA) Contract Pricing
4.34 Procurement of Outdoor Light Fixtures

Annexes
4-A Agency Purchase Order
4-B Contract Form Addendum to Contractor's Form
4-C Make-or-Buy Analysis Procedures
4-E Bookstore, Commissary, Canteen, Gift Shop, and Similar Retail Outlet Purchases
4-F Tips for Detecting Bid Rigging, Price Fixing, and other Types of Collusion
4-G Employee or Independent Contractor? Factors to Consider
4-H Waste & Abuse Warning Symptoms

4. **General**. This chapter contains general guidelines and suggestions when procuring goods, services, printing, and non-capital outlay construction. In some cases, these guidelines expand upon requirements that have their basis in the *Virginia Public Procurement Act* (*VPPA*). Their intent is to assist purchasers in conforming to generally acceptable procurement principles, yet provide maximum interpretive latitude in their application.

4.1 **Lead-Time**.

a. **Administrative Lead-Time**. Administrative lead-time is that period of time from initiation of the requirement by the user to issuance of an award. For routine procurements where informal written solicitations are used, the minimum time required to prepare, solicit, evaluate, and make an award may take from three (3) days up to thirty (30) days. When competitive sealed bidding or competitive negotiation is used, the time required by the purchasing office may be longer. It is important that agency purchasing personnel continue to emphasize to their requisitioners that this time period should be included in their planning.

b. **Order/Ship Time (OST)**. Order/Ship Time is the time after award required by suppliers to fill an order and ship by designated means (truck, rail, or air) to the delivery point. These times vary widely by industry. Consideration should be given to market conditions which will affect delivery. Except for the most routine of expendable supplies, e.g., off-the-shelf items, a range of 30-90 days should be estimated in determining the OST. Custom made and complex items of equipment normally take longer to obtain.

4.2 **Selection of Procurement Method**. It is important to select the proper procurement method. The estimated or anticipated value of the contract must be determined first, unless the purchase is an emergency (for emergencies, see Chapter 9). The anticipated value of the contract includes the dollar value for the initial period of the contract, and includes all possible renewal periods. The expected trade-in value of equipment should not be considered when determining the anticipated value of a contract. When determining the total value of a contract, include all cost elements such as travel related expenses (e.g., travel, lodging, and meals) and direct bill expenses (e.g., copying costs, postage, shipping and handling costs, long distance charges). If purchases under $50,000 are required, then the small purchase procedures in Chapter 5 shall be used. If over $50,000, a decision should be made whether to use competitive sealed bidding or competitive negotiation. For competitive sealed bidding see Chapter 6. For competitive negotiation see Chapter 7. For purchases where there is only one source practicably available, see Chapter 8.

4.3 **Preparing the Written Solicitation**.

a. **General**. Solicitations should convey to the reader, in a clear, concise and logical sequence, the information necessary to answer the basic questions of who, what, why, where, when and how. The *Code of Virginia*, § 2.2-4343.1D requires public bodies to prominently display a nondiscrimination statement concerning faith-based organizations in all Invitation for Bids (IFB), Request for Proposals (RFP), contracts, and purchase orders. The following statement must be prominently displayed on the cover page of every IFB or RFP:

Note: This public body does not discriminate against faith-based organizations in accordance with the *Code of Virginia*, § 2.2-4343.1 or against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.

b. **Terms and Conditions**. Terms and conditions must be in writing, be clear and concise, and express the intent of the agency. Generally, if there is an ambiguity in a written contract that results in a dispute, its resolution will be against the party who wrote the contract. General Terms and Conditions shall be a part of every written solicitation issued by all agencies for goods and services (see Appendix B, Section I). Exceptions to the use of the terms and conditions in Appendix B, section I must be approved by the agency's legal advisor. Special Conditions can be found in sections II, III and IV of Appendix B. Information and assistance in the preparation or use of additional special terms and conditions not contained in this manual can be obtained by contacting the appropriate DGS/DPS official for the goods, or services (see Directory of Procurement Assistance, Annex 13-C). Unless the agency has provided for prequalification of bidders, the solicitation shall include a statement of any requisite qualifications. Such qualifications must be verifiable and must be used in determining responsiveness of bids and in evaluating proposals (see IFB Solicitation and File Checklist, Annex 6-D and RFP Solicitation and File Checklist, Annex 7-E).

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

in determining the value of the contract and procurement method, all possible renewal periods must be included. Multi-year programs are subject to availability of funds, and each solicitation covering a multi-year period must contain an availability of funds clause (see Appendix B, Section I) and reference to the *Vendors Manual*. If price adjustments are to be permitted during the contract period, the conditions under which they are authorized must be specified in the original solicitation and resulting contract. Agencies should review all multi-year contracts at least annually to determine if the goods or services are still required, if prices are fair and reasonable based on the current market conditions, and if performance is satisfactory. Multi-year contracts including options to renew normally should not exceed 5 years.

d. **Types of Contracts**. Listed below are some various types of contracts.

(1) **Fixed Price Contracts**.

(a) **Firm Fixed Price**. Fixed pricing agreement where firm unit or total prices are established at the time of order placement or contract award for the goods or services. A fixed price contract may result from bidding or negotiation processes. Specifications are clear. Costs are predictable. There is minimal risk to the purchasing activity when firm fixed price contracting is used. This type of contract encourages efficient performance and is least costly to administer. Financial requirements are known. The use of firm fixed price contracting may be inappropriate if requirements or specifications are unclear or indefinite.

(b) **Fixed Price with Escalation/De-escalation**. This fixed price agreement provides for price adjustments, up or down if specified contingencies occur. This type of contracting may result from bidding or negotiation processes. It is used to eliminate fluctuations in vendor's prices due to unstable markets. The contract period is typically over a long period of time. The use of fixed price contracts with escalation/de-escalation reduces the need for contractors to inflate cost of goods to offset unstable markets or economic conditions. The risk is partially transferred to the buyer. Costs are increased through greater contract administration efforts that are required by this type of contracting.

(2) **Requirements-Type Contracts**. Requirements-type contracts are agreements for performance over a specified period of time, when quantities are indefinite. They have no fixed total dollar amount; rather, they are unit price based. They establish a framework under which goods/services are provided, but it is the degree of purchase order activity against the contract that will ultimately determine its total value. Effective administration of these open-ended agreements requires that the agency maintain some record of the degree of activity against these contracts. Purchasing must, either manually or through an automated system, have some means to capture, analyze, and report usage information. Purchase order activity must be periodically reviewed for compliance with the terms of the agreement. Contract expenditure activity should always be examined prior to the exercise of any renewal provision or re-solicitation. These contracts are generally used when conducting cooperative procurements and the need for close administration becomes even greater (see 10.21).

(3) **Time and Materials Contracts (T&M)**. The agreement for supplies or services is on the basis of billable hours, which include overhead, profit, and materials at cost. Details of the work are known but the scope of the work is not known. T&M contracts are suitable for maintenance, design, engineering, emergencies, etc. Competition is sought on the basis of labor-hour rate. These contracts may be expensive to administer. Whenever an agency or institution uses a cost-reimbursement agreement such as T&M to acquire needed goods/services, it is essential that billed costs be analyzed (and challenged when appropriate) prior to their approval for payment. Because there is usually no incentive for contractors to contain costs, agencies have an obligation to verify the legitimacy and accuracy of any costs submitted for reimbursement.

When a time and materials agreement is used, agencies must request a <u>detailed</u> job estimate which should include the amount and type of contract labor with associated rates and itemized material costs to allow evaluation of the reasonableness of its cost elements before authorizing the work to be performed. If it is determined that the estimate is not reasonable or in accordance with the terms of the contract, negotiation or the solicitation of additional estimates should be considered (see 10.22).

(4) **Construction-Type Contracts**. Procurement and administration of construction services requires the planning and use of special procedures. Section 4.24 provides specific guidance.

(5) **Blanket Purchase Agreements (BPA)**. Blanket purchase agreements are contractual relationships which may be entered into with local vendors to obtain small dollar value, expendable operating supplies or services (less than the single quote limit) for which low or erratic demand usage exists. Use of these should be discouraged as the Commonwealth has a far more comprehensive program, with the Small Purchase Charge Card Program. For further guidance on BPAs see 5.10.

(6) **Cost Plus a Percentage of Cost**. Except in the case of an emergency affecting the public health, safety or welfare, no public contract shall be awarded on the basis of cost plus a percentage of cost (*Code of Virginia*, § 2.2-4331). This contract permits a contractor to be paid for all costs plus a percentage of the cost. There is no incentive for the contractor to be cost conscious because the greater the cost, the greater the profit.

(7) **Cost-Plus-A-Fixed-Fee**. A cost-plus-a-fixed-fee contract is a cost-reimbursement type contract that provides for the payment of allowable costs plus a firm fixed fee to the contractor which is negotiated prior to contract award. The fixed fee, once negotiated, does not vary with the actual cost but may be adjusted as a result of any subsequent changes which may be negotiated in the scope of work or services to be performed under the contract. The scope of work is generally vague or specifications are indefinite. It accelerates procurement of new technologies. This contract is costly to administer. There are no incentives to reduce costs.

(8) **Incentive**. A fixed price is agreed upon with a target cost/profit, a ceiling price, and a profit formula. Below target, the contractor and state share savings. Above ceiling, the contractor must assume all costs. This is used for competitively negotiated contracts for high cost, long lead-time projects. The contractor's incentive is greater profit by improving performance to control costs. It promotes performance efficiency. The agency may save in costs savings. This type of contracting requires a good accounting system. It increases administrative burden to both parties. The target price may be difficult to establish. The agency assumes a portion of the risk.

e. **Prebid or Preproposal Conferences**. Conference or site visits early in the solicitation cycle provide an opportunity to emphasize and clarify critical aspects of solicitations, eliminate ambiguities or misunderstandings, and permit vendor input. Conferences/site visits shall be conducted with potential bidders or offerors when issuing solicitations for complex, large (over $100,000) or critical requirements. This requirement may be waived by an agency procuring under its authority upon written approval of the head of the agency or his or her designee. A waiver is normally granted only when the procurement is routine, and past procurements have shown no problems. Attendance at conferences or site visits may be either optional or mandatory. The issuing agency may permit attendance through teleconferencing or videoconferencing for optional prebid/preproposal conferences. When mandatory attendance is stipulated in the solicitation, an attendance roster is signed by the attendees and only bids or proposals from those firms represented at the conference or visiting the site will be accepted. Agencies should carefully consider whether it is absolutely necessary that bidders or offerors attend in order to understand the solicitation and submit a response to it. Such mandatory conferences and site visits can reduce competition because of vendor scheduling conflicts. In addition, no such conference or site visit can be scheduled less than ten full calendar days from the date the solicitation is issued and public notice requirements are completed. (A sample clause is in Appendix B, Section II.) Prebid or preproposal conferences scheduled during a period of suspended State business operations must be rescheduled by the purchasing agency to a date and time that will permit proper notification to all potentially interested participants. If a modification to the solicitation is required as a result of the conference or site visit, an addendum must be issued. Specific points to be considered when conducting these conferences or site visits are contained in Annex 6-E.

f. **Response Time**. When establishing an opening date and time, buyers should allow for holiday mail disruptions and erratic mail deliveries as well as vendor's time required to respond to complex procurements. The sealed bid or proposal opening date shall be no less than ten (10) days after the scheduled prebid or preproposal conference. If the tenth calendar day falls on a weekend or holiday, the bid or proposal due date shall be no sooner than the first regular business day thereafter. The fact that an agency or institution is open on a weekend or official holiday does not affect these rules (see also 6.2d, 7.2f & h).

g. **Acceptance Period**. Bids are valid for a minimum of 30 days unless a longer period of time is specified in the solicitation or in the bid response. (See *Vendors Manual*, 6.2). The Bid Acceptance Period clause in Appendix B should be used if it is anticipated that the review and evaluation period will exceed 30 days or the time period stated in the solicitation.

h. **Public Posting of Solicitations**. Agencies shall designate a specific place available to the public used for the purpose of publicly posting solicitations (see 3.18).

4.4 **Specifications**. Specifications can either enhance or inhibit competition (see definition, Appendix A). It is the state's policy that competition be sought to the maximum feasible degree. This can be accomplished by describing goods or services in a manner which meets the agency's needs and encourages competition. Unless otherwise expressly stated in the solicitation, all supplies and equipment furnished must be new and in first class condition. Demonstration, previously rented, or reconditioned items are not considered new. The following specification (descriptive) categories are listed in the preferred order of use:

a. **Generic (Performance and Design)**. Buyers should analyze incoming requirements with a view towards soliciting the requirement on a generic specification basis. Under appropriate circumstances, performance specifications (setting forth the performance requirements), design specifications (setting forth the essential characteristics of the items solicited), or a qualified products list (QPL) may be used.

b. **Brand Name or Equivalent**. When it is determined to be impractical to develop a generic specification, a brand name may be used to convey the general style, type, character and quality of the article desired. Unless otherwise provided in the IFB the name of a certain brand, make or manufacturer does not restrict bidders to the specific brand or manufacturer named. Any article which the state, in its sole discretion, determines to be the equivalent of that specified, considering quality, workmanship, economy of operation and suitability for the purpose intended, shall be accepted (*Code of Virginia*, § 2.2-4315). When brand or manufacturers' names are specified, and one or more of these are known to be Virginia brands or manufacturers, those known to be Virginian shall be listed first prior to listing non-Virginia brands or firms. When a brand name or equivalent specification is used, salient characteristics should be listed.

c. **Proprietary**. A proprietary specification restricts the acceptable products to those of one or more specified manufacturers. It is appropriate to use a proprietary specification when the desired product must be compatible with or is an integral component of existing equipment or products, or where prequalification of products is necessary to support specific needs of a program; is covered by a patent or copyright; must yield absolute continuity of results; or is one with which a user has had extensive training and experience, and the use of any other similar piece of equipment would require considerable reorientation and training. Upon solicitation, every effort must be made to obtain full competition among the distributors which carry the manufacturer's product. The determination for the use of a proprietary specification shall be made in advance, in writing, and be included in the procurement file.

d. **Vendor Assistance in Specification Preparation**. Advice or assistance may be received from a vendor in identifying the features and characteristics needed by the agency; however, no person who, for compensation, prepares an Invitation to Bid or Request for Proposal for or on behalf of a public body shall (i) submit a bid or proposal for that procurement or any portion thereof or (ii) disclose to any bidder or offeror information concerning the procurement which is not available to the public. However, a public body may permit such person to submit a bid or proposal for that procurement or any portion thereof if the public body determines that the exclusion of such person would limit the number of potential qualified bidders or offerors in a manner contrary to the best interests of the public body (*Code of Virginia*, § 2.2-4373). The provisions of this act shall not affect the validity of any procurement contract entered into prior to July 1, 1997. This does not prohibit agencies and vendors from freely exchanging information concerning what is sought to be procured and what is offered. The name of the vendor(s) providing assistance must be submitted with the requisition to the purchasing office. Such information is helpful to the buyer when identifying restrictive or proprietary features which could be challenged by other bidders or offerors causing delays and/or cancellations (see 2.5, 3.16b).

4.5 **Qualified Products Lists (QPL) or Qualified Contractor's Lists (QCL)**. It is sometimes necessary to prequalify products or suppliers and only solicit those who have been prequalified. In such cases, a list is maintained of specific products (QPL) or contractors (QCL) which have been evaluated and determined to be acceptable in meeting predetermined minimum acceptable levels of quality or performance (*Code of Virginia*, § 2.2-4317). This qualification is performed in advance of any particular purchase program. By having a prequalification procedure, the time in the purchase cycle can be reduced. The qualification requirements must be established and potential contractors advised by letter and/or public posting sufficiently in advance of the anticipated procurement to allow for evaluation and qualification of potential contractors and/or products. A contractor whose product or service has been determined not qualified will be advised in writing. Solicitations are only sent to those contractors determined to be qualified. Information on prequalified products or contractors may be obtained by calling the DGS/DPS Specification Section at 804-786-1601.

4.6 **Computer Hardware-Site Preparation.** In the acquisition of computer hardware, the requesting agency is responsible for ensuring that all site and environmental requirements, such as cabling, space, electrical and temperature specifications, load-bearing capabilities and elevator capacities, can be satisfied prior to issuance of a delivery order. For agencies located in the Richmond metropolitan area in state-owned buildings under the jurisdiction of the Division of Engineering and Buildings (DEB) of the Department of General Services, coordination with DEB is required, including compliance with its regulations applicable to the use of such buildings. With respect to any hardware installation that the requesting agency anticipates will require modifications to a building under the jurisdiction of DEB, the agency shall certify in writing that it has advised DEB of any anticipated building modification requirements in accordance with applicable rules and regulations at DEB.

4.7 **Prompt Payment Discounts**. Prompt payment discounts should normally not be considered in determining the lowest responsive bidder. If a bidder does offer a discount for prompt payment, this will not be considered in evaluation, but should be included on the purchase order, and the discount taken if invoices are processed and payment made within the stipulated time frame. If an agency knows that it can regularly process payments within a prescribed time frame, such as 10 or 20 days, and wishes to consider cash discounts in its evaluation, then it may do so by including a statement such as "discounts for prompt payment within ____ (state number of days, e.g., 10, 20, etc.) days will be considered in determining net low bid."

4.8 **Advance Payments**. Advance payments may become necessary for certain purchases. Prior to establishing contract advance payment conditions, agencies should consult the Department of Accounts, *Commonwealth Accounting Policies and Procedures Manual* (*CAPP*), Section Number 20300, *CAPP* Topic Number 20310 on Special Expenditure Processing Policies for guidance and restrictions.

4.9 **Commodity Codes**.

a. **Goods**. Commodity codes are listed in the DGS/DPS *Commodity Class and Item Book for Goods and Services*, revised January 2001. Requisitions sent to DGS/DPS shall have a five (5) digit commodity code for each line item listed. Requisitions received by DGS/DPS without the proper commodity code will be returned to the originating agency for correction. As future updates are anticipated for this commodity code classification system, agencies and institutions should ensure the listing they use is the most recent available by periodically checking the DGS/DPS web site.

b. **Services**. Solicitations (IFB/RFP) and contracts for services should include the appropriate five (5) digit service commodity code.

4.10 **Price Reasonableness Determination**. A written price reasonableness determination is required to determine if prices bid or offered are fair and reasonable when:

a. competition is restricted or lacking,

b. the prices offered do not appear to be fair and reasonable,

c. the decision is made to award to other than the lowest bidder or highest ranking offeror (appropriate award clause must have been included in the solicitation)

This also applies for any sole source purchase, single response purchase, contract change and contract renewal. The written determination of a fair and reasonable price requires that the price is acceptable to both the agency or institution and the bidder or offeror considering all circumstances. Circumstances include, but are not limited to, the degree of competition, market conditions, quality, location, inflation, value, technology and unique requirements of the procuring agency or institution. The written determination may be based on price analysis (comparison with prices previously paid, prices charged for functionally similar items, prices paid by other consumers, prices set forth in a public price list or commercial catalog, or state estimates) or through the analysis of price-to-unit variations, value analysis (make-or-buy study), or cost analysis. Advice and assistance can also be obtained from the appropriate buyer or contract officer at DGS/DPS. The written analysis must be supported by factual evidence in sufficient detail to demonstrate why the proposed price is deemed to be reasonable. If a determination is made that the prices offered are not fair and reasonable, then a decision has to be made whether to rebid seeking broader competition, revise specifications and rebid the requirement, or to negotiate a better price as may be identified through the price analysis process. A combination of these methods may be necessary. If it is a negotiated procurement, then the price should be negotiated to one that is fair and reasonable (see 3.1j and 7.4a).

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

4.12 **Award Documents**. DGS/DPS requires written contracts to be issued in accordance with the provisions of Chapter 14. Every procurement transaction (except those made through the Small Purchase Charge Card Program) should originate from a requisition containing, among other information, budget details and the necessary approval authority. Agency Purchase Orders (APOs) must be prepared and given to suppliers who request a copy, regardless of dollar value. Award documents used by an agency will vary according to the method of solicitation. The award shall include or incorporate by reference the specifications, descriptions or scope of work, general conditions, special conditions and all other requirements contained in the solicitation (Invitation for Bids or Request for Proposal), together with all written modifications and the bid or proposal submitted by the contractor. The award document is to be signed and issued by an authorized official of the agency. Listed below are the types and conditions under which they are to be used.

a. **Agency Purchase Order**. The Agency Purchase Order, DGS-41-056 or an agency's locally developed purchase order (see Annex 4-A), shall be used (other formats may be acceptable in placing orders against term contracts, especially in a direct order entry system):

- to place orders against term contracts for goods, services and printing. If items available from a term contract vendor are not on contract but are required from that vendor and the cost is $5,000 or less, the same APO may be used to purchase both requirements.

- as a binding commitment for one time spot purchases of goods, services and printing.

- as a term contract for goods, services and printing issued under an agency's delegated purchasing authority using unsealed or sealed competitive bidding procedures.

The APO shall not be used to establish a line of credit with one vendor upon which a series of purchases can be made, unless a state or agency term contract has been awarded to the vendor (by use of the APO or the Notice of Award found in Annex 6-H) for the commodity being purchased (examples are bread, milk, fuel oil). The APO should not be used merely to encumber funds. Agencies and institutions using an APO generated from an automated system, (e.g., Oracle, PeopleSoft, etc.) shall also ensure that the Commonwealth's General Terms and Conditions printed on the reverse side of the APO form are provided to the contractor along with the computer-generated APO.

b. **Notice of Award**. The Notice of Award form (see Annex 6-H) is the recommended document to be used as a unilateral award document issued to contractors to accept bids received from sealed and unsealed bid solicitations for spot purchases or term contracts. Using agencies may then place individual or standing orders against the contract using the APO form.

c. **Standard Contracts**. A Commonwealth of Virginia Standard Contract (see Annex 7-D or 8-D as applicable) may be used as a two-party award document issued to a contractor resulting from a competitively or noncompetitively negotiated spot purchase or term contract. If the procurement was for an indefinite delivery, term type requirement, using agencies may then place individual or standing orders against the contract using the APO form. If the use of a Contractor's standard form is being considered, see 4.26.

d. **Notice Of Intent To Award**. The Notice of Intent To Award form (see Annex 6-G) is a suggested format agencies may use to officially notify the public through a public posting of their intent to issue an award. This notice is recommended for use whenever considerable bidder or offeror interest has been expressed about the potential award and/or an agency suspects an award decision may be challenged. The notice should not be posted until after completion of the evaluation. The notice shall be date stamped and publicly posted for the ten day period allowed for protest (*Code of Virginia*, § 2.2-4360). Upon expiration of the ten-day period, the appropriate award document as discussed above may be issued (see also 3.18).

4.13 **Freight**.

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

b. **F.O.B. Origin**. Under F.O.B. Origin, the vendor will be required to select the most economical method of shipment consistent with the required delivery date, prepay the freight charge and add it to the invoice (*Vendors Manual*, 7.6). Regardless of the F.O.B. point, the Commonwealth accepts title only when goods are received (*Vendors Manual*, 7.5).

(1) Under F.O.B. Origin, the total cost for freight to destination, shipping and handling charges etc., shall be included in determining the lowest responsive and responsible bidder. In such cases, the buyer is required to obtain the actual or estimated cost of shipment and show the freight, shipping, and/or handling cost as a line item on the purchase document. Both the F.O.B. point and shipping cost must be clearly shown on the purchase document.

(2) Before approving an invoice for payment the agency should review it and compare it to the award document to determine if the shipping costs are accurate.

4.14 **Insurance**. Whenever work is to be performed on state owned or leased property or facilities, the contractor shall be required to have Workers' Compensation, Employer's Liability, Commercial General Liability and Automobile Liability, and in certain types of programs Professional Liability/Errors and Omissions insurance coverage. Requirements for the various Professional Liability/Errors and Omissions coverages are listed in Appendix B, Section I, T. The Commonwealth of Virginia must be named as an additional insured when requiring a Contractor to obtain Commercial General Liability coverage. In some cases, Workers' Compensation Insurance and Employer's Liability Insurance may not be required. Workers' Compensation insurance is required when the contractor has three (3) or more employees. If work is performed by a sole proprietor, the person does not need Workers' Compensation insurance, as they do not have employees. Employer's Liability is required if an employer has employees who are paid a wage or salary. Employer's Liability is not required for persons in business together, e.g., husband and wife, siblings or parents and children, as these persons would be considered owners not employees. For construction contracts, if any subcontractors are involved, subcontractors shall also be required to have Workers' Compensation Insurance in accordance with *Code of Virginia*, §§ 2.2-4332 and 65.2-800 et seq. Stipulated insurance must be obtained prior to commencing work and be maintained during the entire term of the contract. At a minimum, the contractor must certify to the agency that they possess the appropriate insurance coverage and documentation concerning the contractor's insurance shall be included in the procurement file. Documentation may be maintained on the Telephone Record for Services found in Annex 5-H. Certification shall be in writing when written quotes are required. The procuring office may require a certificate of insurance to be furnished prior to commencement of work and at anytime during contract performance.

4.15 **Bookstore, Commissary, Canteen, Gift Shop, and Similar Retail Outlet Purchases**.

a. **Applicability**. Bookstore purchases and purchases made for similar retail outlets such as those above, are subject to the *VPPA* and this manual except items purchased by public institutions of higher education for resale at retail bookstores and similar retail outlets operated by such institutions are exempt from the *VPPA* and this manual. However, such purchase procedures shall provide for competition where practicable (*Code of Virginia*, § 2.2-4343.A7).

b. In lieu of following the purchasing procedures contained in this manual, agencies operating such retail outlets may use the modified procedures contained in Annex 4-E of this chapter.

4.16 **Conference Planning**.

a. Acquisition of the use of meeting rooms and lodging rooms in hotels or motels is considered to be short term rentals of portions of real property - real estate transactions. So long as the procurement involves only the use of the facilities, the competitive requirements of the *VPPA* and this manual do not apply. However, if the procurement includes the provision of catered meals, audio visual equipment, etc., and the value of these other included services exceeds the $5,000 level for which competition is required, the entire procurement, including the use of the space, shall be procured as a package based on its anticipated value using procedures as stated below.

b. For the purchase of a conference facilities package not expected to exceed $50,000, agencies may use one of the following procedures. These procedures are alternatives to other authorized procurement procedures as described in Chapters 5, 6, 7, 8, and 9.

(1) Make such arrangements through their travel management contractor or through commercial conference planning agencies. In either case, such third parties act as your agent to assist in obtaining competitive written proposals from several hotels/motels that can provide the facilities, etc. Agencies frequently using commercial conference planners for this procedure should establish a competitively awarded contract for conference planning services. Agencies are also advised that travel management contractors and conference planners work on a commission basis paid by the hotels/motels with which arrangements are made on your behalf. This could result in higher overall prices in exchange for the assistance and expertise provided.

(2) Prepare a written description of the conference requirements and attach the General Terms and Conditions and any Special Terms and Conditions considered appropriate to the procurement. Prepare the evaluation criteria and methodology to be used in evaluating the proposals received.

(a) Contact at least three (3) facilities of sufficient size to handle the conference. Determine and document the availability of the desired dates and their interest in providing the services. Provide the written description of the services required.

(b) Visit each of these facilities, if practical. Discuss the conference requirements, their ability to meet these requirements, other related services they have to offer and obtain their proposed prices for the conference. Negotiate with each offeror until you are satisfied that you have obtained their best proposal. Obtain in writing, from each facility with whom negotiations have been held, confirmation of the services to be provided and prices.

(c) Upon completion of these discussions and negotiations, apply the evaluation criteria to the proposals as negotiated and determine who has presented the best proposal.

(d) Award the contract using the Standard Contract Form found in Annex 7-D.

c. For purchases of conference facilities package deals expected to exceed $50,000, agencies shall issue a written solicitation and follow the procedures prescribed for competitive sealed bidding or competitive negotiation (see Chapter 6 or Chapter 7, as applicable).

d. In the event that only one particular hotel/motel can provide the needed facilities during the time frame in which the event is to be held, the procedures for sole source procurement shall be followed [see also 1.5b(14)].

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e. Conferences and meetings not held in state owned offices, buildings or facilities should be held at "Virginia Green" certified facilities if such use will meet the needs for the meeting, will not increase travel distances, and is not cost-prohibitive. (Executive Order 19, dated July 1, 2010) A list of "Virginia Green" certified facilities can be found on the Virginia Department of Environmental Quality website, www.deq.virginia.gov.

4.17 **Used Equipment**.

a. Used equipment, that which has been previously owned and used, offered for sale "where is, as is," does not include demonstration or factory rebuilt items marketed through distribution outlets, may be negotiated by agencies within their delegated authority. Upon a determination in writing that there is only one source practicably available for equipment meeting the agency's needs, a contract may be negotiated and awarded to that source without competitive sealed bidding or competitive negotiation (see 1.5c).

b. Complete information describing the item must be provided to the purchasing office along with the price being offered by the seller in writing. Prior to preparation of any purchase order, the purchasing office must obtain a written statement from a person who is technically knowledgeable of the type of equipment to be purchased, normally the end user, verifying the condition of the equipment, its future usefulness, and that its purchase would be in the best interest of the Commonwealth. If the cost exceeds the agency's delegated authority, a requisition containing the above information shall be submitted to DGS/DPS for purchase.

4.18 **Rental/Lease, Installment Purchases**.

a. **Rental or Lease**. The procurement process for the rental or lease of any equipment will be handled in the same manner as the procurement of goods. Note, however, that hiring a contractor to provide equipment and personnel (operators) to perform a task is a contractual service subject to the guidance in 4.21 and 4.22. The following examples are offered to clarify the difference:

(1) Renting a bulldozer to be operated by state employees to perform grading work is an acquisition of goods. Hiring a contractor to use his bulldozer and operator to perform the same grading work is a contractual service.

(2) Renting 1,000 folding chairs to be picked up by state employees in state vehicles at the contractor's place of business, used and returned is an acquisition of goods. Hiring a contractor to deliver, setup, remove, and haul away the same 1,000 folding chairs is a labor intensive contractual service.

The solicitation should, at a minimum, in addition to other terms and conditions, specify:

(1) Length of time;

(2) Number and types of equipment;

(3) Who will provide maintenance and repair service and insurance coverage; and

(4) Inspection at time of delivery and return.

b. **Installment Purchase**. The procurement process for the installment purchase of any materials, equipment or supplies must be handled in the same manner as the procurement of goods. A purchase order is issued in the full amount but only encumbering the amount to be paid in the current fiscal year. The solicitation should contain an Availability of Funds provision (see Appendix B, Section I). If the purchase is being financed by a third party, the purchase order must name both the vendor and the third party, and use the third party's address.

Installment purchases must also be made in accordance with the *CAPP* Manual, which gives a detailed discussion of the types and classification of leases and installment purchases. All solicitations for purchase of personal property, including personal property to be fixed to realty which provides for installment purchase where payment of purchase price is deferred through installment payments, includes the payment of interest, or is otherwise financed by the seller, lessor, or third parties shall have prior approval of the Treasury Board.

Contact the Director of Debt Management, Department of the Treasury at 804-371-0341 (*Code of Virginia*, § 2.2-2417).

4.19 **Maintenance/Repair of Equipment**.

a. **General**. Equipment is generally covered by warranty provisions for various periods of time. Care should be taken to assure that full advantage is taken of warranty provisions prior to contracting for maintenance or repair service. Where equipment is covered by insurance, i.e., boiler or machinery, the insurance carrier shall be advised, in accordance with the provisions of the policy, prior to contracting for repair.

b. **Contracting for Equipment Maintenance**.

(1) Contracting for equipment maintenance falls into two basic methods:

(a) Full service maintenance normally requires the contractor to provide scheduled service, preventive maintenance, necessary repair parts and additional service calls as required under an annual contract at a firm fixed price. Full service maintenance contracts should be used only on an exception basis or when experience indicates that maintenance/repair on an as needed basis is not practical. In bidding on full service maintenance, contractors include in their bids the cost of all contingencies that might occur during the contract period; normally this results in higher agency costs.

(b) Maintenance/Repair on an as needed basis is normally provided on a time and materials cost basis. Materials and parts must be bid either at contractor's invoiced cost or on a bid percentage discount from manufacturer's published list or catalog prices. Cost plus percentage of cost (markup) is prohibited (*Code of Virginia*, § 2.2-4331). Time and materials contracts demand more effort by the receiving agency in monitoring actual hours expended, prompt identification and solution of problems, and cost control to assure the contractor's performance is not inefficient or wasteful.

(2) Solicitations for maintenance of equipment should identify the make, model, style, and the quantity of each type of equipment. Provisions may be made to add and/or delete equipment during the contract period on a prorated basis; also, for the loan of like equipment during extended periods of downtime. When maintenance is to be performed under contract on state-owned, leased, or rented property, the contractor shall be required to provide necessary insurance coverage (see 4.14 and Appendix B, Section II).

c. **Contracting for Repair and Overhaul**.

(1) **Major Scheduled Repair/Overhaul**: In situations where major equipment items are scheduled to be repaired or overhauled, it is usually impossible to determine the amount of labor and parts required without complete disassembly of the item to inspect all of its internal parts. Contracting for major repair or overhaul work on a fixed price basis without such an inspection is impractical because it forces the bidders to base their prices on an assumed worst case basis. These situations are best handled in an Invitation for Bids requiring the work to be done in two phases. Bids are solicited for a lump sum fixed price for complete disassembly, inspection and preparation of an estimate of the costs to complete the job as the first phase. The second phase is for repair and reassembly with contractor furnished replacement parts and components, startup and operational test, all to be done on a time and materials basis. The bidders are required to bid on the basis of a labor hour rate, with an overall total (not to exceed) labor cost, and parts are to be provided at a bid percentage discount from the manufacturer's parts catalog prices. The IFB includes a bid evaluation procedure with a hypothetical number of man-hours and list price value of parts to which the discount offered will be applied. Assistance and examples of such solicitations are available from Service Contracts Section at 804-786-1601.

(2) **Unscheduled Repair**: Major equipment items which cannot be scheduled for repair should be handled using the appropriate existing emergency procedures. To control costs, it is important for an agency to establish a fixed hourly rate and an estimated number of hours prior to allowing the contractor to proceed with the repair/overhaul.

4.20 <u>Printing</u>

a. **Ownership of Artwork, Negatives, Etc**. All artwork, negatives, dies, overlays or similar material used to print a job shall be the property of the Commonwealth and must be delivered to the requisitioning agency upon completion of the job. Agencies using their delegated authority to purchase printing should use the appropriate special conditions found in Appendix B, Section II. Agencies should not process any invoice for payment until these items are returned. This requirement may be waived by the agency purchasing director when it is not practical (see *Vendors Manual*, 3.9).

b. **Copyright**. No vendor may copyright any work produced for the Commonwealth without the written consent of the requisitioning agency (see *Vendors Manual*, 3.8).

c. **Colors and Ink**. Except for promotional publications and diplomas or where the use of color is essential to support the purpose of the publication, all printing shall be one color. Examples of supporting the purpose of the publication are: maps, aeronautical charts, or pictures such as those used in a medical publication illustrating the difference between healthy tissue and diseased tissue or the use of color blocks or words on a form to highlight or separate critical areas.

d. **Use of Multi-Color Printing**. Multi-color printing may be used for promotional publications. A promotional publication is defined as:

(1) produced for agencies with specific statutory authority to advertise or promote;

(2) designated for specified audiences outside of government;

(3) intended to yield significant benefit to the state; and are produced for use in a competitive environment which may require multiple colors and other special features. A publication of the Economic Development Partnership, produced to attract out-of-state businesses to locate in Virginia qualifies as a promotional publication.

All requests not meeting conditions 1 through 3 must be accompanied by a letter of justification signed by the agency head or his/her designee. This applies to jobs produced in-house as well as outside purchases and purchases made locally as well as purchases through DGS/DPS. If the letter of justification is signed by an agency head designee, the agency head is still responsible for the decision to print using multiple colors of ink. Agencies which have specific statutory authority to advertise or promote must have on file in the purchasing department a copy of such specific statutory authority to be provided upon request (this is a Joint Legislative Audit Review Committee [JLARC] requirement).

e. **Official State Stationery, Letterheads, and Envelopes**. Standardization of "Official State Stationery" was established in November, 1974, by Executive Memoranda to the heads of all state agencies and institutions. This included a standard format for letterheads. Institutions of higher education are exempt, as they are permitted to continue the use of their present seal and design. All other agencies and institutions must use the standard state blue ink (reflex blue) for both letterheads and envelopes. All agencies and institutions, including institutions of higher education, are restricted to the following white paper usage for letterheads and envelopes:

	Letterhead	Envelopes
Governor, Lieutenant Governor, Members of the Legislature, Office of Attorney General, Supreme Court and Cabinet, Secretaries	l00% Rag	100% Rag
Directors of Agencies	25% Rag	25% Rag
Institutions of Higher Learning (Presidents and Chancellors)	25% Rag	25% Rag
Economic Development Partnership, Virginia		
- Commercial and Business Mailings Only	100% Rag	100%Rag
- Interdepartmental Mailings	No. 1 Bond	White Wove
Auditor of Public Accounts	Permalife	White Wove
All Other Letterheads and Envelopes	No. 1 Bond	White Wove

Only the Governor and the Cabinet Secretaries use "Office of the Governor" on their letterhead. Where necessary, agencies and institutions with policy and advisory boards or commissions may include the names of such board or commission members on the official letterhead or may use separate letterheads for the board or commission, and the agency or institution. Engraved stationery may be used only by the Governor's Office, Lieutenant Governor, members of the Legislature, the Attorney General, and Supreme Court. Any deviation from these specifications and requirements must be approved in advance by the Director of DGS/DPS.

f. **Business Cards**. Business cards must conform in style and layout to the uniform state business card design printed in the standard state blue ink, on white card stock as shown in the DGS/DPS annual contract. Engraved cards are limited to the Governor, Lieutenant Governor, members of the Legislature, Attorney General, Supreme Court, Cabinet Secretaries, Directors of Agencies, and Presidents and Chancellors of Institutions of Higher Education. Any deviations must be approved in advance by the Director of DGS/DPS.

g. **Overruns and Underruns**. The state is not required to accept overruns provided "no overruns" is specified in the solicitation. However, an agency may for a valid and justified basis accept up to a 10% overrun. Prices for overruns must not exceed the quoted base price per unit or the quoted price for additional copies run at the same time (R.A.S.T.). Whichever price is less will prevail. An agency may accept an underrun. Prices for underruns will be calculated at the quoted base price per unit. If an agency will not accept underruns or overruns, it must be stated in the specifications. Include the Printing Special Term and Condition in Appendix B, Section II, Clause 45 in all printing solicitations.

4.21 **Services**. The contracting responsibility for services generally remains with the individual agency except for telecommunications services which remain under VITA's purview. Selecting the method for contracting for nonprofessional services shall be in accordance with section 4.22. Professional Services are addressed in section 4.23. When the estimated cost of materials, equipment, or supplies amounts to fifty percent (50%) or more of the total expenditure, it is not considered a contractual service and shall be obtained using the procedures for the procurement of goods. If there are questions as to which procedure applies, contact the DGS/DPS Deputy Director for Procurement at 804-786-3850.

Term Contracts - Term contracts (annual or multi-year) shall be considered where the anticipated cumulative annual costs for a service exceed $15,000 and a fixed price type contract or a unit priced requirements type contract can be awarded. Exceptions to this policy on a case by case basis require a decision in writing approved by the agency head or his or her designee. In some instances, even though the annual amount is less than $15,000, it may be advantageous to enter into a term contract and this should also be considered.

4.22 **Non-Professional Services**

a. **General**. This section covers contracting for nonprofessional services from nongovernmental sources. The term "nonprofessional" services, as used in this section, means all services not within the scope of the practice of accounting, actuarial services, architecture, dentistry, land surveying, landscape architecture, law, medicine, optometry, pharmacy, professional engineering, or the services of an economist procured by the State Corporation Commission. (***Code of Virginia***, § 2.2-4301).

b. **Approvals Required**. Approval for certain services is required by law, regulation, directive or appropriation. Services requiring other state agencies' approval or concurrence are as follows:

(1) Insurance – Department of Treasury/Division of Risk Management.

(2) Graphic Services - Department of General Services/Office of Graphic Communications (OGC).

(3) Capital Outlay Related Services - Department of General Services/Division of Engineering and Buildings.

(4) Banking and Bank - Related Cash Management Services - Department of the Treasury, Division of Cash Management and Investments.

c. **Individual Services**. Contracting for the services of individuals as contractors should be treated the same as any other procurement transaction. Agencies contracting with individuals are cautioned that problems have arisen with the Federal Internal Revenue Service concerning withholding and Social Security taxes in situations where the individual contractor performs under the supervision and control of the agency. An employer - employee relationship has been determined to exist in such cases, thereby subjecting the Commonwealth to liability for such taxes plus those employment obligations established by State law or gubernatorial policy. When in doubt, consult your personnel officer and/or your Assistant Attorney General before entering into such a contract. For factors indicating whether an individual is an employee or an independent contractor see Employer's Supplemental Tax Guide, Publication 15-A (January, 2002), on the IRS web site: http://www.irs.gov/pub/irs-pdf/p15a.pdf.

d. **Consultant Services**. By definition, consultants provide information, assistance, and guidance of a purely advisory nature, usually in the form of a report or other deliverable, setting forth alternative courses of action and recommendations based on the expertise possessed by the outside individual, firm or organization. Such advice or assistance does not relieve agency management of responsibility for its final decision. Use of consultants is a legitimate means to improve government services and operations.

(1) **Assistance through other state agencies**. In recognition of this need, the state has developed the capability for providing certain technical and managerial assistance through selected central agencies. State agencies are strongly encouraged to make maximum use of the consultant services available from these agencies and the Commonwealth's institutions of higher education before seeking such services from the private sector. **Agencies shall not engage outside firms to perform the following services offered by other state agencies without first examining their possible use, as follows**:

- **Virginia Information Technologies Agency** - services related to automated data processing, word

processing, and telecommunications (*Code of Virginia*, § 2.2-1303).

- **Department of Planning and Budget** - analysis of alternatives, program review and evaluation, cost reduction programs and productivity improvement (*Code of Virginia*, § 2.2-1501).

(2) **Agency Responsibility**. Agencies and institutions are responsible for assuring that the use and control of the services of private consultants is properly justified in terms of agency mission, programs, priorities, and funding. As required by the Appropriations Act each year, Use Of Consulting Services, all state agencies and institutions of higher education shall make a determination of "return on investment" as part of the criteria for awarding or using contracts for consulting service.

(3) **Selection**. The process of selecting an outside consultant individual, firm, or organization should be objective, unbiased, and should encourage those qualified to offer their services. When procuring nonprofessional services the procurement procedures provided in this manual shall be used. See 4.23 for guidance on purchasing professional consulting services. The following methods are suggested for use in developing the pricing schedule and for payment of consultants:

(a) A lump sum or fixed price for the total project.

(b) Hourly rate plus cost reimbursement, with a ceiling on the total contract; payment will be made only for hours used at the agreed rate and cost incurred. Items for which cost reimbursement will be made must be specifically indicated in the solicitation and resulting contract.

(c) Daily or hourly compensation for work "when requested" during the period of the contract at agreed rates, with a ceiling on the total, including any other costs which have been determined to be allowable.

(d) An incentive fee arrangement designed to motivate the contractor to complete the project early or achieve specified economies (see also 4.3d (8).

4.23 **Professional Services**.

a. **Responsibility**. **DGS/DPS is not responsible for the procurement of professional services.** The procurement of professional services from nongovernmental sources shall be in accordance with the applicable provisions of the ***VPPA***. See agencies below for specific guidance.

Service	Agency
Architecture, Professional Engineering	DGS/Division of Engineering and Buildings
Landscape Architecture, Land Surveying	http://bcom.dgs.virginia.gov/RDetailPg.aspx?I_PAGE_ID=251
Law	Attorney General's Office

b. **General**. Professional Services as defined in § 2.2-4301 of the ***VPPA*** means work performed by an independent contractor within the scope of the practice of accounting, actuarial services, architecture, land surveying, landscape architecture, law, dentistry, medicine, optometry, pharmacy, professional engineering, and the services of an economist procured by the State Corporation Commission. Public posting is required for professional service procurements over $50,000.

c. **Legal Services and Expert Witness**. Information on the use of legal services and expert witness may be obtained from the Attorney General's Office.

d. **Competitive Negotiation**. Competitive negotiation shall be used for the procurement of professional services as provided for in the ***Code of Virginia***. Annex 7-C provides guidelines for negotiated procurements. Note that solicitations for professional services shall not request that offerors furnish estimates of man-hours or cost for services (***Code of Virginia***, § 2.2-4301.3a).

e. **Professional Services Small Purchases**. The small purchase threshold for the procurement of professional services is $50,000. Professional services shall be procured in accordance with the *Code of Virginia*, § 2.2-4303H. Additionally, architectural, landscape architectural, land surveying and professional engineering services shall be purchased in accordance with the Construction and Professional Services Manual (CPSM), issued by DGS/Division of Engineering and Buildings.

f. **Evaluation and Award Procedures**. The evaluation and award procedure for the procurement of professional services by competitive negotiation is not under the authority of the Division of Purchases and Supply. Evaluation and award of professional services is addressed in the *Code of Virginia* §2.2-4301.3.a.

(1) Deleted.

(2) Deleted.

g. **Contractor Performance**. During the period of the contract, the contractor's performance is to be monitored in accordance with the standards set forth in the contract.

h. **Administration**. The administration of contracts is covered in Chapter 10 of this manual.

4.24 **Construction**. The procurement of "construction" for "Capital Outlay Projects" is governed by the rules of the *Construction and Professional Services Manual*, issued by the Department of General Services, Division of Engineering and Buildings (*Code of Virginia*, § 2.2-1132).

a. **Definitions**

(1) **Construction**. Construction shall mean building, altering, repairing, improving or demolishing any structure, building or highway, and any draining, dredging, excavation, grading or similar work upon real property (*Code of Virginia*, § 2.2-4301).

(2) Capital Project (**Capital Outlay Project)**. Capital project as defined in the ***Construction and Professional Services Manual*** means the acquisition or proposed acquisition of property, including any improvements thereto, a new construction project or improvements to state-owned property, a renovation, maintenance or repair project, an equipment acquisition or improvements to state leased property which meets the criteria in the ***Construction and Professional Services Manual.***

b. **Construction**. Construction may be procured only by competitive sealed bidding, except that competitive negotiation may be used in the following instances upon a determination made in advance by the public body and set forth in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to the public, which writing shall document the basis for this determination (*Code of Virginia*, § 2.2-4303D):

(1) by the Commonwealth, its departments, agencies, and institutions on a fixed price design-build basis or construction management basis under *Code of Virginia*, § 2.2-4306.

(2) by any public body for the alteration, repair, renovation, or demolition of buildings when the contract is not expected to cost more than $500,000.

(3) by any public body for the construction of highways and any draining, dredging, excavation, grading, or similar work on real property.

c. By agreement between the Division of Engineering and Buildings (DEB), and the Division of Purchases and Supply:

(1) Nonprofessional services needed for construction or facilities maintenance, such as cost estimating, Critical Path Method scheduling, construction inspections, roofing evaluations, and nondestructive testing, should be procured in accordance with 4.21 and 4.22 of this chapter.

(2) Construction, including but not limited to renovation, remodeling, demolition and repair work on buildings and other structures, which are not Capital Outlay Projects but which involve plans and specifications prepared by an architect or engineer and/or require a building permit, are to be procured using the same procedures and contract provisions of the ***Construction and Professional Services Manual*** as Capital Outlay Projects. See section 202 of the CPSM for definitions of construction, improvements, maintenance reserve project, and other terms.

(3) Construction procurements for work that does not require issuance of a building permit, either by DEB/BCOM or the agency through the annual permit process as approved by DEB may be procured in

accordance with the ***APSPM*** and the ***VPPA***.

d. For projects using Capital Outlay procedures, use the Commonwealth of Virginia Form of Agreement, Form CO-9 (05/02), as the contract along with the General Conditions of the Construction Contract (for Capital Outlay Projects), Form CO-7 (03/02), and Instructions to Bidders, Form CO-7a (03/02).

e. For construction not following Capital Outlay procedures use the Commonwealth of Virginia Standard Contract (see Annex 7-D) along with the Additional Terms and Conditions for Non-Capital Outlay Construction, and any Special Terms and Conditions applicable to the particular procurement (see Appendix B, Sections I, II, III and IV).

f. For services related to construction such as cost estimating, Critical Path Method (CPM) scheduling, etc., use the procedures from this chapter (see 4.21 and 4.22).

g. Equipment and/or furnishings, whether built-in or free standing, not acquired as part of a general construction contract and not requiring plans and specifications prepared by an architect or engineer, will be purchased in accordance with the provisions of the ***APSPM***. The ***Construction and Professional Services Manual*** provides additional guidance and criteria for the method of procurement to be followed. See CPSM section 202 for definitions. Generally built-in equipment, unless it is a like for like replacement will require a permit and must be procured in accordance with the CPSM.

h. Except in an emergency, all bids for construction services in excess of $100,000 must be accompanied by a Bid Bond from a surety, selected by the bidder, which is legally authorized to do business in Virginia. The amount of the Bid Bond shall not exceed 5% of the amount bid (*Code of Virginia*, § 2.2-4336).

i. Upon award of a construction contract exceeding $100,000, the contractor shall furnish a Performance Bond and a Payment Bond, each in the sum of the contract. Each such bond shall be executed by one or more surety companies which are legally authorized to do business in Virginia. Form CO-10 (03/02) Commonwealth of Virginia Standard Performance Bond, and Form CO-10.1 (03/02) Commonwealth of Virginia Standard Labor and Material Payment Bond, shall be used (Forms may be downloaded from the DGS/Division of Engineering & Buildings web site, http://deb.dgs.virginia.gov/BCOM/).

j. As a minimum, a construction contractor will be required to provide insurance in accordance with the insurance clause in Appendix B, Section II. Additional insurance may be required based on the type of construction service being performed. Contact the Department of Treasury, Division of Risk Management for advice on the specific situation at 804-786-3152.

k. Solicitations for construction contracts with an estimated cost of $1,500 or more must contain the appropriate Contractor Registration clause in Appendix B, Section II.

l. **Construction Related Services**. The procurement of Architectural, Landscape Architectural, Land Surveying, and Professional Engineering Services for Capital Outlay projects and similar projects not classified as Capital Outlay projects must be in accordance with Chapters IV, V, and VI of the Commonwealth of Virginia's *Construction and Professional Services Manual*. Multiple project awards for architectural or professional engineering services are allowed under certain conditions. See *VPPA* § 2.2-4301.3a and the DGS/DEB *Construction and Professional Services Manual* for guidance.

4.25 **Make-or-Buy Analysis**. When contracting for services which have traditionally been accomplished using in-house resources, a thorough analysis of the services to be acquired should be performed. Agencies should first determine if the service is a viable candidate for privatization; then identify all internal costs associated with performing the service (see Annex 4-C, Make-or-Buy Analysis Procedures). Adequate performance expectations and close scrutiny of vendor performance following the award are critical to a successful program.

4.26 **Use of Contractor's Standard Contract Form**. A contractor's standard contract form should be carefully read and those provisions that are contrary to the interests of the Commonwealth or in conflict with state law, must be lined out, rewritten, or removed if the contract is less than $50,000. If it is not possible to award a contract without using the contractor's contract form, the contractor should sign the Contract Addendum Form, found in Annex 4-B. A contractor's standard contract form should not be used for procurements of $50,000 or more without the approval of the agency's legal advisor. Agencies unable to obtain goods or services without using the contractor's form and the contractor refuses to accept the Addendum to Contractor's Form should contact DGS/DPS at 804-786-3850.

4.27 **Samples**. There are situations when samples will be needed to verify quality levels or to test materials or equipment to determine conformance with the specifications stipulated in the solicitation. A request for bid samples must be clearly indicated in the IFB (see *Vendors Manual*, 5.6). Samples should be properly labeled, stored, and controlled until no longer needed. Those not destroyed during testing may be returned at the bidder's expense. If, after 60 days, the samples have not been picked up and bidders fail to provide disposition instructions, samples may be offered to other agencies or internal operating departments for use. If the items have significant reusable utility value, they should be disposed of using established property disposal procedures (see Chapter 12). The file must be documented as to disposition of samples.

4.28 **Vendor Advertising Prohibition**. Advertising or promotional literature stating or implying that a Commonwealth agency or institution endorses a vendor's products or services is prohibited. Exceptions may only be granted by an agency or institution's chief purchasing official.

A vendor may include a Commonwealth agency or institution in a client list, provided that the listing in no way states or implies that the Commonwealth agency or institution endorses the vendor's products or services. An agency or institution may choose to prohibit a contractor from including reference to that agency or institution in client lists used in advertising or promotional materials by including such a prohibition in the terms and conditions of its contract(s) with that contractor. (See Appendix B, Sect. II, 1)

4.29 **VBO Advertising.** See 3.18 for VBO advertising requirements. VBO electronic posting instructions are on the eVA web site (www.eva.virginia.gov) under VBO Ads.

4.30 **Antitrust Violations**

a. **General.** Practices that eliminate or restrict competition usually lead to excessive prices and may warrant criminal, civil, or administrative action against the offeror, vendor, or contractor. Examples of anti-competitive practices are collusive bidding, bid rigging, bid rotation, and sharing of the business.

Procurement personnel are an important potential source of investigating leads and recognizing possible antitrust violations. As a result, procurement personnel should therefore be sensitive to indications of unlawful behavior by offerors, vendors contractors, and other procurement, technical, or administrative personnel.

b. **Reporting Suspected Antitrust Violations**. Agencies shall report to the Office of the Attorney General, or to the agency's attorney advisor, any bids or proposals that show evidence or suspicion that an antitrust law violation has occurred. (See *Code of Virginia*, §§ 59.1-9.1 through 59.1-9.8 and §§ 59.1-68.6 through 59.1-68.8*)*.

The purpose of the antitrust laws is to promote the free market system in the economy of this Commonwealth by prohibiting restraints of trade and monopolistic practices that act or tend to act to decrease competition. Annex 4-F, lists some behavior patterns that are often associated with antitrust law violations. Offerors, vendors, or contractors meeting the descriptions are not necessarily improper, but they are sufficiently questionable to warrant notifying the Office of the Attorney General or the agency's attorney advisor. Also see Annex 4-H, for a list of warning symptoms to detect possible waste and abuse.

c. Questions concerning the reporting requirement may by communicated by telephone to the Office of the Attorney General, Antitrust Section at 804-786-2116. Personnel are also encouraged to use the Virginia Waste, Fraud, and Abuse Hotline at 1-800-723-1615.

4.31 **Debarment**. Grounds for debarment of vendors and procedures for disqualification and reinstatement of vendors are contained in paragraph 7.20 of the Commonwealth of Virginia's *Vendors Manual*. Copies of the debarment listing may be obtained by calling Contract Compliance at 804-225-4045.

4.32 **Unsolicited Proposals**. This policy applies to goods and non-professional services, and not to construction or professional services. The submission of a unique offer for new and innovative goods or services through unsolicited proposals is encouraged. However, all solicited and unsolicited proposals and all solicited and unsolicited ideas for innovation or improvement are submitted at the risk and expense of the offeror, and no obligation on the part of the Commonwealth and no restriction on the Commonwealth's use of such ideas, proposals or the information contained therein shall arise in connection with such submission. The foregoing shall not preclude express, written commitments made by agencies in formal solicitation documents within the limitations imposed by the *Code of Virginia*, § 2.2-4342F and the *Freedom of Information Act*. The foregoing shall also not diminish or waive any copyright, patent rights or trademark rights, which the offeror may have.

If acceptance of offers to "loan" or provide goods or services at no cost or minor cost would tend to create a need for subsequent additional acquisitions, the requirement for such goods or services and the additional needs shall be offered for competition in accordance with the *Virginia Public Procurement Act* (*VPPA*) and the *Agency Procurement and Surplus Property Manual* (*APSPM*). Potential bidders or offerors shall be afforded an opportunity to participate in the resulting procurement activity.

If the offeror believes that it is the only source practicably available for goods or services required by the agency and available through the unsolicited proposal, to assist the Commonwealth in evaluating the unsolicited proposal, the proposal shall include a justification by the offeror as to why the company is the only source practicably available for the goods or services in question.

a. Definition: "Unsolicited Proposal" means a proposal received that is not in response to any Commonwealth initiated solicitation or program.

b. Receipt: Unsolicited proposals shall be submitted in writing directly to the central procuring office of agencies, departments and institutions who shall establish a primary point of contact to coordinate the receipt and handling of unsolicited proposals.

c. Evaluation:

(1) A favorable comprehensive evaluation of an unsolicited proposal by the agency or institution does not, in itself, justify awarding a contract without providing for competition. No preference shall be given to the offeror that initially offered the unsolicited proposal.

(2) If it is determined by the evaluation that goods or services required by the agency and offered in an unsolicited written proposal are practicably available from only one source, a buyer may negotiate and award a contract following the sole source procedures in Chapter 8. The buyer shall post a notice of intent to award for ten (10) calendar days before awarding the contract.

4.33 **General Services Administration (GSA) Contract Pricing.** Deleted. See 3.7, Cooperative Procurement.

4.34 **Procurement of Outdoor Light Fixtures:** All state agencies and institutions shall procure only shielded outdoor light fixtures, unless exempted in writing by DGS/DPS. A shielded outdoor light fixture is an outdoor light fixture that is (i) fully shielded so that no light rays are emitted by the installed fixture above the horizontal plane or (ii) constructed so that no more than two (2) percent of the total luminaire lumens in zone of ninety to 180 degrees vertical angles is permitted, if the related output of the luminaire is greater than 3200 (§ 2.2-1111.B.3 *Code of Virginia*). Measurement details for shielded outdoor light fixtures may be found in Illuminating Engineering Society of North America Guide LM-64-01, *Photometric Measurements of Parking Areas* (Newly Revised) which is available for order at www.IESNA.org under the "Publications" tab.

If an agency/institution has a bona fide reason for not complying with this section, the agency/institution may submit a request for waiver from this requirement to DGS/DPS on a "Procurement Exemption Request" form, which can be found in Annex 13-D of this manual. Bona fide reasons for not complying include operational, temporary, safety or specific aesthetic need is indicated or that such fixtures are not cost effective over the life cycle of the fixtures.

The provisions of this section shall not apply to the procurement of outdoor light fixtures by the Virginia Department of Transportation until July 1, 2004.

GS-41-056

Annex 4-A

COMMONWEALTH OF VIRGINIA

AGENCY PURCHASE ORDER

CONTRACT NUMBER 2	DATE P.O. PREPARED	P.O. NUMBER 4
BID OPENING DATE 5	BID REF./REQUISITION NO. 3	TERMS P.O.

AGENCY NAME/DELIVERY ADDRESS 1

DO NOT TYPE OR WRITE IN THIS SPACE 6

ADDRESS ALL INQUIRIES AND CORRESPONDENCE TO 7

PURCHASE OFFICER TELEPHONE

MUST BE DELIVERED BY 8

INSIDE DELIVERY ☐ YES (IF CHECKED)

VENDOR ID: SUFFIX

NAME & ADDRESS 9 10

IMPORTANT

SEE INSTRUCTIONS, TERMS AND CONDITIONS ON REVERSE SIDE

DELIVERY IS F.O.B. DESTINATION UNLESS OTHERWISE NOTED IN THE BODY OF THE PURCHASE ORDER

INVOICE TO ADDRESS 11

≥NOTE: PLEASE SEND INVOICE TO THIS ADDRESS

VENDOR NAME	P.O. NUMBER
INTRA-AGENCY CONTACT 12	TELEPHONE 13

ITEM NO.	COMMODITY CODE	DESCRIPTION	QUANTITY 14	UNIT	UNIT PRICE	AMOUNT 15
16	17	18	19	20	21	22
	INTRA-INST. USE			TOTAL AMOUNT		

PURCHASE AUTHORIZED BY: TITLE → 23

24

TRANS	AGENCY	GLA	FUND			PROGRAM			OBJECT	REVENUE SOURCE	AMOUNT					PROJECT		
			FUND	DET	FFY	PROG	SUB	ELE								PROJECT	TK	PH

COST CODE	PS 25	PSD	AGENCY REFERENCE	INVOICE DATE	INVOICE NUMBER	DUE DATE MM	DUE DATE DD	DUE DATE YY	REFERENCE DOC NUMBER	REFERENCE DOC SX	✓

DESCRIPTION	CURRENT DOCUMENT NUMBER	CURRENT DOCUMENT SX	SUBSIDIARY ACCOUNT	MULTI-PURPOSE	CHECK IF EXPENDITURE DISTRIBUTION CONTINUATION
					SHEETS ARE ATTACHED

TERMS AND CONDITIONS & INSTRUCTIONS TO VENDORS

1. This contractual agreement is subject to the terms and conditions of the Commonwealth of Virginia *Vendors Manual* and any revisions thereto, as published by the Department of General Services, Division of Purchases and Supply.

2. Goods or Services delivered must be strictly in accordance with bid referred to and shall not deviate in any way from terms, conditions or specifications of the bid. Equipment, materials and/or supplies delivered on this order shall be subject to inspection and test upon receipt. If rejected, same shall remain the property of the vendor.

3. Purchase Order number shall be shown by vendor on all related invoices, delivery memoranda, bills of lading, packages and/or correspondence.

4. A SEPARATE INVOICE FOR THIS PURCHASE ORDER OR FOR EACH SHIPMENT THEREON SHALL BE RENDERED IMMEDIATELY FOLLOWING SHIPMENT. ALL COPIES SHALL BE FORWARDED DIRECT TO AGENCY AT INVOICE ADDRESS SHOWN.

5. STATE SALES AND USE TAX CERTIFICATE OF EXEMPTION, FORM ST-12 WILL BE ISSUED UPON REQUEST, IF YOU DO NOT HAVE SAME ON FILE.

6. DELIVERIES AGAINST THIS ORDER MUST BE FREE OF EXCISE OR TRANSPORTATION TAXES, EXCISE TAX EXEMPTION REGISTRATION NO. 54-73-0076K MAY BE USED WHEN REQUIRED.

7. In the absence of other contractual terms, payment shall be due 30 days after receipt of proper invoice, or material/service, whichever is the latter.

8. If discount for prompt payment is allowed, the discount period will begin on the date of receipt of proper invoice, or material, whichever is the latter.

9. In case of default by the successful bidder, or failure to deliver the supplies or services ordered by the time specified, the Commonwealth after due notice (oral or in writing), may procure them from other sources and hold vendor responsible for any excess cost occasioned thereby.

10. No substitution, change or deviation shall be made without written authority from the Commonwealth by Purchase Order Change.

11. Vendors and contractors providing goods to the Commonwealth of Virginia under this order herewith assure the Commonwealth that they are conforming to the provision of the Civil Rights Act of 1964 as amended, as well as the *Virginia Fair Employment Contracting Act* of 1975 as amended, where applicable.

12. This Purchase Order/Contract shall be governed in all respects, whether as to validity, construction, capacity, performance or otherwise by the laws of the Commonwealth of Virginia.

13. All prices unless otherwise specified are net F.O.B. Destination with transportation charges prepaid.

14. If shipment is made by freight or express and charges added to invoice, the original bill of lading properly receipted shall accompany invoice. All charges must be prepaid.

15. Vendors and contractors performing work on Commonwealth owned or leased facilities or property shall, during the entire term of the contract, maintain at a minimum, the insurance coverages as listed in the *Vendors Manual* and any revisions thereto.

Note: This public body does not discriminate against faith-based organizations in accordance with the *Code of Virginia*, § 2.2-4343.1 or against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.

AGENCY PURCHASE ORDER - FORM DGS-41-056

How to Prepare This Form

1. Insert the full name/delivery address of the agency.
2. Insert the state contract number, if applicable.
3. Insert the date the purchase order is prepared.
4. Insert the agency purchase order number.
5. Insert the date the bid was opened, if available.
6. Insert the agency requisition number, if applicable.
7. Insert the terms offered by the vendor.
8. Insert the delivery date as denoted on the contract or bid.
9. Insert the assigned vendor number - mandatory entry (eVA Vendor ID or DUNS number).
10. Insert the full name, address and zip code of the vendor.
11. Insert the full name, address and zip code of the invoice to address. If the invoice name, address and zip code is the same as the delivery address, mark "Same" in section 11.
12. Insert the name of the vendor contact person.
13. Insert the purchase order number.
14. Insert the name of the agency contact person.
15. Insert the telephone number of the agency contact person.
16. Insert the item number, i.e., 1, 2, 3, etc.
17. Insert the commodity code as shown in the *Commodity Class and Item Book*.
18. Give a thorough description of the item or items required. If there is more than one item on a purchase order, double space between items. Complete specifications are required and should be included in this section or included by attachment to the purchase order.
19. Insert the quantity required.
20. Insert the unit as sold, i.e., each, dozen, case, etc.
21. Insert the unit cost as denoted on the contract or bid.
22. Insert the total price of all units. Example - Item price: $1.50 per dozen
Quantity ordered: 12 dozen
Total amount would be: $18.00
23. Insert the total amount of all items ordered on the purchase order.
24. Include the signature and title of an authorized person at the agency.
25. Insert Agency 3-digit code and estimated amount in appropriate columns; however, at agency's option, all CARS II coding may be inserted.

<u>DISTRIBUTION - FORM DGS-41-056</u>

White copy (1-vendor) is sent to the vendor. The remaining copies are for agency use.

Annex 4-B

COMMONWEALTH OF VIRGINIA AGENCY

CONTRACT FORM ADDENDUM TO CONTRACTOR'S

AGENCY NAME: _____

CONTRACTOR NAME: _____

DATE: _____

The Commonwealth and the Contractor are this day entering into a contract and, for their mutual convenience, the parties are using the standard form agreement provided by the Contractor, _____. This addendum, duly executed by the parties, is attached to and hereby made a part of the contract.

The Contractor represents and warrants that it is a(n) / / individual proprietorship / / association / / partnership / / corporation / / governmental agency or authority authorized to do in Virginia the business provided for in this contract. (Check the appropriate box.)

Notwithstanding anything in the Contractor's form to which this Addendum is attached, the payments to be made by the Commonwealth for all goods, services and other deliverables under this contract shall not exceed $_____; payments will be made only upon receipt of a proper invoice, detailing the goods/services provided and submitted to _____. The total cumulative liability of the Commonwealth, its officers, employees and agents in connection with this contract or in connection with any goods, services, actions or omissions relating to the contract, shall not under any circumstance exceed payment of the above maximum purchase price plus liability for an additional amount equal to such maximum purchase price. In its performance under this contract, the Contractor acts and will act as an independent contractor, and not as an agent or employee of the Commonwealth.

The Contractor's form contract is, with the exceptions noted herein, acceptable to the Commonwealth. Nonetheless, because certain standard clauses that may appear in the Contractor's form agreement cannot be accepted by the Commonwealth, and in consideration of the convenience of using that form, and this form, without the necessity of specifically negotiating a separate contract document, the parties hereto specifically agree that, notwithstanding any provisions appearing in the attached Contractor's form contract, none of the following shall have any effect or be enforceable against the Commonwealth:

1. Requiring the Commonwealth to maintain any type of insurance either for the Commonwealth's benefit or for the contractor's benefit;

2. Renewing or extending the agreement beyond the initial term or automatically continuing the contract period from term to term;

3. Requiring or stating that the terms of the attached Contractor's form agreement shall prevail over the terms of this addendum in the event of conflict;

4. Requiring the Commonwealth to indemnify or to hold harmless the Contractor for any act or omission;

5. Imposing interest charges contrary to that specified by the *Code of Virginia*, § 2.2-4347 through 2.2-4354, Prompt Payment;

6. Requiring the application of the law of any state other than Virginia in interpreting or enforcing the contract or requiring or permitting that any dispute under the contract be resolved in the courts of any state other than Virginia;

7. Requiring any total or partial compensation or payment for lost profit or liquidated damages by the Commonwealth if the contract is terminated before its ordinary period;

8. Requiring that the contract be "accepted" or endorsed by the home office or by any other officer subsequent to execution by an official of the Commonwealth before the contract is considered in effect;

9. Delaying the acceptance of this contract or its effective date beyond the date of execution;

10. Limiting or adding to the time period within which claims can be made or actions can be brought;

11. Limiting the liability of the Contractor for property damage or personal injury;

12. Permitting unilateral modification of this contract by the Contractor;

13. Binding the Commonwealth to any arbitration or to the decision of any arbitration board, commission, panel or other entity;

14. Obligating the Commonwealth to pay costs of collection or attorney's fees;

15. Granting the Contractor a security interest in property of the Commonwealth.

16. Bestowing any right or incurring any obligation that is beyond the duly granted authority of the undersigned agency representative to bestow or incur on behalf of the Commonwealth.

This Agency contract consisting of this Agency addendum and the attached Contractor's form contract constitute the entire agreement between the parties and may not be waived or modified except by written agreement between the parties.

This contract has been reviewed by staff of the agency. Its substantive terms are appropriate to the needs of the agency and sufficient funds have been allocated for its performance by the agency. This contract is subject to appropriations by the Virginia General Assembly.

IN WITNESS WHEREOF, the parties have caused this contract to be duly executed, intending thereby to be legally bound.

AGENCY by _____ CONTRACTOR by _____

Title_____ Title _____

When Used: For contracts valued at less than $50,000 and it is not feasible to award a contract without using the contractor's form, and clauses which are not in the best interest of the Commonwealth cannot be crossed out, then use this form. For contracts over $50,000, your legal advisor should be consulted prior to using this form.

Annex 4-C

"MAKE OR BUY" ANALYSIS PROCEDURES

PROCEDURE FOR EVALUATING SERVICE DELIVERY ALTERNATIVES

BACKGROUND

"Make or buy" analyses offer an opportunity for increasing the provision of government services by private sector entities and for removing government from activities that might more appropriately be provided by the private sector.

This "make or buy" analysis procedure was developed by DGS/DPS with the assistance of representatives of the Department of Planning and Budget and the Virginia Information Technologies Agency. It is intended to provide a concise procedural framework for agencies to follow in carrying out their responsibilities toward privatization. It should be used by agencies as a guide for accomplishing and documenting their evaluations and decisions regarding contracting with the private sector for services.

Comments and suggestions for improving this procedure should be addressed to the Division of Purchases and Supply, ATTN: Service Contracts Section.

I. PHASE ONE - INVENTORY OF SERVICES

A. List all services now provided or proposed to be provided by your agency to the public or to other agencies, and the services your agency provides or contracts for, in support of its operations.

B. Consider the public acceptability of contracting. Determine which services are close to the fundamental purpose of government, which includes the discretionary exercise of government authority (e.g., judicial, police, tax collection, revenue disbursement, intergovernmental affairs), or are essential to the government's ability to protect the health, safety and welfare of its citizens (e.g., regulatory functions). Exercise caution in considering services of this nature for provision by contractors. Some parts of a particular service may be suitable for contractor provision while others may not.

C. Determine which of the services on the list meet all or part of the following criteria. Those that do may be good candidates for contracting out and should be further examined as discussed in subsequent steps.

1. Service is tangible, making stipulation of specific contractor requirements and performance measures possible.

2. Service can be, or already is, available from the private sector.

3. Service involves either repetitious and routine activities, or it requires a relatively low skill level, e.g., janitorial services, grounds keeping work, etc.

4. Service requires special equipment or technical/specialized skills or credentials.

5. Service is susceptible to changes in demand or funding support, making it difficult to justify a full time year-around work force, or the service is now provided using temporary employees.

II. PHASE TWO - DETERMINE COST OF IN-HOUSE PROVISION

A. Determine the number of full time equivalent employees (FTEs) required to provide the service along with all other costs of service provision. The in-house costs include base expenses, such as salaries, fringe benefits, supplies and equipment, and the dollar costs for space and utilities. Some costs that need to be considered may cross program lines, e.g., inspection work done by personnel of another activity or other types of assistance provided from shared resources. The total in-house cost is needed for comparison with the net contract cost from Phase Three. If agencies wish to protect this information from public disclosure, it must be treated as a part of the cost estimate for the proposed procurement (*Code of Virginia*, § 2.2-4342B).

B. For services currently provided in-house, the agency may wish to determine if there is a more cost efficient way to provide the required service in-house. The agency would then determine other factors (e.g., organizational structure, staffing, the use of resources, operational procedures) that would make for more efficient, effective, and economical in-house provision of the service. Based on the selected improvements, an estimate of the proposed optimum in-house cost of providing the service can be made. If the changes can be implemented within the same time frame as the contracting option, this optimum cost can be used for comparison with the net contract cost from Phase Three.

III. PHASE THREE - DETERMINE FEASIBILITY OF CONTRACTING OUT

A. Determine availability of at least two commercial sources.

B. Determine that the agency's contract administrator successfully completed DGS/DPS training or other appropriate training and that necessary personnel and procedures are in place to effectively administer the contract and monitor contractor performance. An administrator or project officer is critical to a successful privatization program.

C. Consider the impact on your ability to bring the service back in-house if substantial capital equipment investment is involved and contracting out provides unsatisfactory results.

D. Consider the impact on displaced employees and what provisions could be made for their continued employment, such as being hired by the contractor or retrained for other State service.

E. Prepare and issue a formal solicitation [Invitation for Bids (IFB) or Request for Proposals (RFP)] based on the scope of services, performance standards, job analysis, etc., in accordance with the *Agency Procurement and Surplus Property Manual (APSPM).*

F. Prepare an estimate of the State's net cost of contracting the service (see II A. above). This includes the projected contract price; contract administration, e.g., audit, performance evaluation, communication; and other management costs, such as salaries, fringe benefits, etc.; contractor support costs, such as any space to be provided to the contractor; and "one time" costs or savings, such as solicitation costs, staff training, savings from sale of surplus property; personnel costs or savings, such as severance pay, unemployment benefits; savings on real property for the function, etc.

G. Compare estimates of net contract cost to in-house cost. Existing or optimum in-house cost (paragraph II, A or B) can be used for this comparison. However, if optimum cost (paragraph B) is used and becomes the basis to retain the service in-house, the necessary improvements must be promptly implemented.

IV. PHASE FOUR - MAKE FINAL DETERMINATION

A. If the net cost of contracting is equal to or less than the in-house cost and the quality and reliability of services are at least equal, proceed with award of the contract.

B. If the net cost of contracting is higher than the in-house cost or the quality and reliability of services are not at least equal, provide/continue to provide the service in-house. Cancel the solicitation and reject all bids/proposals received.

V. PHASE FIVE - REVIEW AND REEVALUATE

A. Review contracts continuously to ensure the costs stay below those estimated for in-house provision. The original estimate for in-house costs should be adjusted for inflation to properly compare them with contract costs.

B. Completely reevaluate services retained in-house every two years in conjunction with budget request preparation to determine that it is still the most cost effective means of provision.

Annex 4-E

Bookstore, Commissary, Canteen, Gift Shop, and Similar Retail Outlet Purchases

The following guidelines are offered as an alternative to the small purchase procedures for these categories of purchases.

(1) The *VPPA* and this manual apply to bookstore purchases over $50,000. They also apply to purchases of less than $50,000 however agencies have the authority to write their own small purchase procedures (less than $50,000) for bookstores which they operate. For bookstore small purchases, the use of manufacturers' current price lists serves the same purpose as obtaining phone quotes. The price lists used should be referenced on the order document and it is not necessary when using the price lists for the bookstore to list individual prices on the purchase order. A random sampling of invoices submitted should be conducted periodically to compare prices invoiced with phone quotes received or price lists used to ensure that they do not exceed the prices on the referenced price lists. The procedures for small purchases in this section are the minimum acceptable. An agency may develop its own procedures that may be more restrictive. The *VPPA* and this manual do not apply to purchases made by contractor operated bookstores or to items purchased by public institutions of higher education (see 4.15a).

(2) For resale purchases, an agency may establish its own small purchase procedures, if adopted in writing, for single purchases or term contracts not expected to exceed $50,000. Such small purchase procedures shall provide for competition wherever practicable.

(3) When competitive negotiation (Request for Proposals) is used, a written determination must be made in advance stating that competitive sealed bidding is either not practicable or not fiscally advantageous. The writing must explain the basis for this determination.

Procedures for Purchases Over $50,000

(1) **New Book Purchases**. Copyrighted books available only from their publishers, are considered "sole source procurements." For such purchases, the following statement must be posted for each publisher annually for a period of one year on a public bulletin board where bookstore purchasing notices are posted:

> "Sole Source Notice for the Purchase of Books". Books available for purchase directly only from the publisher are hereby determined to be sole source procurements. This is a one-time determination for such book purchases made during the period July 1, 20__ through June 30, 20__. The posting of this notice shall serve in lieu of newspaper publication."

(2) **Used Book Buy Back and Purchases**. When the anticipated value of the used book buy back exceeds $50,000, the selection of a vendor shall be through competitive sealed bidding or competitive negotiation. Used books may be purchased from the same vendor selected to perform the buy back <u>provided this provision was included in the original IFB or RFP and used as part of the evaluation criteria</u>.

When used book purchases are independent of the buy back and are anticipated not to exceed $50,000 a want list is to be simultaneously distributed to several used book vendors and orders may be placed on a first response basis provided prices are reasonable.

(3) **Other Purchases**. Single purchases and term contracts expected to exceed $50,000 shall be made in accordance with the *VPPA* and the *APSPM*.

Purchases Less than $50,000. (Small Purchases)

Recognizing that retail stores operate in a competitive environment with an overriding objective of satisfying customer needs and that irregular demands may exist, the following small purchase procedures are suggested:

Small purchases (under $50,000) of like items such as pre-packaged edibles, books, magazines, novelties, paper, pens, pencils, toiletries, and wearing apparel may be purchased without competitive bidding or negotiation provided a written market survey* of at least 10% of the highest use items has been conducted within the past 6 months and a determination made that the prices being paid are fair and reasonable. Competition should be obtained when prices do not appear fair and reasonable. In establishing price reasonableness, product quality and such supplier services as merchandise stocking, merchandise returns, merchandise marking, and vendor responsiveness may be considered.

*Market Survey - a written list of at least 10% of the highest use items. Price comparisons may be made from written quotes, supplier price lists, or prices paid by other bookstores.

Disposal of New/Unused and Used Books by College or University Operated Bookstores.

(1) Surplus (unsold) new books and used books purchased by a college or university-operated bookstore that are no longer required must be disposed of using surplus procedures and offered to eligible surplus recipients in accordance with surplus regulations (Chapter 12). This requirement may be satisfied by announcement in the DPS Internet home page for a ten (10) day period. Contact the DPS home page coordinator at 804-786-3855 or shane.caudill@dgs.virginia.gov. This is not applicable to new books purchased on consignment from a publisher. Surplus new and used books with no resale value may be recycled.

(2) New, unused books owned by a college or university-operated bookstore may be traded-in under the trade-in procedures outlined in section 12.9e or marked down and sold to vendors that buy back unsold books. This applies to new books which, after purchase, have become inactive for use in particular courses of study. Used books may also be disposed of in the same manner.

Annex 4-F

Tips for Detecting Bid Rigging, Price Fixing, and other Types of Collusion

The following are some tips for consideration when suspicious actions are detected:

1. Some bids are much higher than published price lists, previous bids by the same firms, or engineering cost estimates. (This could indicate token or complementary bids.)

2. Fewer competitors than normal submit bids. (This could indicate a deliberate plan to withhold bids.)

3. The same contractor has been the low bidder and was awarded the contract on successive occasions over a period of time.

4. There is an inexplicably large dollar margin between the winning bid and all other bids.

5. There is an apparent pattern of low bids regularly recurring, such as corporation "X" always winning a bid in a certain geographical area for a particular service, or in a fixed rotation with other bidders.

6. A certain company appears to be bidding substantially higher on some bids than on other bids, with no logical cost differences to account for the difference.

7. A successful bidder repeatedly subcontracts work to companies that submitted higher bids on the same projects.

8. There are irregularities (e.g., identical calculation errors) in the physical appearance of the bids or proposals, or in the method of their submission (e.g., use of identical forms or stationery), suggesting that competitors had copies, discussed, or planned one another's bids or proposals. If the bids are obtained by mail, there are similarities of postmark or post metering machine marks.

9. Two or more competitors file a "joint bid," even though at least one of the competitors could have bid on their own.

10. A bidder appears in person to present his bid and also submits the bid or bond of a competitor.

11. Competitors regularly socialize or appear to hold meetings, or otherwise get together in the vicinity of procurement offices shortly before bid filing deadlines.

12. Competitors meet as a group with procurement personnel to discuss or review terms of bids or proposals. (This may facilitate subtle exchanges of pricing information.)

13. Competitors exchange any form of price information among themselves. (When this occurs among sellers in concentrated markets [markets with sellers], it is suspicious. Note that such exchanges may take quite subtle forms, such as public discussions of the "right" price.)

14. There is industry-wide resale price maintenance. (This could help manufacturers police collusion at the manufacturing level, since any reduction in the resale price, which is both easily observable and known to be controlled by the manufacturer, is readily detected by other manufacturers to account for the extra cost of the transportation expense.)

15. Competitors submit identical bids or frequently change prices at about the same time and to the same extent. (Regulations currently permit submission of identical bid data to the Antitrust Division.)

16. Bidders who ship their product short distances to the buyer charge the same price as those that ship long distances. (This may indicate price fixing, since otherwise the distant sellers would probably charge more for a given item to account for the extra cost of transportation.)

17. Local competitors are bidding higher prices for local delivery than for delivery to points farther away. (This may indicate rigged prices in the local market.

18. Bid prices appear to drop whenever a new or infrequent bidder submits a bid.

19. An employee (buyer, clerk, temporary hire), upon receipt and opening of bids/proposals reveals pricing information to various bidders/offerors via telephone or mail to give them a chance to submit or change their pricing prior to bid/proposal due date and time for receipt.

Annex 4-G

Employee or Independent Contractor? Factors To Consider

Guidance in making the determination concerning the classification of an employee versus an independent contractor is available from the Department of Treasury, Internal Revenue Service (IRS), in Publication 15-A. It may be found on the IRS web site. The web address for this publication is http://www.irs.gov/pub/irs-pdf/p15a.pdf.

Annex 4-H

Waste and Abuse Warning Symptoms

The following are some “warning symptoms” for consideration when waste and abuse may be suspected.

1. Billing for work not performed (false invoices).

2. Delivered item was other than what was specified (substituted product, demonstration equipment).

3. Frequent dating of requisition and/or approval after receipt of merchandise.

4. Improper Charge e.g., a part number is listed on an invoice but is not verified to assure the correct part was installed on the correct item (Cadillac fuel pump installed on an employee’s car but billed as installed on the agency’s Chevrolet shuttle bus).

5. Order splitting to avoid bidding ($17,000 house repair in under $5,000 increments).

6. Repeated use of restricted specs therefore avoiding competition, not using “or equivalent.” The winning contractor always is the same for the specified item.

7. High number of sole source and “emergencies” or single source purchases - possible “specification rigging.”

8. High use of change orders - adding new items, significant change in scope of work, original bid much lower than other bidders (low balling).

9. Staggered invoices but same pick up date and signature on a copied delivery ticket.

10. Using contractor furnished usage figures when rebidding.

11. Minimum advertisement time - excessive use of mandatory prebid conferences - discourages and prevents competition.

12. Not properly advertising (use of small newspaper, few mailings, etc.).

13. Site visits required - site visitors being told of special conditions and no addenda issued.

14. Accepting nonresponsive bid from a preferred contractor.

15. Using biased individuals on evaluation panels.

16. Statement that bidder does not service that area or only ABC Co. sells in that area (possible collusion/price fixing).

CHAPTER 5

SMALL PURCHASES

In this Chapter look for . . .

5. General
5.1 Competitive Requirements
5.2 Charge Cards for Small Purchases
5.3 Single Quotation
5.4 Deleted
5.5 Deleted
5.6 Unsealed Bidding
5.7 Unsealed Proposals
5.8 Purchases for Research and Academic Support
5.9 Pass-through-Procurements
5.10 Blanket Purchase Agreements

Annexes
5-A Small Purchase Procedures Flowchart
5-C Single Quotation Process Flowchart
5-D Six Quotation Process Flowchart
5-E Unsealed Bidding Process Flowchart
5-F Unsealed Proposal Process Flowchart
5-G Telephone Record for Goods
5-H Telephone Record for Services
5-I Fax Back Price Quote Sheet

5. **General**. The *Virginia Public Procurement Act (VPPA)* permits a public body to establish small purchase procedures, if adopted in writing, not requiring the use of competitive sealed bidding or competitive negotiation for single or term contracts if the aggregate or sum of all phases is not expected to exceed $50,000; however, such small purchase procedures shall provide for competition wherever practicable (*Code of Virginia*, § 2.2-4303G). The following small purchase procedures have been established by DGS/DPS for use by state agencies and institutions when acquiring materials, supplies, equipment, printing or nonprofessional services under $50,000 (excluding information technology and telecommunications goods and services). Procurements made pursuant to these procedures do not require public bid openings or newspaper advertising of competitively negotiated procurements. For your convenience, process flowcharts for each category of small purchases have been developed and are in the annex of this chapter. Annex 5-A depicts the decision making process that will assist in determining the appropriate small purchase procedure to use up to $50,000.

5.1 **Competitive Requirements**. Procurements up to $50,000 shall be set-aside exclusively for DMBE-certified small business participation in accordance with 3.10 g. Competition, where required, is to be made according to the number of competitive sources shown in Chapter 5. If two or more DMBE-certified small businesses cannot be identified to set-aside the procurement under $50,000, then the file shall be documented with the efforts made to obtain the number of required sources.

a. **Oral or Written.** Purchases of goods or services up to the single quote limit, requires soliciting orally or in writing, a minimum of one (1) DMBE-certified small business, if available.

b. **Written**. Purchases over $5,000 and up to the small purchase dollar threshold of $50,000 require soliciting at least four (4) DMBE-certified small business sources, if available, in writing. Estimate the total cost, including all possible renewal periods if a term contract, to determine if the procurement will not exceed $50,000. If the procurement is expected to exceed $50,000 over the entire term of the contract, including all possible renewal periods, use the procedures outlined in Chapter 6 on competitive sealed bidding or in Chapter 7 on competitive negotiation. The expected trade-in value of equipment shall not be considered when determining the anticipated total value of a contract.

5.2 **Charge Cards for Small Purchases**. Deleted. Note: Information on the use of charge cards for payment is moved to 10.11 b., Payment and Invoice Processing.

5.3. **Single Quotation**. (Up to $5,000)

a. Where the agency's estimated cost of goods or nonprofessional services is $5,000 or less unless exempted (see 3.10 g), purchases may be made upon receipt of a minimum of one (1) written or telephone (oral) quotation (see flowchart, Annex 5-C) from a DMBE-certified small business, if available. Additional DMBE-certified small business sources may also be solicited. Other quotes received from DMBE-certified small businesses that were not solicited shall be considered. If more than one quote is received, the award shall be made to the lowest responsive and responsible DMBE-certified small business bidder. A record of the quotation must be kept with the file. If a telephone quote is solicited, a record shall be kept of the name and address of the vendor(s) contacted, the item description or service offered, price quoted, delivery dates and F.O.B. point, names of persons giving and receiving the prices and the date the information was obtained. Notation on the requisition form is considered to be an adequate record or see Annex 5-G, and 5-H, for copies of sample forms to use in recording information. When using a charge card as the payment method, solicit a minimum of one (1) DMBE-certified small business, if available.

b. Agencies should seek additional competition whenever there is reason to believe a quotation is not a fair and reasonable price (see 4.10 for Price Reasonableness Determination).

5.4 Deleted.

5.5 Deleted.

5.6 **Unsealed Bidding**. (Over $5,000 to $50,000)

a. Quick Quote shall be used to solicit bids or quotes for goods and nonprofessional services from $5,000 to $50,000 (see 14.5e). Any appropriate special conditions must be stated in or attached to the Quick Quote.

b. Set-aside for DMBE-certified small businesses unless exempted (see 3.10 g). The procurement file shall be documented if the procurement does not qualify for a set-aside. If set-aside for small businesses, solicit a minimum of four (4) DMBE-certified small business sources, if available. If not set-aside for small businesses, solicit a minimum of four (4) sources, if available. Include a minimum of two (2) DMBE-certified small business sources, if available. If fewer than the required number of sources are solicited, the reasons shall be documented.

c. *VBO* advertising is not required under $50,000 (see 3.18).

5.7 a. **Unsealed Proposals** (Over $5,000 to $50,000). Agencies and institutions may obtain required goods or nonprofessional services up to $50,000 using the Unsealed Proposal process (see flowchart, Annex 5-F). A written determination for the use of competitive negotiation is not required for unsealed proposals. The solicitation should include a cover sheet, a general description of what is being sought, the evaluation criteria and weights to be used in evaluation, current version of the General Terms and Conditions, and any Special Terms and Conditions including unique capabilities or qualifications that will be required.

1. Set-aside for DMBE-certified small businesses unless exempted (see 3.10g). If set-aside for small businesses, solicit a minimum of four (4) DMBE-certified small business sources, if available, by mail, fax, or electronically. If not set-aside for small businesses, solicit a minimum of four (4) sources. Include

a minimum of two (2) DMBE-certified small business sources, if available. If fewer than the required number of sources are solicited, the reasons shall be documented.

2. *VBO* advertising is optional, but encouraged up to $50,000. *VBO* advertising is required over $50,000. See 3.18.

3. Offers may be opened and evaluated upon receipt. All responses must be received at the designated location by the date and time stated in the solicitation (see 3.1e).

4. In lieu of an evaluation committee, the buyer or end user may solely evaluate and rank offers. Upon completion of the evaluation, negotiations shall be conducted with the offerors selected.

b. **Unsealed Best Value Acquisition** (Over $5,000 to $50,000).
Agencies and institutions may obtain required goods or nonprofessional services using best value concepts. A written determination for the use of competitive negotiation is not required for unsealed Best Value Acquisition. Set-aside for DMBE-certified small businesses unless exempted (see 3.10g). The procurement file shall be documented if the procurement does not qualify for a set-aside.

1. Procurement Planning. A purpose statement must include that the solicitation is using best value procurement procedures and shall note if set-aside for small businesses. Describe Statement of Needs in general terms. Mandatory requirements are stated. Include Subjective/Objective evaluation criteria (see Annex 7-F for sample subjective/objective evaluation criteria). If making multiple awards, the total sum of all awards shall not exceed $50,000.

2. Pre-proposal Conference/Site Visit. A pre-proposal conference or a site visit may be held if necessary. Seek information from vendors concerning criteria.

3. Evaluation Criteria. Criteria shall be stated in the solicitation. Unless otherwise stated, each criterion will be of the same importance. If criteria are not of the same importance, then include a statement at the end of the paragraph such as: Criteria are listed in the order of importance. Examples of criteria may be Technical Approach, Qualifications of Personnel, Resource Commitment, Past Performance, Risk and Incentives.

4. General and Special Terms & Conditions. Add General and Special Terms and Conditions to the solicitation or incorporate them by reference. The Announcement of Award clause must be included in the solicitation.

5. Select Rating and Scoring Method. Listed below are methods that can be used to score and evaluate proposals. Any method is acceptable.
   1) Adjectival
   2) Color
   3) Numerical

   See Annex 7-F for examples of each rating and scoring method.

6. Pricing Schedule/Scenario. Include how proposal prices are to be submitted. If lump sum pricing is not advantageous, use a pricing scenario to obtain prices for unknown quantities or hours. The pricing schedule should be tied to deliverables and must coincide with the method of payment stipulated in the solicitation.

7. Attachments. An attachment such as a Contractor Data Sheet may be used.

8. If set –aside for small businesses, solicit a minimum of four (4) DMBE-certified small business sources, if available, by mail, fax or electronically. If not set-aside for small businesses, solicit a minimum of four (4) sources, if available. Include a minimum of two (2) DMBE-certified small business sources, if available. If fewer than the required number of sources are solicited, the reasons shall be documented. VBO advertising on eVA is not required up to $50,000. The solicitation shall be open for the period of time stated in the solicitation but must be open for at least one (1) day. A reasonable amount of time should be allowed for vendors to respond based on the nature of the procurement.

9. Receipt. Unsealed Best Value proposals may be received by FaxBack, electronically, hand-delivery or mail. Receive proposals until the due date and time specified in the solicitation. Proposals may be opened

and evaluated upon receipt. In lieu of an evaluation committee, the buyer or end user may solely evaluate and rank offers.

10. Evaluation and Negotiation. Use a Go/No-Go approach and eliminate those proposals that do not meet mandatory requirements. Evaluate vendor performance to determine responsibility. Check debarment records on the DPS eVA web-site, www.eva.virginia.gov. Evaluation criteria, other than price, are evaluated first. After rating the technical proposals, pricing is then considered. Consider the overall benefits and costs to the agency. A sample evaluation sheet is provided in Annex 7-F. Points to be negotiated may be selected. Negotiations may be conducted with the offeror(s) deemed to be fully qualified and offering the best value proposal(s). Document results of any negotiations in the procurement file.

11. Award. The award will be made to the responsible Offeror(s) whose proposal, conforming to the solicitation, is the most advantageous and represents the Best Value to the Commonwealth, costs and other factors considered. Prepare a written justification and place in contract file.

5.8 **Purchases for Research and Academic Support**. It is recognized that some universities sponsor numerous research projects and also have specific academic curricula which may require frequent telephonic purchasing support to $50,000. Exceptions to the written solicitation process may be granted to universities by the Director of the Division of Purchases and Supply upon submission of a written request describing in detail the basis for such action.

5.9 **Pass-through-Procurements**. Pass-through-procurements are purchases made by educational institution personnel acting as intermediaries on behalf of groups or individuals associated with the institution's mission. Procurements performed are infrequent and of short duration. These purchases are exempt from the above prescribed small purchase procedures; however, all such transactions must be approved in advance by the head of the institution's purchasing office. Examples include contracting for alumni functions for which the institution is reimbursed by the alumni and materials purchased for students by a faculty member using State funds and for which the students fully reimburse the university. In such cases, any expenditure of state money shall result in expeditious replenishment of the total amount of expended funds by the group or individuals for whom the agency acted as an intermediary. No financial gain is to be derived by the institution or State person or persons acting as intermediaries.

5.10 **Blanket Purchase Agreements**.

a. Blanket purchase agreements (BPAs) are contractual relationships which may be entered into with local vendors to obtain small dollar value expendable operating supplies or services (less than the single quote limit) for which low or erratic demand usage exists. Basically, a set of terms and conditions are agreed upon between the buyer and seller wherein the seller will deliver or permit pick up of supplies ordered through a call system controlled by the individual who has received authorization from the purchasing office. The prevailing market price, less any trade and/or volume discounts as may be agreed upon, is charged and invoiced on a consolidated (usually monthly) basis.

b. The principle advantage of a BPA is the ability to delegate ordering authority to the user level, resulting in quicker access to the goods or services. Consolidated invoices are processed, which reduces the paper flow and administration. The success of this procedure is dependent upon the establishment and enforcement of proper controls.

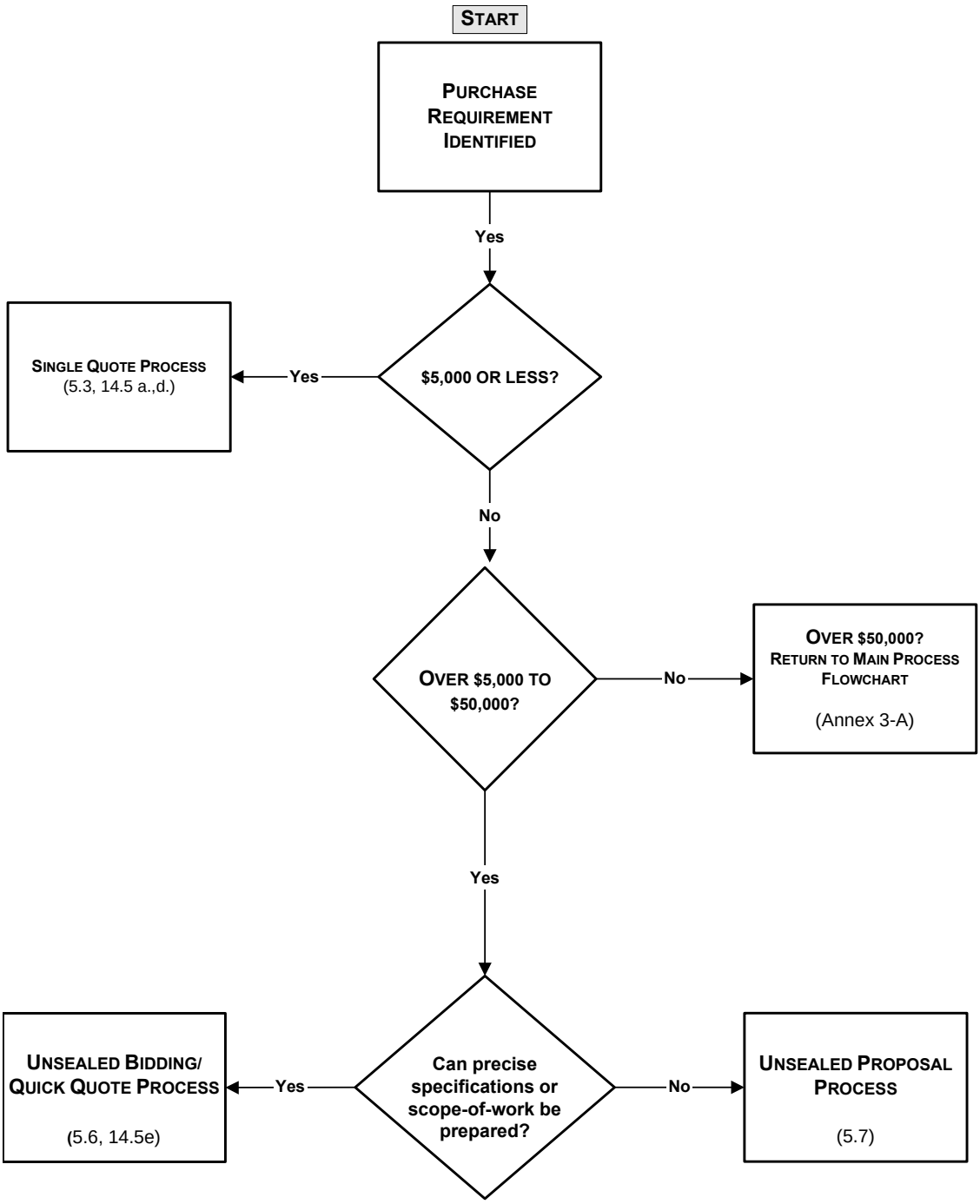
c. By careful analysis of recurring needs, BPAs may be entered into for supplies or services not available from contracts or other prior purchase commitments. Examples are hardware, electrical, office, plumbing supplies, or services such as electrical, locksmith, film developing, and painting. (See paragraph 4.21 if cumulative annual value of any service exceeds $15,000.) When practicable a minimum of two agreements should exist per item category.

d. Prior to the establishment of BPAs, contact DGS/DPS for assistance and for the procedures required to be used at 804-786-0324. See also 4.3d (5).

Annex 5-A

SMALL PURCHASE PROCEDURES (CODE OF VA § 2.2-4303G)

Small Purchase Process (goods and nonprofessional services up to $50,000)

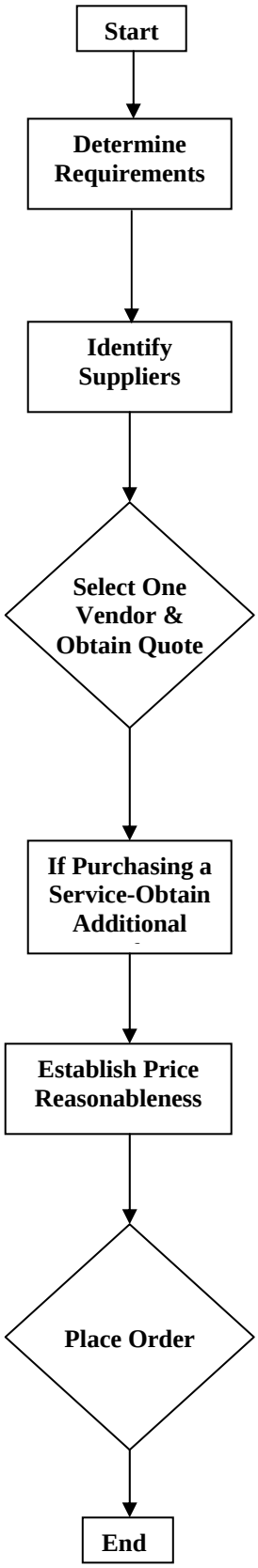


Annex 5-B

Deleted

Annex 5-C

Single Quotation Process
For Goods and Non-professional Services to $5,000



Establish need, location, quantity, etc., and estimated cost. Check if available from a mandatory source.

Set-aside for small business participation: Identify a minimum of one (1) DMBE-certified small business, if available, to satisfy the requirement unless exempted (see 3.10 g).

Call, fax or obtain quote through the eVA eMall from a minimum of one (1) DMBE-certified small business. If using a charge card for payment follow the same solicitation requirement. If phone quoting, keep record of item/service description, price quoted, delivery terms, FOB point, contact name and date of quote. Insure delivery and freight is included in total cost. Other quotes received from DMBE-certified small businesses that were not solicited shall be considered.

If a service, consider: a. Verify vendor's insurance if work is on state owned/leased property or facilities, b. Verify applicable contractor's license, c. Perform reference checks.

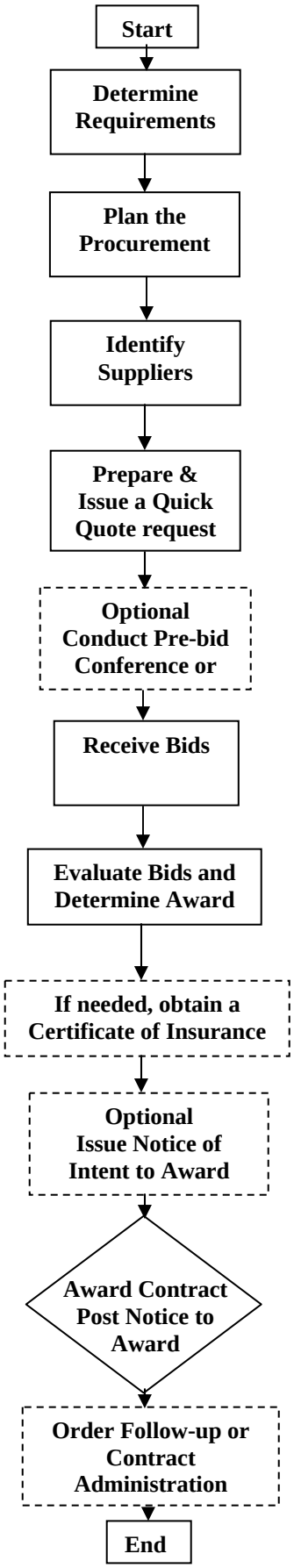
If the price is not fair and reasonable, based on the estimated cost, seek competition from at least one additional DMBE-certified small business. Extensive research is not necessary; weight administrative costs vs. product costs (4.10). If purchasing more than one item in the eVA eMall, see 14.5a.

Place orders through eVA unless exempted. Orders are automatically assigned an order number. USE THE SMALL PURCHASE CHARGE CARD FOR PAYMENT WHEN POSSIBLE.

Annex 5-D
Deleted

Annex 5-E

Unsealed Bidding Process
For Goods and Non-professional Services over $5,000 to $50,000



Establish need, location, quantity, etc., and estimated cost. Check if available from a mandatory source.

Quick Quote (QQ) is required to solicit bids or quotes (see 14.5e). Plan lead times, purchase authority, external agency approval, specifications or scope of work needed, site visit or pre-bid conference and any special terms and conditions needed (Ts & Cs).

Set-aside for small business unless exempted (see 3.10 g). Identify a minimum of four (4) DMBE-certified small businesses, if available (5.6 & 14.5e).

Include purpose, description/scope-or-work/specifications, special terms and conditions (Solicitation & File Checklist, Annex 6-D). Include method of payment, pricing schedule, attachments. Solicit via QQ. QQ should be open a minimum of 1 day. Note if a set-aside procurement in QQ title.

An attendance roster must be signed by attendees if the pre-bid conference is mandatory (4.3e). Issue addenda if necessary.

Open bids according to QQ procedures. If faxed or mailed bids are received, record & tabulate. Bids must be received at the specified location by the due date/time.

Prepare/print tabulation form. Determine responsiveness, compliance with Ts & Cs. Evaluate responsibility. Determine award to the lowest responsible and responsible bidder.

When work is performed on state owned or leased property or facilities, the vendor must certify in writing that appropriate insurance coverage is in effect. You may obtain a certificate of insurance from the vendor (4.14).

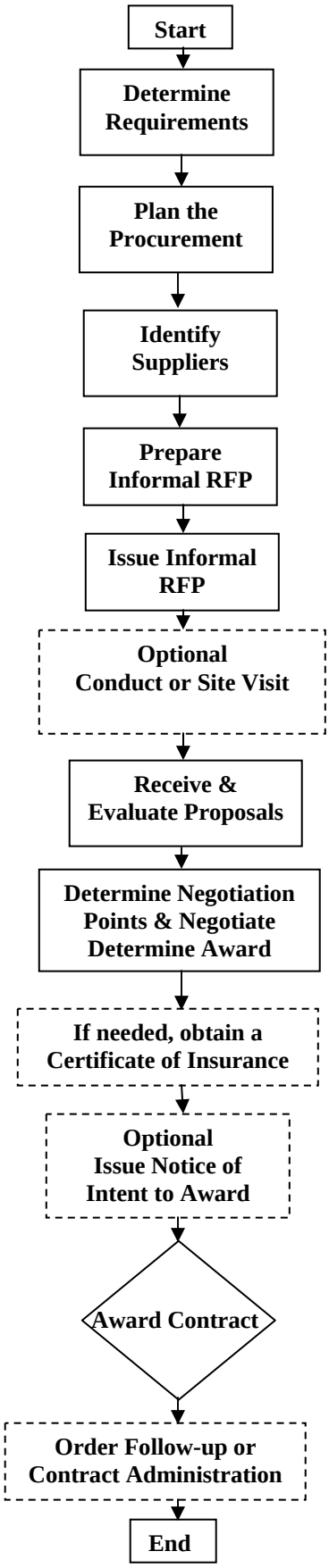
Post for 10 days if a protest is anticipated (4.12 d, 6-G).

Post Notice of Award for 10 days if a Notice of Intent to Award was not issued. The award document is a purchase order incorporating the bid & all Ts & Cs by reference. A 2-party contract is not used as an award document for bids.

Follow-up receipt, administer or assign a contract administrator as needed (Chapter 10).

Annex 5-F

Unsealed Proposal Process
For Goods and Non-professional Services over $5,000 to $50,000



Establish need, location, quantity, etc., and estimated cost. Check if available from a mandatory source. Estimate total value incl. aggregate or sum of all phases & include all possible renewal periods.

Determine format to use, e.g., faxback or written unsealed proposal or best value acquisition (5.7b) Determine need for external approval, need for pre-proposal conference and any special terms and conditions needed (Ts & Cs). Develop statement of needs with the requestor.

Set-aside for small business unless exempted (see 3.10 g). Identify a minimum of four (4) DMBE-certified small businesses, if available (5.7 & 14.5 e).

Include purpose, statement of needs, special terms and conditions, evaluation factors & weights, method of payment, pricing schedule, attachments and unique qualifications. Note if a set-aside procurement.

Solicit proper number of sources and leave open for the period of time stated in the solicitation.

An attendance roster must be signed by attendees if the pre-proposal conference is mandatory (4.3e). Issue addenda if necessary.

Proposals must be received at the specified location by the due date/time. Proposals may be opened upon receipt. Check references, inspections to determine responsibility. Evaluate according to criteria & weights.

Determine points to negotiate. Conduct and document negotiations. If using Best Value Acquisition you may negotiate (5.7b.10). Determine best proposal. Award to the offeror making the best proposal .

When work is performed on state owned or leased property or facilities, the vendor must certify in writing that appropriate insurance coverage is in effect. You may obtain a certificate of insurance from the vendor (4.14).

Post for 10 days if a protest is anticipated (4.12 d, 6-G).

The award document may be a 2 party contract followed up by an eVA order or an eVA order only, depending upon the detail of negotiations, incorporating the proposal & all Ts & Cs by reference.

Follow-up receipt, administer or assign a contract administrator as needed (Chapter 10).

Annex 5-G

TELEPHONE RECORD FOR GOODS – Use up to $5,000; over $5,000 use Quick Quote.

REQUEST NUMBER: _____ BUYER: _____	BIDDER #1 DATE: _____	BIDDER #2 DATE: _____	BIDDER #3 DATE: _____
eVA VENDOR ID or DUNS NUMBER>			
VENDOR NAME > VENDOR ADDRESS >			
CONTACT PERSON >			
PHONE NUMBER >			
FAX NUMBER >			

QUANTITY	ITEM DESCRIPTION	UNIT PRICE / TOTAL PRICE	UNIT PRICE / TOTAL PRICE	UNIT PRICE / TOTAL PRICE
(1)				
(2)				
(3)				
(4)				
(5)				
(6)				

DELIVERY DATE or TIME >			
PROMPT PAYMENT TERMS >			
ARE SHIPPING/HANDLING COSTS INCLUDED IN TOTAL PRICE? YES or NO >			
IF NO: CITE SHIPPING COST >			
TOTAL ORDER VALUE >			

INSTRUCTIONS - TELEPHONE RECORD FOR GOODS

1. CAUTION: Care should be exercised when obtaining pricing information by telephone. The description of what is desired should be described in generic terms or by use of brand name (including make and model). When specifying a brand name, be prepared to receive bids on an "or equivalent basis" unless the item desired has been justified as proprietary. When identifying potential sources to solicit, ensure that those selected are in business to provide what is needed.

2. COMMUNICATE: Communicate with the end user, when appropriate, to ensure that what is needed will be accurately described to the bidder(s).

3. READ AND EDIT: Read the requisition to make sure it answers the following questions:

- WHO will receive the goods?
- WHAT is needed?
- WHEN is delivery required?
- WHERE are the goods to be delivered?
- HOW to be shipped, e.g., customer pick-up, truck, inside delivery, furnish and install, etc., and
- HOW much?

4 MODIFICATIONS: All bidders contacted must be given the opportunity to bid on the identical specifications. For example, if during the bidding process a bidder offers an alternative (not an equivalent) and the end user determines that the alternate would suffice, then each bidder previously contacted must be provided the revised requirement and allowed to bid.

5. NOTATIONS: When soliciting bids on a brand name specified or equivalent basis, note on the phone quote sheet the product offered by each bidder, i.e., "as specified" or make, model of equivalent. When soliciting bids using generic specifications, notate the make and model offered by each bidder.

6. TERMS AND CONDITIONS: Note any special conditions that apply to the purchase and communicate those to each bidder. An example would be insurance and contractor licensing requirements involving some types of "furnish and install" procurements.

7. PRICING: Bids are to be solicited on a firm fixed price basis. Every attempt should be made to have the prices quoted F.O.B. destination and to include any shipping and handling charges in the total price. Otherwise, any separate charges must be shown on the Telephone Record sheet and included as part of the total bid price when evaluating the bids.

THIS FORM MAY BE REDESIGNED TO FIT LOCAL NEEDS; HOWEVER, THE INFORMATION BLOCKS SHOWN ON THE REVERSE SIDE OF THIS EXAMPLE ARE THE MINIMUM REQUIREMENTS TO BE RECORDED WHEN USING THE TELEPHONE BID METHOD.

Annex 5-H

TELEPHONE RECORD FOR SERVICES

REQUEST NUMBER: _____ BUYER: _____	BIDDER #1 DATE: _____	BIDDER #2 DATE: _____	BIDDER #3 DATE: _____
eVA VENDOR ID OR DUNS NUMBER >			
VENDOR NAME > VENDOR ADDRESS >			
CONTACT PERSON >			
PHONE NUMBER >			
FAX NUMBER >			

SCOPE OF WORK	FACTORS	BID INFORMATION	BID INFORMATION	BID INFORMATION
	LABOR COSTS			
	MATERIAL COSTS			
	TOTAL BID PRICE			
	PAYMENT TERMS			
	PERFORMANCE PERIOD/TIME			

******* ATTENTION PROCURING AGENTS, RECORD AND VERIFY THE INFORMATION BELOW WHEN APPLICABLE *******

REQUIRED	REQUIREMENT	CIRCLE "YES" OR "NO" TO INDICATE CONTRACTOR'S COMPLIANCE					
Y or N	**Contractor's License Number**						
Y or N	**Insurance/Workmans' Compensation**	**YES**	**NO**	**YES**	**NO**	**YES**	**NO**
Y or N	**Prebid Conference/Site Visit**	**YES**	**NO**	**YES**	**NO**	**YES**	**NO**
Y or N	**Warranty (Materials/Workmanship)**	**YES**	**NO**	**YES**	**NO**	**YES**	**NO**
Y or N	**Qualified Contractor Personnel**	**YES**	**NO**	**YES**	**NO**	**YES**	**NO**
Y or N	**References; # Provided: _____**	**YES**	**NO**	**YES**	**NO**	**YES**	**NO**

INSTRUCTIONS - TELEPHONE RECORD FOR NONPROFESSIONAL SERVICES

1. CAUTION: Care should be exercised when obtaining pricing information by telephone to purchase nonprofessional services. The scope of work should describe and define the task(s) which the contractor will be required to perform and itemize what the contractor is expected to accomplish. REMINDER: You are buying the contractor's time and effort, not a specific product.

2. BE PREPARED: Develop a firm understanding of the exact service to be purchased as this understanding will be communicated to the bidder(s). SUGGESTION: An effective way to gain the understanding needed to make an informed purchase decision is via a "using department" questionnaire.

3. READ AND EDIT: Read the scope of work provided on the requisition carefully. Ask yourself, "Do I fully understand the need(s) of the user, i.e., the recipient of the service?"; "Do I understand what he/she expects the contractor to do?"

4. MODIFICATIONS: All bidders must be given the chance to bid on the identical scope of work. If the original scope of work is modified during the telephone bid process, then each bidder previously contacted must be contacted again and allowed to bid on the revised requirement.

5. FINAL SCOPE OF WORK: The final product of your discussions with users and bidders MUST be transferred exactly to the APO. The scope of work becomes the basis for performance by the contractor, measurement of that performance by the agency, and the means by which the user's need is ultimately satisfied.

6. TERMS AND CONDITIONS: If the bidders are registered with the Commonwealth, you can assume familiarity with the procedures outlined in the *Vendors Manual*. In soliciting telephone bids, be sure bidders are made aware of any general and special terms and conditions which will apply to the procurement.

7. PRICING FACTORS: Major elements of the price of service(s) provided may need to be itemized e.g., materials, labor rates, travel, etc. If multiple pricing factors are involved e.g., labor rates, discounts off price lists, unit prices, and/or lump sums, be sure to have a clear and understandable bid evaluation procedure established.

THIS FORM MAY BE REDESIGNED TO FIT LOCAL NEEDS; HOWEVER, THE INFORMATION BLOCKS SHOWN ON THE REVERSE SIDE OF THIS EXAMPLE ARE THE MINIMUM REQUIREMENTS TO BE RECORDED WHEN USING THE TELEPHONE BID METHOD.

Annex 5-I

FAX BACK **PRICE QUOTE**

To be considered, Respond by - Date: _____ Time:_____

Late bids will not be accepted. Fax response back to Fax Number:_____

Agency: Commonwealth of Virginia	**Bidder:** **Fax Number:**

Refer questions to _____ Phone Number _____

This solicitation is subject to the provisions of the Commonwealth of Virginia General Terms and Conditions, the DGS/DPS *Vendors Manual* and special terms and conditions as attached.

Applicable if checked: [ ] Insurance required. [ ] Contractor license required (insert below).
License Number _____

The right is reserved to make an award on a line item, group, or total sum basis.

The following checked specification and/or bid procedure applies to this request:

[ ] Service: Submit quote based on description of service.

[ ] Generic: Bidder must list make, model and/or product description offered that will meet the below specified performance requirements.

[ ] Brand Name or Equivalent: Bidder is not restricted to the specific brand name, but if an equivalent is quoted, sufficient descriptive literature must be faxed with the quote.

[ ] Proprietary: Quotes will only be accepted for exact brand and model listed.

Quote F.O.B. Destination.

Item	Description of Item/Service	**Quan**	**Unit**	**Price**	**Total**

Delivery Date (ARO): _____ Page/Grand Total $_____
Prompt Payment Discount Terms:_____

My signature on this solicitation indicates that I will comply with all terms and conditions. I agree to furnish the goods/services at the price(s) indicated.

Bidder Signature: _____ Phone: _____
eVA Vendor ID or DUNS Number: _____ Date: _____

INSTRUCTIONS - FAX BACK PRICE QUOTE FORM

The use of this form for facsimile bidding is limited to the dollar thresholds authorized by DGS/DPS for obtaining quotes for goods and services. Review the following instructions prior to preparing the FAX BACK form.

1. SPECIFICATION: Check the appropriate type specification being used. If a service, ensure that the scope of work fully describes and defines the task(s) which the contractor will be required to perform. The use of separate additional pages may be necessary to convey the scope of work and any additional special terms and conditions.

2. DELIVERY INSTRUCTIONS: If delivery is required by a specific date, or the delivery/performance location will be different from agency address, or any specific shipping instructions apply, indicate this on the form or a separate sheet.

3. SPECIAL TERMS AND CONDITIONS: Check if insurance and/or contractor license required and include the written provision if work is to be completed on state owned or leased property. Include any other applicable special terms and conditions as an attachment..

4. BID EVALUATION AND AWARD: If the bid evaluation and award will be based on a combination of pricing factors, such as labor hour rates and discounts off price lists, the bid evaluation procedure or pricing scenario to be used must be explained on the form or a separate sheet.

CHAPTER 6

COMPETITIVE SEALED BIDDING

In this Chapter look for . . .

6 General
6.1 Competitive Sealed Bidding
6.2 Preparation and Issuance of IFBs
6.3 Sealed Bids - Receipt, Opening, Evaluation, and Award
6.4 Two-Step Competitive Sealed Bidding
6.5 Procedure for Two-Step Competitive Sealed Bidding
6.6 Combined Two-Step Competitive Sealed Bidding
6.7 Negotiation with the Lowest Responsible Bidder

Annexes
6-A Competitive Sealed Bid Process Flowchart
6-B Sample Format and Step-by-Step Procedures
6-C Vendor Data Sheet
6-D IFB Solicitation and File Checklist
6-E Prebid or Preproposal Conference Checklist
6-F IFB/RFP Addendum Format
6-G Notice of Intent to Award
6-H Notice of Award
6-I Small Business Subcontracting Plan

6. **General**. Competitive sealed bidding is the preferred method for acquiring goods, printing, non-capital outlay construction and nonprofessional services for public use when the estimated cost is over $50,000. The competitive sealed bidding process is depicted in the flowchart in Annex 6-A.

6.1 **Competitive Sealed Bidding**. The goods or service to be procured when using this method must be capable of being described so that bids submitted by potential contractors can be evaluated against the description in the Invitation for Bids (IFB) and an award made to the lowest responsive and responsible bidder; however, an award may be made to a reasonably priced DMBE-certified small business that is other than the lowest priced bidder when the provision for such an award is included in the solicitation (Appendix B, Section II, 7. J). This shall include DMBE-certified women-owned and minority-owned businesses that have received the DMBE small business certification. When the terms and conditions of multiple awards are so provided in the Invitation for Bids, awards may be made to more than one bidder. Competitive sealed bidding includes the issuance of a written IFB containing the specifications or scope of work/purchase description and the contractual terms and conditions applicable to the procurement. The terms or conditions of the solicitation must include how the agency or institution will publicly post the notice of the award or make the announcement of the decision to award the contract (see Appendix B, Section I, U.). The requirements set forth in the IFB may include special qualifications required of potential contractors, life-cycle costing, value analysis, and any other criteria such as testing, quality, workmanship, delivery and suitability for a particular purpose which may help in determining acceptability. IFBs must describe the requirements accurately and completely. Unnecessarily restrictive specifications or terms and conditions that unduly limit competition must be avoided. In addition to the public notice, bids are to be solicited directly from potential bidders. Any such direct solicitations shall include businesses selected from a list made available by the Department of Minority Business Enterprise (DMBE). In the competitive sealed bid process, bids are publicly opened and read aloud (see 3.1e). The bids are evaluated based upon the requirements set forth in the IFB (if multiple awards are so provided in the solicitation, awards may be made to the lowest responsive and responsible bidders). Best value concepts may be applied when procuring goods and nonprofessional services, but not construction or professional services. Solicitations may include criteria, factors and basis for the consideration of

best value and the process for the consideration of best value shall be as stated in the procurement solicitation (Best Value, defined in Appendix A).

6.2 **Preparation and Issuance of IFBs**.

a. **Format**. Prepare the IFB using the format and contents shown in Annex 6-B. Establish a due date and time that will allow sufficient time for potential bidders to seek clarification and for the issuance of an addendum, if necessary. The due date shall not be less than 10 days from the issue date of the IFB.

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

c. **Verify**. Review the IFB Solicitation and File Checklist (Annex 6-D) to assure that all requirements applicable to the procurement have been met (see 3.18 for posting requirements).

d. **Conferences/Site visits**. All prebid conferences and/or site visits shall be mentioned in both the IFB and any advertisement. If attendance at such a conference or site visit is a prerequisite for bidding, the public notice period shall be long enough to provide adequate opportunity for potential bidders to obtain a copy of the IFB and attend (see 4.3e). Mandatory prebid conferences scheduled during a period of suspended State business operations should be rescheduled by the purchasing agency to a date and time which will permit proper notification to all potentially interested participants. Purchase actions requiring advertisement in the *Virginia Business Opportunities (VBO)* shall be forwarded for publication as provided in 3.18. Any changes in the requirements of the solicitation must be made by written addendum (see Annex 6-F). The due date for receipt of bids should not be less than 10 days after the issue date of the addendum.

e. **Sources**.

1) Solicit at least six (6) sources, including a minimum of four (4) DMBE-certified small businesses, if available. The list should note which vendors are small businesses. The award may be made to other than the lowest responsive and responsible bidder when the provision for such an award is included in the solicitation (Appendix B, Section II, 7. J). If fewer than the required number of sources are solicited, the reasons must be documented in writing and placed in the purchase file.

2) If set-aside for small business participation only, solicit a minimum of six (6) DMBE-certified small businesses. The award to other than the lowest bidder clause may not be used.

f. **Small Business Subcontracting Plan**. In accordance with the Commonwealth's policy of facilitating and maximizing the participation of small businesses, which shall not exclude businesses owned by women and minorities in its purchasing programs, in order for the bid to be considered responsive for any prime contract in excess of $100,000 bidders shall include, as part of their bid, a Small Business Subcontracting Plan that ensures DMBE-certified small business participation as part of its efforts toward achieving the statewide goal of 40 percent of the Commonwealth's discretionary spending in combined prime and subcontracts for small businesses unless the solicitation has been set-aside for small businesses or no subcontactor opportunities exist. (See 3.10 h) See Appendix B, Section II, 36 for the special term and condition that shall be included in solicitations requiring the plan and the contractor to provide evidence of compliance with this requirement

If the bidder on the contract is a DMBE-certified small business, the bidder shall indicate such in Section A of Annex 6-I. This shall not exclude DMBE-certified women-owned and minority-owned businesses that have received the DMBE small-business certification. If the bidder is not a DMBE-certified small business, the bidder, to be considered responsive, is required to identify the portions of the contract the bidder plans to subcontract to DMBE-certified small business by completing and returning Section B of Annex 6-I. If no subcontracting opportunities exist see 3.10 h. No bidder or subcontractor shall be considered a Small Business, a Women-Owned Business or a Minority-Owned Business unless certified as such by the Department of Minority Business Enterprise (DMBE) by the due date for receipt of bids.

6.3 **Sealed Bids - Receipt, Opening, Evaluation, and Award**.

a. **Receipt**. Bids shall be received until the date and time specified in the IFB. Bids are then publicly opened and read aloud. Late bids shall not be considered. The public opening of bids for construction type contracts shall

be held 24 hours after the date and time set for submission of bids, *Code of Virginia*, § 2.2-4330A(ii). (See 3.1e for further guidance on the receipt and opening of sealed bids.)

b. **Opening**. After bid opening, each bid is evaluated to determine if it is responsive to the IFB. The responsive bids are then evaluated according to the criteria and/or evaluation procedure described in the IFB to determine which is the lowest bid (see 3.1e).

c. **Evaluation**. The lowest responsive bidder is then evaluated to determine if the firm is responsible (see 3.20).

d. **Award**. The contract is awarded to the lowest responsive and responsible bidder (see 3.20 and 3.21). If the provision for award to other than the lowest priced bidder was made by including the appropriate clause in Appendix B., Section II, 7. J. in the solicitation, the award may be made to a reasonably priced DMBE-certified small business bidder that is other than the lowest responsive and responsible bidder (see 3.10 f.). If the award is made to other than the lowest priced bidder, the award shall be made to the lowest responsive and responsible DMBE-certified small business bidder. No bidder or subcontractor shall be considered a Small Business, a Women-Owned Business or a Minority-Owned Business unless certified as such by the Department of Minority Business Enterprise (DMBE) by the due date for receipt of bids.

6.4 **Two-Step Competitive Sealed Bidding**. Two-step competitive sealed bidding is used when it is impractical to initially prepare a definitive purchase description to support an award based on prices. In such instances an IFB is issued requesting the submission of unpriced technical proposals, to be followed by an IFB for a price, limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation. There is no negotiation in the two-step competitive bid process; however, the agency at its option may request information from bidders to clarify material contained in their technical proposals.

6.5 **Procedure for Two-Step Competitive Sealed Bidding**.

a. **Step One**. Prepare an IFB requesting a technical proposal. The solicitation describes the agency's requirement in general terms and asks for a technical proposal describing how the bidder intends to meet the agency's requirements and what goods, equipment, and service, as applicable, will be furnished. Specify any mandatory technical data and information to be submitted in the proposal and any optional information desired. The cover sheet should explain the two-step procedure and emphasize that the technical proposal is not to include the bid price. It should indicate if a prebid conference will be conducted and if attendance is mandatory or optional. The proposals are publicly opened, and the names of the firms submitting proposals are announced. The agency then evaluates and selects those proposals which will meet its needs, based on the mandatory criteria specified in the solicitation. The evaluators may request written or oral discussions from bidders to clarify or amplify the material in the proposal. The contents of the technical proposal are not subject to negotiation and must be evaluated as submitted. They are not ranked but are determined to be acceptable or not acceptable for meeting the agency's needs. Only those responsive bidders whose technical proposals were determined to be acceptable will be invited to submit a bid price.

b. **Step Two**. Prepare an IFB to include a pricing schedule, reference the request for technical proposal title and number, and set a specific date and time for receipt of sealed bids. A public opening is held. Bids are evaluated, and the contract is awarded to the lowest responsive and responsible bidder. If the provision for award to other than the lowest priced bidder was made by including the appropriate clause in Appendix B., Section II, 7. J. in the solicitation, the award may be made to a reasonably priced DMBE-certified small business bidder that is other than the lowest responsive and responsible bidder (see 3.10 f.). The award document shall incorporate by reference the terms and conditions of the solicitation, the contractor's technical proposal, and the bid price.

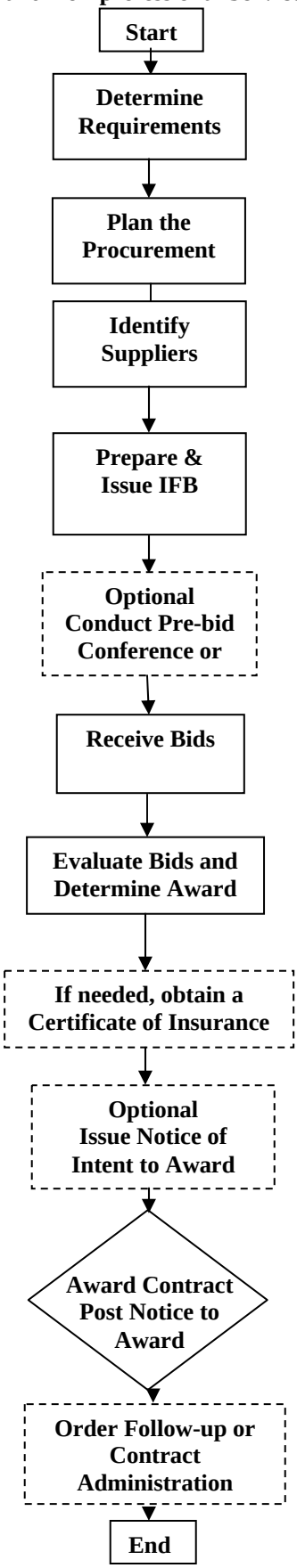
6.6 **Combined Two-Step Competitive Sealed Bidding**. The two steps can be combined by requiring the firms who respond to the solicitation to furnish their unpriced technical proposals in one sealed envelope and their bid prices in a second sealed envelope at the same time. The instructions issued must specify that the responses are to be submitted in two separate sealed envelopes - one marked "Technical Proposal" and the other "Bid Price." If the solicitation is a combined two-step IFB, the bidders should be instructed to identify both the technical proposal and pricing envelope with the bidder's name, company name and address, and bid reference number. The technical proposals are opened and evaluated as described in 6.5a, then only the price envelopes for those technical proposals selected as acceptable are opened. The award is made to the lowest responsive and responsible bidder. If the provision for award to other than the lowest priced bidder was made by including the appropriate clause in Appendix B., Section II, 7. J. in the solicitation, the award may be made to a reasonably priced DMBE-certified small business bidder that is other than the lowest responsive and responsible bidder (see 3.10 f.). The award

document will incorporate by reference the terms and conditions of the solicitation and include the contractor's technical proposal and the bid price. The envelopes containing the bid price for those proposals determined to be not acceptable will be returned unopened.

6.7 **Negotiation with the Lowest Responsible Bidder**. If the bid from the lowest responsible bidder exceeds available funds, the agency may negotiate with the apparent low bidder to obtain a contract price within available funds if the solicitation contains the appropriate clause in Appendix B, Section II, (*Code of Virginia*, § 2.2-4318). This clause shall not be used as a matter of routine. If the buyer decides to negotiate in such circumstances, the decision must be documented in writing in advance of the negotiations. Otherwise, unless canceled or rejected, a responsive bid from the lowest responsible bidder shall be accepted as submitted. "Available funds" are those budgeted by the agency for the requirement and designated as such prior to the issuance of the IFB. The purpose of this provision is not to force a bidder to take a lower price but rather to negotiate an acceptable change in requirements, including price, that is agreeable to both parties. Negotiations might include an extended delivery date, reduced quantity, different accessories, etc., with a corresponding reduction in price.

Annex 6-A

Competitive Sealed Bidding Process
For Goods and Non-professional Services over $50,000 (*Code of Virginia* § 2.2-4301)



Establish need, quantity and estimated cost, including all possible renewal periods, to determine sealed or unsealed. Check if available from a mandatory source then an optional use contract.

Plan lead times, purchase authority, external agency approval, specifications or scope of work needed, site visit or pre-bid conference and any special terms and conditions needed (Ts & Cs).

Identify a minimum of six sources including (4) DMBE-certified small businesses, if available (6.2 e). Solicit 6 DMBE-certified small businesses if set-aside and if competition exists [3.10 g (3)].

Include purpose, description/scope-or-work/specifications, special terms and conditions (Sample in Annex 6-B; Solicitation & File Checklist, Annex 6-D). Include method of payment, pricing schedule, attachments. Solicit sources as appropriate. Post ad on VBO in eVA.

An attendance roster must be signed by attendees if the pre-bid conference is mandatory (6.2d). Issue addenda if necessary.

Publicly open bids at the date/time specified in the IFB (3.1e).

Tabulate bids. Determine responsiveness, compliance with Ts & Cs. Evaluate responsibility. Determine award to the lowest responsible and responsible bidder unless the decision is to award to other than the lowest priced bidder per 3.10f.

When work is performed on state owned or leased property or facilities, the vendor must certify in writing that appropriate insurance coverage is in effect. You may obtain a certificate of insurance from the vendor (4.14).

Post for 10 days if a protest is anticipated (4.12 d, 6-G).

Award document is Notice of Award. Post Notice of Award in eVA for 10 days if a Notice of Intent to Award was not issued. Follow with an eVA Order unless exempted (14.9b) incorporating the bid & all Ts & Cs by reference. A 2-party contract is not used as an award document for bids.

Follow-up receipt, administer or assign a contract administrator as needed (Chapter 10).

Annex 6-B

SAMPLE FORMAT AND STEP-BY-STEP PROCEDURES

INVITATION FOR BIDS
(IFB)

Issue Date: IFB# _____

Title:

Commodity Code:

Issuing Agency: Commonwealth of Virginia _____
_____
_____
_____

Using Agency And/Or Location
Where Work Will Be Performed: _____
_____

Period Of Contract: From _____ Through _____ (*Renewable).
(* If contract has renewal clause)
Sealed Bids Will Be Received Until _____(Time and Date)_____

For Furnishing The Goods/Services Described Herein And Then Opened In Public.

All Inquiries For Information Should Be Directed To: _____ Phone: (____) _____.

IF BIDS ARE MAILED, SEND DIRECTLY TO ISSUING AGENCY SHOWN ABOVE. IF BIDS ARE HAND DELIVERED, DELIVER TO: _____
Street Address Building Floor Room No.

In Compliance With This Invitation For Bids And To All The Conditions Imposed Therein, The Undersigned Offers And Agrees To Furnish The Goods/Services At The Price(s) Indicated In Section VII, Pricing Schedule.

State Corporation Commission ID Number: _____ (See Special Terms and Conditions)
* Virginia Contractor License No. _____
Class: _____ Specialty Codes: _____

Name And Address Of Firm:
_____
_____
_____
_____Zip Code:_____
eVA Vendor ID or DUNS#:_____
Fax Number: (___) _____
E-mail Address: _____

Date: _____
By: _____
(Signature In Ink)
Name: _____
(Please Print)
Title: _____
Telephone Number: (___)_____

* PREBID CONFERENCE: A (mandatory/optional) prebid conference will be held on _____ at the _____. (Reference: Paragraph ____ herein). (If mandatory add: "NO ONE WILL BE ADMITTED AFTER ____(Time) ")* If special ADA accommodations are needed, please contact ___(Name)___ at __(phone number) by __(date) .
* Delete if not applicable.

Note: This public body does not discriminate against faith-based organizations in accordance with the *Code of Virginia*, § 2.2-4343.1 or against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.

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III. PREBID CONFERENCE

IV. GENERAL TERMS AND CONDITIONS

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VI. METHOD OF PAYMENT

VII. PRICING SCHEDULE

VIII. ATTACHMENTS

NOTE: See following pages for guidance in preparation of the IFB.

IFB STEP-BY-STEP PROCEDURES

The following step-by-step procedures are provided as a guide on how to properly prepare an IFB when soliciting competition for goods or nonprofessional services. These procedures apply to both sealed and unsealed bids.

STEP ONE:

DETERMINE REQUIREMENTS: What is needed, how much, where and when. In addition, a cost estimate should be prepared to assist in the determination as to whether or not sealed or unsealed bids should be solicited. The estimated or anticipated value of the contract must be determined first. This is the dollar value for the initial period of the contract, and includes all possible renewal periods.

STEP TWO:

DO PROCUREMENT PLANNING: Refer to chapters within this manual for guidance in determining the following: procurement lead time available, whether the procurement is for goods or nonprofessional services, whether your agency has authority for the procurement, if approval of another agency is required, the type of specifications or scope of work to be used, need for a site visit or prebid conference, the method of procurement to be used, if the procurement is to be set-aside for small business, etc.

STEP THREE:

PREPARE THE IFB: Use the sequence shown in the table of contents following Annex 6-B.

I. PURPOSE: If it is a complex or involved procurement, a purpose or summary statement of what is required should be included on the first page of the document. A purpose statement is not used for routine purchases of goods or services where it is readily apparent from the product or service name what is wanted.

II. SCOPE OF WORK/DESCRIPTION OF ITEM: Describe in complete detail the service to be performed or what is to be purchased, including quantity, as applicable. Specifications or drawings, if applicable, may be referenced and attached. **This is the most important section of the IFB because this is what bidders base their bid prices upon**. The following are examples of the beginning language:

A. GOODS (FURNISH ONLY): "The contractor shall furnish and deliver each of the following described item(s):"

1. The purchase description(s) must be complete and specify the minimum needs of the agency. Specifications may allow for bidding on a brand name or equivalent basis, if applicable.

2. Other items that should be addressed in the purchase description or in the Special Terms and Conditions, as appropriate, include but are not limited to inside delivery, set up and assembly, removal of trash, warranty, maintenance, packaging, etc.

B. GOODS (FURNISH AND INSTALL): "The contractor shall provide all labor, supervision, equipment, tools, materials and incidentals necessary to furnish and install (state product). All equipment, materials and installation work shall comply with this specification, the Virginia OSHA Standards, and the Virginia Uniform Statewide Building Codes."

C. SERVICES: "The contractor shall furnish all labor, supervision, equipment, tools, parts and materials, as necessary, to maintain the (type of equipment) listed in accordance with manufacturer's service manuals (or other)."

1. Ensure that the scope of work is complete. The contractor cannot be required to perform omitted work items.

2. Other items that should be addressed, as appropriate, include but are not limited to repair response time, contractor certification-license requirements, workmanship, repair and maintenance records, working hours, overtime, agency-furnished materials, etc.

III. PREBID CONFERENCE: If a prebid conference is desired, indicate date, time, place and whether attendance is mandatory or optional. See Annex 6-E for procedures.

IV. GENERAL TERMS AND CONDITIONS: Include the general terms and conditions for goods, services or non-capital outlay projects as appropriate. See Appendix B.

V. SPECIAL TERMS AND CONDITIONS: Select applicable special terms and conditions. Other special terms and conditions may be developed and included, as appropriate.

The following special terms and conditions must be included in IFBs, as indicated:

A. AUDIT: Term contracts only.

B. CANCELLATION OF CONTRACT: Term contracts only. Provides the cancellation of the contract by the agency without penalty when it is determined to be the best interest of the Commonwealth. This clause is not to be used to terminate a contract for default (Appendix B, Section II).

C. BID ACCEPTANCE PERIOD: If it is anticipated that it will take in excess of 30 days to make an award then the IFB should contain a bid binding clause, e.g., 45 days, 60 days, etc.

D. BID EVALUATION AND AWARD PROCEDURE: The IFB must specify how the award will be made, e.g., line item, extended grand total lump sum, hourly rate, etc., and if single or multiple awards. If the award is to be made on other than a lump sum, single hourly rate, or line item basis, the IFB must specify how the low bidder will be determined. The use of hypothetical situations, e.g., certain number of hours times the hourly rates, etc. is recommended. Such scenarios detailing the evaluation equation must state the factors that will be considered (hourly rates, overtime rates, holiday rates, cost of materials used, etc.) - e.g., hourly rate X 25 + overtime rate X 10 + holiday rate X 3 + price for CH&E pump model #4200 = Total sum. Weighted percentage factors times the bid rates may also be used; **however, the percentage factors to be used must be shown in the IFB**. Except when life cycle costing principles are employed, price is the sole determining factor under IFB procedures if the bidder is a responsive and responsible bidder.

E. RENEWAL OF CONTRACT: No term contract can be renewed unless a renewal clause is included in the IFB. (See Appendix B, Section II)

F. SMALL BUSINESS SUBCONTRACTING AND EVIDENCE OF COMPLIANCE: Required where the prime contract is in excess of $100,000 unless the solicitation has been set-aside for small businesses or no subcontactor opportunities exist. (See 3.10 h. and Appendix B, Section II, 36.) When this term and condition is used then include Annex 6-I in solicitations to be completed by the offeror.

VI. METHOD OF PAYMENT: Specify when payment will be made, e.g., upon delivery, monthly, quarterly, completion of project, etc. In addition, specify when and where invoices are to be submitted, e.g., by the 10th of the month following the month services were rendered, upon shipment, completion of project, etc. The method of payment should be specified in the IFB.

VII. PRICING SCHEDULE: Provide space and specify how price is to be submitted, e.g., lump sum, hourly rate, unit price, etc. For example: Lump Sum $_____ ; Each $_____ (See 3.6).

Time & Material Service Contracts: Where several categories of labor prices are requested, the following statement should be included in the pricing schedule. "Any bidder who enters $0 on a pricing blank or leaves it blank shall be considered nonresponsive."

VIII. ATTACHMENTS: List all applicable attachments with a brief statement on their purpose. For example: Vendor Data Sheet (see Annex 6-C) asks for the bidder's number of years in business and a specified number of references.

STEP FOUR:

ISSUE THE INVITATION FOR BIDS: Prepare the IFB cover sheet, identify potential sources, prepare a bidder's mailing list, advertise in the *Virginia Business Opportunities*, if appropriate, and publicly post the IFB and/or advertise in a newspaper of general circulation.

A. COVER SHEET: Use the coversheet format on Annex 6-B.

1. IFB#: A control number must be assigned to each IFB issued for identification purposes.

2. ISSUE DATE: This is the date that the IFB is publicly posted and sent to potential bidders.

3. TITLE: Designate if set-aside for small businesses. Use the following format (in all capital letters): "SET-ASIDE FOR SMALL BUSINESSES" followed by the title of the commodity or service being procured (e.g., SET-ASIDE FOR SMALL BUSINESSES - Security Services).

   COMMODITY CODE: Assign 5-digit commodity code from commodity code book.

4. PERIOD OF CONTRACT: The IFB must state either "from date of award," or specified date to a specified ending date, or delivery of goods or services. If it will be a renewable term contract, put the word "renewable"

in parenthesis after the "through" date if the contract contains a renewal clause. This will let potential bidders know right away if you anticipate the contract to go beyond the initial period.

5. SEALED BIDS WILL BE RECEIVED UNTIL: Specify the exact date and time which must be at least 10 days after the issue date for sealed solicitations. If the procurement does not meet the criteria for sealed bids, the wording may be changed to say "unsealed bids" and delete the words, "And then opened in public." If unsealed bids are solicited, include a fax number on the cover sheet for bids to be sent by fax.

B. IDENTIFY POTENTIAL SOURCES: Select appropriate number of sources to solicit. Prepare a solicitation list (see 2.3 and 3.10).

C. *VIRGINIA BUSINESS OPPORTUNITIES* (*VBO*): If the estimated total value of the pending procurement transaction exceeds $50,000, advertise in the *VBO*. This may require a longer solicitation period (see 3.18). Quick Quote is required to be used for purchases over $5,000 to $50,000 and is not required to be advertised or posted on the *VBO*.

D. PUBLIC POSTING: The IFB must be publicly posted on the DGS/DPS eVA web site. Agencies may also post on a designated bulletin board (normally outside the purchasing office) where the general public has access to it or advertise in a newspaper of general circulation or both (see 3.18 for more information on public posting).

STEP FIVE:

CONDUCT PREBID CONFERENCE AND/OR SITE VISIT: Prebid conferences and/or site visits are required for procurements over $100,000. See 4.3e for policy and Annex 6-E for guidelines on conducting prebid conferences and site visits. It is recommended that conferences not be made mandatory unless the procurement is so complex that attendance at the conference is required to understand the requirements of the procurement.

STEP SIX:

ISSUE ADDENDUM/ADDENDA: Issue addendum/addenda to correct errors, change bid due date, or to make any needed changes that were identified during the prebid conference, site visit, etc. See Annex 6-F for sample addendum. Upload addenda to the *VBO* Ads web link on the eVA web site (see 3.18).

STEP SEVEN:

RECEIVE BIDS: Receive bids until the due date and time specified in the IFB. Publicly open bids follow receipt or at the date and time specified in the IFB (see 3.1e). Unsealed bids may be opened and tabulated upon receipt.

STEP EIGHT:

TABULATE THE BIDS, DETERMINE RESPONSIVENESS, AND EVALUATE:

A. TABULATE BIDS: A bid tabulation form should be prepared showing all the vendors solicited, description of item/service, bid prices, bids not returned, and the total price.

B. DETERMINE RESPONSIVENESS AND EVALUATE BIDS: Review all the bids to determine if the bids conform in all material respects to the IFB (see 3.21). Substitution or addition of the bidder's own contractual terms, taking exception to any of the terms and conditions or specification requirements, failure to submit a bid bond if required in the IFB, failure to sign the bid, submission of sample goods which do not meet the specification, failure to acknowledge receipt of an addendum which affects price, quantity, quality, or delivery, etc., providing multiple prices for performing a service where a single price was solicited, failure to provide prices for all categories of labor in the pricing schedule of a time and materials service contract (if required), may make a bid nonresponsive. See *Vendors Manual*, Section 5.13, for guidelines on mistakes and informalities in bids. Evaluate all responsive bids in accordance with the bid evaluation procedure contained in the IFB to determine the low bidder.

STEP NINE:

DETERMINE RESPONSIBILITY OF THE LOW BIDDER: See 3.20 for guidance. If references were requested to be submitted with the bid, prepare questions, call references, and record their responses. In addition, visit the bidder's shop/office, if necessary, to satisfy any concerns about the bidder's capability to perform the service or provide the product.

STEP TEN:

POST NOTICE OF INTENT TO AWARD: Post for 10 days if a protest of the award is anticipated; otherwise, issue award. See 3.18c & d, and Annex 6-G.

STEP ELEVEN:

REQUEST INSURANCE CERTIFICATE (OPTIONAL): If the solicitation specified insurance and the agency desires to verify the bidder's coverage under the provisions of the insurance clause, the buyer may request the bidder to provide a certificate of insurance for the required coverage.

STEP TWELVE:

AWARD CONTRACT: Use Notice of Award (see Annex 6-H) or an eVA Order, as appropriate. Awards over $50,000 shall be posted on the DGS/DPS eVA web site (see 3.18).

STEP THIRTEEN:

POST AWARD: The award of a contract is the end of one phase of procurement and the beginning of another equally important phase. This latter phase is contract administration. Its purpose is to assure that the contractor's total performance is in accordance with all the terms and conditions of the contract. An individual should be assigned in writing to be responsible for contract monitoring and oversight. Any deviation from contract requirements must be brought to the attention of the contractor and immediate corrective action required (see Chapter 10).

Annex 6-C

VENDOR DATA SHEET

Note: The following information is required as part of your response to this solicitation. Failure to complete and provide this sheet may result in finding your bid nonresponsive. (In the case of a two-step IFB, it may cause the proposal portion to be determined to be not acceptable.)

1. Qualification: The vendor must have the capability and capacity in all respects to satisfy fully all of the contractual requirements.

2. Vendor's Primary Contact:

   Name: _____ Phone: _____

3. Years in Business: Indicate the length of time you have been in business providing this type of good or service:

   _____ Years _____ Months

4. Vendor Information:

   eVA Vendor ID or DUNS Number: _____

5. Indicate below a listing of at least four (4) current or recent accounts, either commercial or governmental, that your company is servicing, has serviced, or has provided similar goods. Include the length of service and the name, address, and telephone number of the point of contact.

   A. Company:_____Contact: _____

   Phone:(_____)_____ Fax: (_____)_____

   Project:_____

   Dates of Service: _____$ Value: _____

   B. Company_____ Contact: _____

   Phone:(_____)_____ Fax: (_____)_____

   Project:_____

   Dates of Service: _____$ Value: _____

   C. Company:_____ Contact: _____

   Phone:(_____)_____Fax:(_____)_____

   Project:_____

   Dates of Service: _____$ Value: _____

   D. Company:_____Contact: _____

   Phone:(_____)_____Fax:(_____)_____

   Project:_____

   Dates of Service: _____$ Value: _____

I certify the accuracy of this information.

Signed: _____Title: _____ Date: _____

When used: This form is used as an attachment to a solicitation when the agency or institution wishes to check the bidder's/offeror's references or to verify the bidder's/offeror's experience.

Annex 6-D

IFB SOLICITATION AND FILE CHECKLIST

✓	IFB SOLICITATION CHECKLIST	✓	FILE CHECKLIST
	Approval: If an approval is required, it should be obtained prior to preparing the solicitation and a copy placed in the solicitation file. Examples include: a release from Corrections to purchase a good(s) or service they produce from a commercial source, authority from the DGS/DPS for an agency to make a direct procurement in excess of its delegated purchase authority (see 1.2, 1.4 and 2.1 of this manual).		Special Approval
	Approved Request: Written approval to expend funds must be included in the file.		Purchase Requisition
	Specifications/Scope of Work: The most important part of every solicitation, the specifications or scope of work is a detailed description of what is to be procured. It establishes the quality level that is used to determine the acceptability of the goods or services delivered. The solicitation should clearly state what is wanted, where, when, and how many or how much.		
	Prebid Conferences/Site Visits: If a prebid conference or site visit is to be held, the solicitation must state the date, time, place, and whether attendance is optional or mandatory.		Prebid sign-in sheet
	General Terms and Conditions: The general terms and conditions or "boilerplate" must be included in every solicitation. Taxes, Use of Brand Names, and Transportation and Packaging General Terms and Conditions are not normally required for service contracts. The Insurance clause is not normally required for goods purchases.		
	Special Terms and Conditions: Each procurement is different, and for each solicitation the special terms and conditions used should be carefully reviewed to ensure that the proper ones are included. They should be essential to the requirement, protect the interests of the Commonwealth, and assist the bidder in understanding the agency's intent.		
	Method of Award: The method of award must be stated in the solicitation, and be based on the requirements stated therein. If the award is based on other than line item, lot, or grand total, a pricing scenario should be included to illustrate how the low bid will be determined.		
	Method of Payment: If payment is to be made prior to final acceptance of the service or goods to be provided, the solicitation should set forth the procedure; e.g., progress payments, partial payments, etc.		
	References: If references are required, the number and type should be specified in the solicitation, and those listed should be checked.		Results of Reference Checks (if requested)

Pre-Award, Receipt & Evaluation, and Post-Award Activities:			
	Bidders List: If set-aside for small business participation only, solicit a minimum of six (6) DMBE-certified small businesses, if available. If fewer than the required number of sources are solicited, the reasons shall be documented. If not set-aside for small businesses, solicit a minimum of six (6) sources, including a minimum of four (4) DMBE-certified small businesses, if available. Note which vendors are DMBE-certified small businesses. If fewer are solicited, include reason in procurement file.		Bidders List: Name, addresses of Bidders solicited
	Public Notice: Public notice of the solicitation is required at least ten days prior to the date set for receipt of bids by posting on the DGS/DPS eVA web site under *Virginia Business Opportunities* Awards (see 3.18).		Posted notice of solicitation from *VBO* Advertisement
	Solicitation: Original IFB, as issued.		Original solicitation
	Addenda: Any changes to the original solicitation must be made by written addendum, sent to each bidder attending a mandatory prebid conference, or each bidder on the bidder's list. A copy of all addenda issued must be maintained in the file.		Addenda issued and uploaded to eVA web site

	Questions/Responses: Answers to questions from potential bidders, which do not require a change to the solicitation, should be shared with all bidders on the bidder's list (or only those attending a mandatory prebid conference).		
	Bid Opening and Evaluation: Bids are closed at the date and time specified in the solicitation, then opened in public and tabulated. See 3.1e. Other factors may be used in the evaluation of the lowest responsive and responsible bidder if stipulated in the solicitation.		Bid tabulation sheet
	Notice of Award or Notice of Intent to Award: Post a Notice of Intent to Award for 10 calendar days if a protest of the award is anticipated; otherwise, issue the Notice of Award and post for 10 days on the DGS/DPS eVA web site (see 3.18).		Award document
	Successful Bid: A copy of the successful bid is retained in the active procurement file.		Successful bid
	Contract Administration: If the contract requires administration by other than the buyer, those responsibilities are assigned in writing.		Contract Administrator assignment
	Insurance/Licenses/References: If other information was required of the contractor, these items must be retained in the procurement file.		
	Unsuccessful Bids: Copies of the unsuccessful bids are retained as a part of the inactive permanent record.		Unsuccessful bids

The following items should be considered when developing the solicitation:	
	For BOTH Goods and Service Procurements:
	Bonds: For the procurement of goods or services other than construction, for any dollar amount, consider if bid, performance or payment bonds are necessary to protect the Commonwealth's interest.
	Cancellation Clause: If the solicitation will result in a term contract this clause should be included. This is not an appropriate clause for spot purchases (see Appendix B for sample clause).
	Liquidated Damages: If time and delivery are critical, it may be necessary to include a provision for liquidated damages. The basis for the amount of liquidated damages assessed must be supportable and reasonable, considering the service or goods being purchased and the impact of delay on the Commonwealth. **A liquidated damages clause is not to be used as a penalty** but as a means to access for damages which may be incurred by late delivery.
	Ownership of Documents: If the contract will result in the production of plans, camera ready copy, art work, or any other material that has been paid for by the Commonwealth and is required for subsequent or future production, then the appropriate special clause should be used in the solicitation to ensure ownership and retention by the Commonwealth.
	Performance Period: The performance period stated in the contract must include a starting and ending date, or the contract period must be for a specific period of time after a starting point; e.g., 120 days after date of award. If an option to renew the contract for an additional period is desired, the option must be stated in the solicitation.
	Prompt Payment Discount: If there is a certainty that payment can be made within a specified period, then a solicitation may be issued including a provision that discounts offered for prompt payment will be considered in determining the low bid. The provision should establish a minimum number of days that the agency will consider; e.g., prompt payment discounts for less than 30 days will not be considered.
	Small Business Subcontracting and Evidence of Compliance: Use in solicitations for goods, nonprofessional services, or non capital outlay construction when a small business subcontracting plan is a condition of the award. Required in solicitations valued over $100,000 that are not set-aside for small business unless a written determination is made, signed by the chief purchasing officer and supported by factual evidence explaining in sufficient detail why no subcontracting opportunities exist.
	Vendor Data Sheet: If the agency wishes to check bidder's/offeror's references or to verify the bidder's/offeror's experience, the Vendor Data Sheet should be included as an attachment to the solicitation (see Annex 6-C).

	For Goods Procurements:
	Inside Delivery: If inside delivery is required, the solicitation should so state. Consider specifying access requirements, e.g., elevator, loading dock, stairwell limitations.
	Samples/Demonstration: If samples or demonstration models are required, the type, quantity, size, the place, and time for submission must be stated in the solicitation.
	Technical Data: If technical data will be required for evaluation, the solicitation should specify when and where the data should be submitted.
	Warranty: If a warranty is required, specify the type and minimum warranty period in the solicitation.

	For Service Procurements:
	Bonds: If personal bonding is desired such as financial or security service, the requirement should be stated in the solicitation.
	Facilities: If the agency will provide facilities for use by the contractor, such as a storage area, this should be stated in the solicitation. If the contractor is required to provide equipment or facilities, it should also be stated in the solicitation.
	Hours of Work - Access to Agency Facilities: If the hours of work and access to the agency's facilities are restricted to certain time periods and dates, the solicitation should so specify. If the resulting contract is not a fixed price contract and overtime work can be anticipated, the pricing schedule should require a statement of overtime rates.
	Licensing Requirements: State any requirements for licensing. Contractors must comply with licensing requirements (see 3.4). The file must show documentation of the contractor's license number when written bids are required.
	Personnel Approval: If the agency desires to approve individuals employed by the contractor under the terms of the contract, or to exercise some degree of control over contractor's personnel, the requirement must be included in the solicitation.
	Response Time/Service Calls: If the vendor must respond to a service call within a specific time frame, the time frame must be specified in the solicitation.
	Sub-Contractor Approval: If sub-contractors may be involved in satisfying the requirement and there is a need to approve the sub-contractors on a project, then the solicitation should state what approvals the Commonwealth wishes to exercise (Annex B).

	For Construction Procurements:
	See 4.24 - The procurement of "construction" for "Capital Outlay Projects" is governed by the rules of the *Construction and Professional Services Manual*, issued by DGS/Division of Engineering and Buildings.
	Bonds: For construction contracts in excess of $100,000, a bid bond, performance and payment bonds are required.
	Drawings, As-Built: If "as-built drawings" are required, specify the number of copies, when, and to whom they are to be delivered.
	Drawings, Shop: If shop drawings are required, specify when and to whom they are to be submitted, approvals required, and time limits for review or changes, by both the agency and the contractor.
	Material/Supplies: If there is agency furnished material to be supplied to the contractor, the solicitation must provide for its control, and return, or disposition. If the contractor is to furnish material or supplies, the quantity, quality, and availability must be specified.

Annex 6-E

PREBID OR PREPROPOSAL CONFERENCE CHECKLIST

The following points are to be considered when prebid or preproposal conferences are used:

____ Requirement: Prebid or preproposal conferences are required for complex and/or large dollar value (over $100,000) solicitations (see 4.3e).

Preparation:

____ Reserve a meeting room suitable to accommodate the anticipated attendance. Be sure the site is accessible; if outside, specify an alternate date in the event of inclement weather.

____ Coordinate with the user to determine who will speak for the requisitioning activity and conduct the conference and/or site visit.

____ Have extra copies available of the solicitation and all attachments.

____ Electronically record the meeting, or have someone take notes.

____ Have a sign-in register prepared.

Conduct of Conference/Site Visit:

____ Note the date, time, location, and name of solicitation for recorded conferences. If this is a mandatory conference and a cutoff time for late arrivals was stated in the solicitation, remind attendees, and enforce it.

____ Welcome participants, and introduce key people.

____ Require all present to sign the register and include their title or position and the firm or agency they represent.

____ Explain the purpose of the conference/site visit - how it is to be conducted, how any addenda are issued, if necessary, and whether attendance is mandatory or not, etc. Advise all participants if the conference is to be recorded, and request that they state their name and affiliation each time they ask a question or make a statement. Attendees are to be told that no changes resulting from the conference are official unless issued in writing in the form of an addendum.

____ The solicitation serves as the agenda for the conference. Review the solicitation on a page-by-page basis with emphasis on special conditions, specifications, and site conditions that must be addressed in solicitation responses.

After the conference:

____ Review the transcript or recording to determine the need for revising the solicitation by issuing an addendum.

____ If an addendum is to be issued, prepare it as indicated in the example provided in Annex 6-F.

NOTE: The spokesperson for the agency should:

- control the conference/site visit;
- consider all vendor comments;
- encourage vendor participation; and
- repeat all questions and answers to ensure that they are heard and understood; and
- at the conclusion, summarize what was discussed.

State personnel at the conference should not:

- express opinions on the validity of the requirements;
- tell vendors how to do their job;
- discuss the pros and cons of vendor questions with other State personnel in front of the vendors;
- take a vote of the vendors on a question relative to the solicitation; or
- argue with vendors at the conference.

Annex 6-F

IFB/RFP ADDENDUM FORMAT

(Agency Letterhead)

September 15, 1998

ADDENDUM NO. 1 TO ALL BIDDERS:

Reference - Invitation For Bids:	IFB #905-02
Commodity:	Building Interior Alterations & Remodeling
Dated:	September 1, 1998
For Delivery To:	Departments, Institutions, Agencies, Commonwealth of Virginia
Bid Due:	See Attached
Prebid Conference:	September 11, 1998

The above is hereby changed to read:

1. Reference Page 1, Bid Due Date: Change to read "Sealed Bids Will Be Received Until 2 p.m., October 10, 1998."

2. Reference Page 1, Bid Opening Date: Change to read "Bids Will Be Opened in Public at 2 p.m., October 10, 1998."

3. Reference Page 2, Section 2, Paragraph 2.1 F., second line: Change "prime one coat and paint one coat" to read "prime one coat and paint two coats."

4. Reference Page 3, Section 2, Paragraph 2.2, first sentence, second line: Insert after "agency's work site" the words "within three (3) workdays."

5. Reference Page 3, Section 2, Paragraph 2.2, 11th line: After the sentence ending with the words "agency's purchase order" insert the following sentence: "The contractor, in establishing the target date for completion, will take into account the time required to obtain delivery of the required materials and, where appropriate, will advise the agency if the availability of materials will delay the start of work on the project beyond the five-day limit called for in the Pricing Schedule (Attachment A, Paragraph 5, on page 21)."

6. Reference Page 4, Section 4, Paragraph 4.1: After last sentence add, "The procedures in Chapter 5, paragraph 5.13, Mistakes in Bids, are modified to note that the provisions of § 2.2-4330A(ii) of the *Code of Virginia* apply to this procurement."

7. Reference Pages 17, 18 and 19 Headings: Above the word "QUANTITY" insert the word "ESTIMATED."

Note: A signed acknowledgment of this addendum must be received at the location indicated on the IFB either prior to the bid due date and hour or attached to your bid. Signature on this addendum does not substitute for your signature on the original bid document. The original bid document must be signed.

Very truly yours,

John Q. Public
Contract Officer
Phone: 804-123-4567

_____
Name of Firm

_____
Signature/Title

_____
Date

Annex 6-G

(AGENCY LETTERHEAD)

COMMONWEALTH OF VIRGINIA

NOTICE OF INTENT TO AWARD

DATE _____

COMMODITY _____

IN RESPONSE TO IFB/RFP # _____ OF ___(ISSUE DATE)

CONTRACTOR(S)/VENDOR(S) _____

Records for this procurement are now available for inspection by any (bidder/offeror) on this (IFB/RFP)

(Purchase officer/contract officer) _____(Signature)_____
Name typed or printed

Note: This form is used if a protest of the award is anticipated.

Annex 6-H

(AGENCY LETTERHEAD)

COMMONWEALTH OF VIRGINIA

NOTICE OF AWARD

Contract No. _____

Date _____

Vendor Reference No. _____

Name _____
Address _____
Your Bid/Offer Dated _____
In Response To _____
To Furnish _____
During the Period _____
hereby is accepted at prices and terms stated, subject to all conditions and requirements of the solicitation, purchase specifications, warranties, performance bond and other stipulations, if any.
The solicitation, your bid or offer and this notice of acceptance constitute the contract.

_____

Purchase Officer or Contract Officer

Note: This form (or the APO) is used to award a contract.

Annex 6-I

Small Business Subcontracting Plan

Definitions

Small Business: "Small business " means an independently owned and operated business which, together with affiliates, has 250 or fewer employees, or average annual gross receipts of $10 million or less averaged over the previous three years. Note: DMBE-certified women- and minority-owned businesses shall also be considered small businesses when they have received DMBE small business certification.

Women-Owned Business: Women-owned business means a business concern that is at least 51% owned by one or more women who are citizens of the United States or non-citizens who are in full compliance with United States immigration law, or in the case of a corporation, partnership or limited liability company or other entity, at least 51% of the equity ownership interest is owned by one or more women who are citizens of the United States or non-citizens who are in full compliance with United States immigration law, and both the management and daily business operations are controlled by one or more women who are citizens of the United States or non-citizens who are in full compliance with the United States immigration law.

Minority-Owned Business: Minority-owned business means a business concern that is at least 51% owned by one or more minority individuals or in the case of a corporation, partnership or limited liability company or other entity, at least 51% of the equity ownership interest in the corporation, partnership, or limited liability company or other entity is owned by one or more minority individuals and both the management and daily business operations are controlled by one or more minority individuals.

All small businesses must be certified by the Commonwealth of Virginia, Department of Minority Business Enterprise (DMBE) by the due date of the solicitation to participate in the SWAM program. Certification applications are available through DMBE online at www.dmbe.virginia.gov (Customer Service).

Bidder Name: _____

Preparer Name: _____ Date: _____

Instructions

A. If you are certified by the Department of Minority Business Enterprise (DMBE) as a small business, complete only Section A of this form. This shall not exclude DMBE-certified women-owned and minority-owned businesses when they have received DMBE small business certification.

B. If you are not a DMBE-certified small business, complete Section B of this form. For the bid to be considered and the bidder to be declared responsive, the bidder shall identify the portions of the contract that will be subcontracted to DMBE-certified small business in Section B.

Section A

If your firm is certified by the Department of Minority Business Enterprise (DMBE), are you certified as a (**check only one below**):

_____ Small Business

_____ Small and Women-owned Business

_____ Small and Minority-owned Business

Certification number:_____ Certification Date:_____

Section B

Populate the table below to show your firm's plans for utilization of DMBE-certified small businesses in the performance of this contract. This shall not exclude DMBE-certified women-owned and minority-owned businesses that have received the DMBE small business certification. Include plans to utilize small businesses as part of joint ventures, partnerships, subcontractors, suppliers, etc.

B. Plans for Utilization of DMBE-Certified Small Businesses for this Procurement

Small Business Name & Address **DMBE Certificate #**	**Status if Small Business is also: Women (W), Minority (M)**	**Contact Person, Telephone & Email**	**Type of Goods and/or Services**	**Planned Involvement During Initial Period of the Contract**	**Planned Contract Dollars During Initial Period of the Contract**
Totals $					

CHAPTER 7

COMPETITIVE NEGOTIATION

In this Chapter look for . . .

7. General
7.1 Competitive Negotiation (For Goods and Nonprofessional Services)
7.2 Preparation and Issuance of a Request for Proposal (RFP)
7.3 Sealed proposals - Receipt and Evaluation
7.4 Negotiation and Award
7.5 Best Value Acquisition

Annexes
7-A Competitive Negotiation Process Flowchart
7-B Sample Format and Step-by-Step Procedures
7-C Negotiation Tips/Guidelines
7-D Standard Contract Format (Competitively Negotiated Contracts)
7-E RFP Solicitation and File Checklist
7-F Best Value Criteria, Evaluation Methods & Scoring
7-G Small Business Subcontracting Plan
7-H Summary of Evaluation Ratings by Criteria Worksheet

7. **General**. The *Virginia Public Procurement Act* (*VPPA*) requires the use of competitive negotiation for the procurement of all professional services. For professional service procurement guidelines, refer to 4.23. Competitive negotiation may be the procurement method used for goods and nonprofessional services when it is not practicable or fiscally advantageous to use competitive sealed bidding (*Code of Virginia*, §§ 2.2-4301 & 2.2-4303C. The competitive negotiation process, for the purchase of goods and nonprofessional services, is depicted in the flowchart in Annex 7-A.

7.1 **Competitive Negotiation (for Goods and Nonprofessional Services)**. Competitive negotiation has the advantage of flexibility for describing in general terms what is being sought and the factors to be used in evaluating responses. It offers the opportunity, through negotiation, to change the content of an offer and pricing after opening. Negotiation is the dialogue that occurs to achieve mutually satisfactory objectives and benefits and to reconcile differences through mediation. This discussion provides the means for both the buyer and seller to reach agreement on a contract's content, terms, and conditions. In the course of negotiation, both parties should be able to reach a mutually acceptable agreement. Competitive negotiation is not "horse trading," "haggling," or an auction. Competitive negotiation, properly carried out, requires skill and extensive preparation on the part of the negotiators to achieve specific procurement objectives.

This method of procurement requires the issuance of a Request For Proposal (RFP) that describes in general terms the requirement, the factors that will be used to evaluate the proposal, the Commonwealth General Terms and Conditions, plus any special conditions including unique capabilities or qualifications that will be required. In a sealed program, all responses must be held unopened until the date and time specified for their receipt.

7.2 **Preparation and Issuance of a Request for Proposal (RFP)**.

a. Upon a determination made in advance by the public body and set forth in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to the public, goods, services, or insurance may be procured by competitive negotiation (*Code of Virginia*, § 2.2-4303C). The writing shall document the basis for

this determination. This document must be signed by the agency head or his/her designee, and be retained in the purchase file.

b. A written RFP is issued to describe in general terms that which is to be procured (see Annex 7-B for format and contents). The RFP must specify and list the specific requirements to be addressed by the offerors that will be used in evaluating the proposals and will contain other applicable contractual terms and conditions, including any unique capabilities or qualifications required of the contractor. When the terms and conditions of multiple awards are so provided in the RFP, awards may be made to more than one offeror. The terms or conditions of the RFP must state the manner in which public notice of the award or the announcement of the decision to award shall be given by the public body (see 3.18 and Appendix B, Section I, U.).

c. If the method for receiving "Best and Final Offers" (BAFO) is to be used in the negotiation and evaluation process, then this must be stated in the RFP for the offerors' notification and consideration.

d. Mandatory requirements should be kept to a minimum and refer only to those areas that are required by law or regulation or are such that they cannot be waived and are not subject to negotiation. The use of "shall" or "must" indicates a mandatory requirement. Specify any optional information desired. The factors for use in evaluation shall be stated in the RFP, and the weights assigned to them must be included in the RFP or shall be posted in the location used for public posting of procurement notices prior to the receipt and evaluation of proposals. A breakout of subcomponent weights need not be listed. Price shall be one of the factors considered, but need not be the determining one. Include a pricing schedule in the RFP (see Annex 7-B).

e. Review the RFP Solicitation and File Checklist (Annex 7-E) to assure that all specific requirements applicable to the procurement have been met (see 3.18 for posting requirements). In writing the scope of work and/or technical specifications for an RFP, use the term "contractor" to describe the person/firm that is to perform the requirements of the contract after award. Use the term "offeror" to describe who is to submit a response to the RFP.

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

g. Sources. For the purchase of material, equipment, supplies or nonprofessional services estimated to cost $50,000 or more:

1) Solicit at least six (6) sources, including a minimum of four (4) DMBE-certified small businesses, if available. The award may be made to other than the highest ranking offeror when the provision for such an award is included in the solicitation (Appendix B, Section II, 7. K). If fewer than the required number of sources are solicited, the reasons must be documented in writing and placed in the purchase file.

2) If set-aside for small business participation only, solicit a minimum of six (6) DMBE-certified small businesses. The award to other than the highest ranking offeror clause may not be used.

h. All preproposal conferences or site visits must be mentioned in the RFP and any advertisement of it. If attendance at such a conference or site visit is a prerequisite for submitting a proposal, the public notice period must be at least ten (10) days after issuance to provide adequate opportunity for potential offerors to obtain a copy of the RFP and attend. Preproposal conferences scheduled during a period of suspended State business operations must be rescheduled by the purchasing agency to a date and time which will permit proper notification to all potentially interested participants (Annex 6-E).

i. Purchase actions requiring advertisement in the *Virginia Business Opportunities (VBO)* should be forwarded to DGS/DPS in accordance with section 3.18. In addition to advertising in the VBO, RFPs over $50,000 shall be advertised in a newspaper of general circulation in the area in which the contract is to be performed. The advertisement should be a brief statement about the requirement and information on how to receive a copy of the solicitation.

j. In accordance with the Commonwealth's policy of facilitating and maximizing the participation of small businesses, which shall not exclude businesses owned by women and minorities in its purchasing programs when they have received DMBE small business certification, an evaluation criterion for all contracts in excess of $100,000 shall be a Small Business Subcontracting Plan (see Annex 7-G) unless the solicitation has been set-aside for small businesses or no subcontactor opportunities exist. (See 3.10 h). This requirement is to ensure DMBE-certified small business participation, which will assist efforts toward achieving the statewide goal of 40% of the Commonwealth's discretionary spending in combined prime and subcontracts for small businesses. When using numerical scoring, the weight for this evaluation criterion shall be at least 20% of the total evaluation points. If the weight for this criterion exceeds 20%, the weight should be based on the availability or likelihood of subcontracting opportunities for the goods or services being procured. See Appendix B, Section II, 36 for the special term and condition for submission of the Small Business Subcontracting Plan and Evidence of Compliance with this requirement.

If the offeror is a DMBE-certified small business, the offeror shall indicate such in Section A of Annex 7-G, and shall receive 100% of the points assigned to this evaluation criterion. If the offeror is not a DMBE-certified small business, the offeror is required to identify which portions of the requirement is planned to subcontract to DMBE-certified small businesses by completing and returning Section B of Annex 7-G. The maximum number of points available if the offeror is not a DMBE-certified small business is 75% of the points assigned to this evaluation criterion. No offeror or subcontractor shall be considered a Small Business, a Women-Owned Business or a Minority-Owned Business unless certified as such by the Department of Minority Business Enterprise (DMBE) by the due date for receipt of proposals.

(See Annex 7-G.)

7.3 **Sealed Proposals - Receipt and Evaluation**.

a. Public openings of proposals are not required. If a public opening is held, the names of the individuals, or the names of firms submitting proposals in a timely manner, is the only information read aloud and made available to the offerors and general public (see 3.1e for further guidance on the receipt and opening of proposals).

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

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

7.4 **Negotiation and Award**.

a. Negotiations are conducted with each of the offerors so selected. Negotiation allows modification of proposals, including price. Offers and counter-offers may be made as many times with each offeror as is necessary to secure a reasonable contract. After negotiations have been conducted with each of the selected offerors, the Commonwealth selects the offeror which, in its opinion, has made the best proposal; however the contract may be awarded to a reasonably ranked DMBE-certified small business offeror that is other than the highest ranking offeror (3.10 f.). In all cases, written confirmation shall be obtained from the offeror on any modifications of the original proposal. Once an Intent to Award notice is posted, no further negotiation shall be conducted.

b. When a provision for receiving best and final offers (BAFO) is included in the RFP, after negotiations, offerors are given the opportunity to submit a best and final offer. After the offeror submits a BAFO, no further

negotiation shall take place with that offeror. The offeror's proposal, if already received and scored, may be rescored to combine and include the information contained in the BAFO with the technical evaluation score previously assigned, and the award decision made. The contract file shall be documented to show the basis for the award, and include the final rescoring of the proposals following negotiation and receipt of best and final offers.

c. For competitively negotiated procurements, once evaluation and negotiations have been completed with selected offeror(s), the agency must prepare a written narrative summarizing the rationale for the ratings that are developed for each proposal received. The summary shall address the merits of the proposal relative to the evaluation ratings; it shall not compare proposals to each other (see Annex 7-H). Agencies are not required to furnish a statement of the reason why a particular proposal was not deemed to be the most advantageous (*Code of Virginia*, § 2.2-4359D). Offerors may inspect the proposal records after evaluation and negotiations are complete, but prior to award (see 3.17 and *Code of Virginia*, §2.2-4342D).

Note: Although DPS policy does not require agencies to conduct formal debriefings upon completion of the evaluation process, if after review of the procurement file a vendor requests further clarification of specific issues, the contract officer should be prepared to discuss pertinent information in regards to the procurement process. It is not intended that advice be provided in regards to how a vendor could strengthen future responses to make him more competitive, as that should be self-evident upon completion of his review.

d. Agencies may cancel a RFP, or reject proposals at any time prior to making an award (*Code of Virginia*, § 2.2-4319 and 3.1d in this manual).

e. The award documents shall incorporate, by reference, the terms and conditions of the RFP and the contractor's proposal, together with all written modifications thereof (see 4.12, Annex 6-G, and Annex 6-H).

f. Once negotiations have been finalized, complete the "Summary of Evaluation of Ratings by Criteria Worksheet" (Annex 7-H) and place in the procurement file. This worksheet should be a compilation of the evaluation committee's ratings and not done by or for each committee member.

7.5 **Best Value Acquisition (over $50,000).** The Virginia Public Procurement Act (VPPA) allows public bodies to consider best value concepts when procuring goods and nonprofessional services, but not construction or professional services. The criteria, factors, and basis for consideration of best value and the process for the consideration of best value shall be as stated in the procurement solicitation (Code of Virginia, § 2.2 -4300 C).

a. Agencies and institutions may obtain required goods or nonprofessional services using best value concepts. A written determination for the use of Best Value Acquisition (BVA) is required when using Best Value Acquisition under Competitive Negotiation.

b. Procurement Planning. A purpose statement must include that the solicitation is using best value procurement procedures. Describe Statement of Needs in general terms. Mandatory requirements are stated. Include Subjective/Objective evaluation criteria (see Annex 7-F for sample subjective/objective evaluation criteria).

c. Pre-proposal Conference/Site Visit. A pre-proposal conference or a site visit may be held if necessary. Seek information from vendors concerning criteria. See 7.2 h. for further guidance.

d. Evaluation Criteria. Criteria shall be stated in the solicitation. Unless otherwise stated, each criterion will be of the same importance. If criteria are not of the same importance, then include a statement at the end of the paragraph such as: Criteria are listed in the order of importance. Examples of criteria may be Technical Approach, Qualifications of Personnel, Resource Commitment, Past Performance, Risk and Incentives. If the value of the procurement is over $100,000 see 7.2 j.

e. General and Special Terms & Conditions. Add General and Special Terms and Conditions to the solicitation or incorporate them by reference. The Announcement of Award clause must be included in the solicitation. See Section II, Special Terms and Conditions for Award Clause, 7-I.

f. Select Rating and Scoring Method. Listed below are methods that can be used to score and evaluate proposals. Any method is acceptable.

1) Adjectival

2) Color
3) Numerical

See Annex 7-F for examples of each rating and scoring method.

g. Pricing Schedule/Scenario. Include how proposal prices are to be submitted. If lump sum pricing is not advantageous, use a pricing scenario to obtain prices for unknown quantities or hours. The pricing schedule should be tied to deliverables and must coincide with the method of payment stipulated in the solicitation.

h. Attachments. An attachment such as a Contractor Data Sheet may be used.

i. Sources may be solicited by mail, fax or electronically. Publicly post a copy of the solicitation on the DGS/DPS eVA web site www.eva.virginia.gov. *VBO* advertising is required. In addition to advertising in the *VBO*, BVAs over $50,000 shall be advertised in a newspaper of general circulation in the area in which the contract is to be performed.

1) Solicit at least six (6) sources, including a minimum of four (4) DMBE-certified small businesses, if available. The award may be made to other than the highest ranking offeror when the provision for such an award is included in the solicitation (Appendix B, Section II, 7. K). If fewer than the required number of sources are solicited, the reasons must be documented in writing and placed in the purchase file

2) If set-aside for small business participation only, solicit a minimum of six (6) DMBE-certified small businesses. The award to other than the highest ranking offeror clause may not be used.

j. Receipt. Best Value proposals must be received by the due date and time specified in the solicitation. Public openings of proposals are not required. If a public opening is held, the names of the individuals, or the names of firms submitting proposals in a timely manner, is the only information read aloud and made available to the offerors and general public (see 3.1e for further guidance on the receipt and opening of proposals).

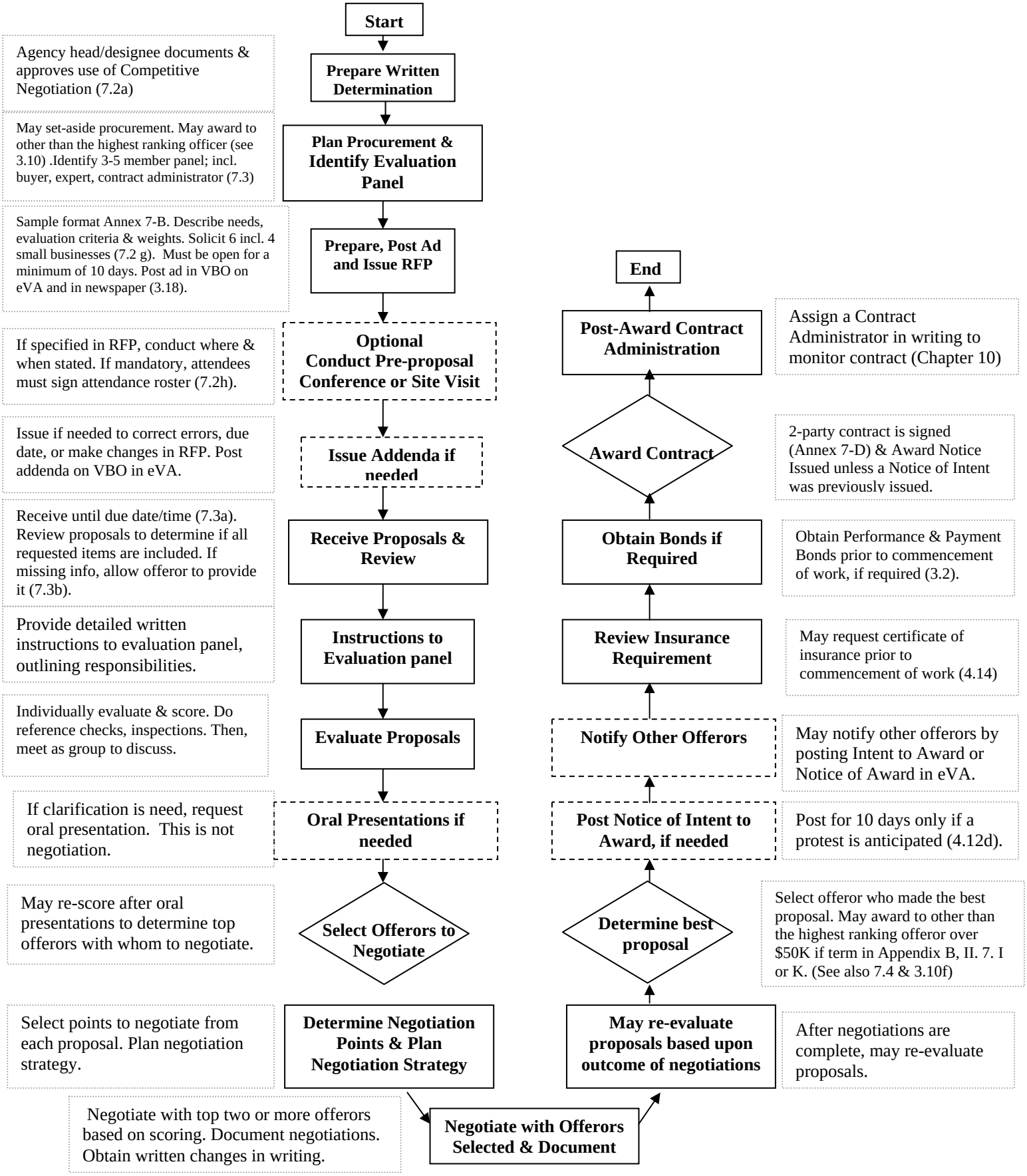
k. Evaluation. Use a Go/No-Go approach and eliminate those proposals that do not meet mandatory requirements. Evaluate vendor performance to determine responsibility. Check debarment records on the DPS eVA web-site, www.eva.virginia.gov. Evaluation criteria, other than price, are evaluated first. After rating the technical proposals, pricing is then considered. Consider the overall benefits and costs to the agency. A sample evaluation sheet is provided in Annex 7-F. During the evaluation phase it may be determined that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under consideration. A written determination shall be prepared and retained in the contract file to document the facts supporting the decision for selecting only one offeror and negotiating with that offeror.

l. Negotiation. Select points to be negotiated. Negotiations shall be conducted with two or more offerors deemed to be fully qualified and best suited among those submitting proposals, except as provided in 7.5 k. Document the results of negotiation in the procurement file.

m. Award. The award will be made to the responsible Offeror(s) whose proposal, conforming to the solicitation, is the most advantageous and represents the Best Value to the Commonwealth, costs and other factors considered. If not set-aside an award may be made, in whole or in part, to a reasonably ranked DMBE-certified small business offeror that is other than the highest ranking offeror (see 3.10 f.). Prepare a written justification and place in contract file. Post a Notice of Award or Notice of Intent to Award in the manner prescribed in the solicitation as required in 3.18.

Annex 7-A

Competitive Sealed Proposal Process
For Goods and Non-professional Services over $50,000 (*Code of Virginia* §2.2-4301)



Annex 7-B

SAMPLE FORMAT AND STEP-BY-STEP PROCEDURES
REQUEST FOR PROPOSAL (RFP)

Issue Date: RFP# _____

Title:

Commodity Code:

Issuing Agency: Commonwealth of Virginia_____
_____
_____
_____

Using Agency And/Or Location
Where Work Will Be Performed: _____
_____

Initial Period Of Contract: From _____ Through _____ (*Renewable).
(* If contract has renewal clause)

Sealed Proposals Will Be Received Until _____For Furnishing The Goods/Services Described Herein.
Time and Date

All Inquiries For Information Should Be Directed To: _____Phone: (_____)_____.

IF PROPOSALS ARE MAILED, SEND DIRECTLY TO ISSUING AGENCY SHOWN ABOVE. IF PROPOSALS ARE HAND DELIVERED, THEN DELIVER TO:

_____
Street Address Building Floor Room No.

In Compliance With This Request For Proposal And To All The Conditions Imposed Therein And Hereby Incorporated By Reference, The Undersigned Offers And Agrees To Furnish The Goods/Services In Accordance With The Attached Signed Proposal Or As Mutually Agreed Upon By Subsequent Negotiation.

State Corporation Commission ID Number: _____ (See Special Terms and Conditions)
* Virginia Contractor License No. _____
Class:_____ Specialty Codes: _____

Name And Address Of Firm:
_____ Date: _____

_____ By: _____
(Signature In Ink)

_____ Name: _____
(Please Print)

_____Zip Code: _____ Title: _____

EVA Vendor ID or DUNS number _____ Phone: (_____)_____

E-mail: _____ Fax: (_____)_____

* PREPROPOSAL CONFERENCE: A (mandatory/optional) preproposal conference will be held on _____ at the _____. (Reference: Paragraph ____ herein). (If mandatory, add:) NO ONE WILL BE ADMITTED AFTER ___(Time).
* Delete if not applicable.

Note: This public body does not discriminate against faith-based organizations in accordance with the *Code of Virginia*, § 2.2-4343.1 or against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.

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NOTE: FOR SECTIONS NOT USED ENTER THE WORD “OMITTED” IN PAGE NUMBER COLUMN.

COMPETITIVE NEGOTIATION STEP-BY-STEP PROCEDURES

The following step-by-step procedures are a guide on how to properly prepare an RFP for the procurement of goods or nonprofessional services by competitive negotiation.

STEP 1 - PREPARE WRITTEN DETERMINATION

The use of competitive negotiation requires a written determination made in advance that competitive sealed bidding is either not practicable or not fiscally advantageous to the Commonwealth. The writing shall document the basis for this determination (*Code of Virginia,* § 2.2-4303). It is not sufficient to only state that "it is not practicable or not fiscally advantageous." The written statement must explain why it is not practicable or not fiscally advantageous. This must be signed by the agency head or his/her designee and becomes part of the procurement file (see 7.2a).

STEP 2 - PREPARE THE REQUEST FOR PROPOSAL (RFP)

Competitive negotiation is a method of contractor selection which includes issuance of a written RFP indicating in general terms that which is sought to be procured, specifying the factors that will be used in evaluating the proposals, and containing or incorporating by reference the applicable contractual terms and conditions including any unique capabilities or qualifications which will be required of the contractor (*Code of Virginia,* § 2.2-4301). The RFP should be prepared using the sequence shown on Annex 7-B. The use of this procedure by state agencies standardizes format and makes it easier for state personnel to prepare, evaluate, award, and administer a competitive negotiation program. It also makes it easier for vendors to understand and respond to RFPs. Determine if the procurement is to be set-aside for small businesses.

Preparing the RFP - The following is an explanation of the contents of each section of an RFP. Not all sections need be used in every RFP.

I. PURPOSE: Include a brief statement of the purpose of the RFP. The following are typical examples of language used in writing this section for goods and services.

A. Goods: "The purpose of this Request for Proposal (RFP) is to solicit sealed proposals to establish a contract through competitive negotiation for the (purchase/lease-purchase/lease/rental) of (generic commodity description) by the (agency name)."

B. Services: "The purpose of this Request for Proposal (RFP) is to solicit sealed proposals to establish a contract through competitive negotiation for the purchase of (type of consultant services/type of maintenance services/type of other nonprofessional services) by the (agency name)."

II. BACKGROUND: Optional. If used, the brief narrative should describe historical facts or events leading up to the present requirement for that which is to be purchased. It sets the stage for the proposed procurement.

III. STATEMENT OF NEEDS:

A. The Statement of Needs should describe in general terms, the service to be performed or the goods to be purchased, including quantity, if applicable. Specifications and/or drawings may be referenced by attachment.

B. Items that should be addressed in the Statement of Needs include the specific tasks, subtasks, parameters, and limitations restricting such task or subtasks which should be accomplished and/or considered by the contractor or included in the final product. Consequently, each task should be numbered and organized in such a manner as to identify it as an individual task among many. This is one of the most important sections of the RFP, because it is the section upon which the offerors will base their proposed prices.

C. Other items that should be addressed, as appropriate, include but are not limited to, agency furnished materials such as State plans, statistical reports, office space, personnel, response times, workmanship, working hours, overtime, access to work site, etc.

D. The following content information and language usage should be observed in writing the Statement of Needs:

1. Do not include Proposal Preparation and Submission information in the Statement of Needs section of the RFP. Likewise, do not place Statement of Needs requirements in the Proposal Preparation and Submission Instructions Section of the RFP (see IV, Proposal Preparation and Submission Instructions).

2. In stating a requirement or fact, avoid duplication unless necessary. Duplicating a requirement, especially if it is worded differently, may be confusing. The weaker construction of two different sentences addressing the same requirement may be construed to govern in case of controversy. Courts normally rule against the writer of a document in such matters.

3. Use the word "contractor" in the Statement of Needs to describe the person/firm under contract. Use the word "offeror" to describe who is to submit a response to the RFP. Do not use the words offeror, successful proposer, consultant, vendor, selected firm and provider or other similar nouns to identify the contractor. These terms may create severe problems since they also identify other types of persons besides a contractor. Be consistent in the use of a term to describe a person, function, action, item or organization. For example, do not identify a person or role as a "Project Leader" in one instance and then subsequently identify the same person as a "Project Manager" in another sentence. Technically, two different positions may contractually exist in a case of strict interpretation. More importantly, the offerors may be confused by the use of different terms.

4. Use the words "must" or "shall" only for those areas which are mandatory; that is, they are required by law or regulation or are such that they cannot be waived and are not subject to negotiation. The writer should avoid the use of such phrases as "The contractor will ...." and "The report is to be completed by ...." to describe a mandatory requirement. These, and other similar expressions, may be construed as future tense or as a condition of fact rather than a mandatory requirement.

5. The words "should" and "may" are to be used to describe an advisory or permissible action for which negotiations are anticipated or desired.

E. The following are samples of the beginning language:

1. Goods: "The contractor shall furnish ____ each of the following described item(s):"

a. The description must specify the minimum desired functions of the item(s) and/or the desired characteristics, design, etc., if applicable. The use of brand names is more appropriate in an IFB than a RFP.

b. Other items that should be addressed include but are not limited to inside delivery, set up and assembly, removal of trash, warranty, maintenance, packaging, etc., as appropriate.

2. Consultant Services: "The contractor shall furnish all labor and resources to conduct a management study of (name of specific area, etc.) for the purpose of analyzing and recommending appropriate changes to improve efficiency, etc."

3. Nonprofessional Services: "The contractor shall furnish all labor, materials, etc. to provide Janitorial Services/Dental Services/Food Service Operations/etc. to the (name of the agency or specific areas, etc.)."

IV. PROPOSAL PREPARATION AND SUBMISSION INSTRUCTIONS:

A. GENERAL INSTRUCTIONS: This section is used to inform the potential offerors of how many copies of the proposal must be submitted, how the proposal is to be prepared, the possibility of oral presentations by the offerors, etc. To reduce administrative burden and costs, request enough copies so that each evaluator is provided a copy. The following are sample paragraphs normally used in this section.

1. RFP Response: In order to be considered for selection, offerors must submit a complete response to this RFP. One (1) original and (_) copies of each proposal must be submitted to the issuing agency. No other distribution of the proposal shall be made by the offeror.

2. Proposal Preparation:

a. Proposals shall be signed by an authorized representative of the offeror. All information requested should be submitted. Failure to submit all information requested may result in the purchasing agency requiring prompt submission of missing information and/or giving a lowered evaluation of the proposal. Proposals which are substantially incomplete or lack key information may be rejected by the purchasing agency. Mandatory requirements are those required by law or regulation or are such that they cannot be waived and are not subject to negotiation.

b. Proposals should be prepared simply and economically, providing a straightforward, concise description of capabilities to satisfy the requirements of the RFP. Emphasis should be placed on completeness and clarity of content.

c. Proposals should be organized in the order in which the requirements are presented in the RFP. All pages of the proposal should be numbered. Each paragraph in the proposal should reference the paragraph number of the corresponding section of the RFP. It is also helpful to cite the paragraph number, subletter, and repeat the text of the requirement as it appears in the RFP. If a response covers more than one page, the paragraph number and subletter should be repeated at the top of the next page. The proposal should contain a table of contents which cross-references the RFP requirements. Information which the offeror desires to present that does not fall within any of the requirements of the RFP should be inserted at an appropriate place or be attached at the end of the proposal and designated as additional material. Proposals that are not organized in this manner risk elimination from consideration if the evaluators are unable to find where the RFP requirements are specifically addressed.

d. As used in this RFP, the terms "must", "shall", "should" and “may” identify the criticality of requirements. "Must" and "shall" identify requirements whose absence will have a major negative impact on the suitability of the proposed solution. Items labeled as "should" or “may” are highly desirable, although their absence will not have a large impact and would be useful, but are not necessary. Depending on the overall response to the RFP, some individual "must" and "shall" items may not be fully satisfied, but it is the intent to satisfy most, if not all, "must" and "shall" requirements. The inability of an Offeror to satisfy a "must" or "shall" requirement does not automatically remove that Offeror from consideration; however, it may seriously affect the overall rating of the Offerors’ proposal.

e. Each copy of the proposal should be bound or contained in a single volume where practical. All documentation submitted with the proposal should be contained in that single volume.

f. Ownership of all data, materials, and documentation originated and prepared for the State pursuant to the RFP shall belong exclusively to the State and be subject to public inspection in accordance with the *Virginia Freedom of Information Act.* Trade secrets or proprietary information submitted by an offeror shall not be subject to public disclosure under the *Virginia Freedom of Information Act*; however, the offeror must invoke the protections of § 2.2-4342F of the *Code of Virginia*, in writing, either before or at the time the data or other material is submitted. The written notice must specifically identify the data or materials to be protected and state the reasons why protection is necessary. The proprietary or trade secret material submitted must be identified by some distinct method such as highlighting or underlining and must indicate only the specific words, figures, or paragraphs that constitute trade secret or proprietary information. The classification of an entire proposal document, line item prices, and/or total proposal prices as proprietary or trade secrets is not acceptable and will result in rejection of the proposal.

3. Oral Presentation: Offerors who submit a proposal in response to this RFP may be required to give an oral presentation of their proposal to the agency. This provides an opportunity for the offeror to clarify or elaborate on the proposal. This is a fact finding and explanation session only and does not include negotiation. The issuing agency will schedule the time and location of these presentations. Oral presentations are an option of the purchasing agency and may or may not be conducted.

B. SPECIFIC PROPOSAL INSTRUCTIONS: Use this section to inform the potential offerors of the information that must be submitted with their proposals. The information requested is used as the basis for developing the proposal evaluation criteria. The following is a sample of the beginning language and examples of typical specific requirements:

“Proposals should be as thorough and detailed as possible so that the (agency name) may properly evaluate your capabilities to provide the required goods/services. Offerors are required to submit the following items as a complete proposal:

1. Return the RFP cover sheet and all addenda acknowledgments, if any, signed and filled out as required.

2. Offeror Data Sheet, included as an attachment to the RFP, and other specific items or data requested in the RFP.

3. A written narrative statement to include:
   a. Experience in providing the goods/services described herein.
   b. Names, qualifications and experience of personnel to be assigned to the project.
   c. Resumes of staff to be assigned to the project.

4. Specific plans for providing the proposed goods/services including:
   a. List of proposed equipment/goods/etc. including operating parameters, illustrations, etc.
   b. What, when and how the service will be performed.
   c. Time frame for completion (if not otherwise specified by the agency in the statement of needs).

5. Proposed Price. Indicate in the pricing schedule, Section XI of the RFP, if provided.

6. Small Business Subcontracting Plan – Summarize the planned utilization of DMBE-certified small businesses which include businesses owned by women and minorities, when they have received DMBE small business certification, under the contract to be awarded as a result of this solicitation. This is a requirement for all prime contracts in excess of $100,000 unless the solicitation has been set-aside for small businesses or no subcontracting opportunities exist. (see 3.10 h and Appendix B, Section II, 36.) Complete Annex 7-G.

V. EVALUATION AND AWARD CRITERIA: This section is in two parts. The first part, "Evaluation Criteria," tells the offerors how the proposals will be evaluated. **The criteria must be developed from the items asked for in the "Specific Proposal Instructions" section**. The point values assigned to each of the evaluation criteria shall be included in the RFP or be posted in the location used for public posting of procurement notices prior to the receipt of proposals. Prepare a written evaluation plan showing the maximum point values to be assigned to each of the evaluation criteria appearing in the RFP. It is suggested that the point values assigned to the evaluation criteria when totaled equal 100. The second part is the "Award of Contract" clause that states how the award will be made. Select from Appendix B, Section II, the appropriate award clause. The following is a **sample** of the beginning language and example evaluation and award criteria that can be modified to reflect the agency's needs:

A. EVALUATION CRITERIA: "Proposals shall be evaluated by the (name of issuing agency) using the following criteria:"

Instructions to Buyers: The basis for evaluation must be known in advance. Phrases such as "and any other criteria the State may decide to use" are not specific, violate the intent of the General Assembly expressed in § 2.2-4300C of the *Code of Virginia,* and shall not be used. Experience and qualifications not only of the firm but also of the personnel to be assigned to the contract shall be included in the "Experience and qualifications" criterion, when appropriate (e.g., services, furnish and install).

These are examples of **typical criteria** used. There is no specific number required but the number should normally be kept to no more than five criteria. The numerical weight assigned to each criterion must be determined by the agency and stated in the RFP, or they must be assigned and posted prior to the opening of proposals. The weights shown here are **only for illustration purposes, except the weight for the small business subcontracting plan shall not be less than 20% of the total point value**. A DMBE-certified small business that serves as a prime vendor will receive full credit for small business utilization. Other businesses will receive credit based on their Small Business Subcontracting Plan.

	FOR SERVICES	POINT VALUE
1.	Specific plans or methodology to be used to perform the services	25
2.	Price	25
3.	Experience and qualifications of personnel assigned to perform the services	20
4.	Small Business Subcontracting Plan	20
5.	References from other clients	10
	TOTAL	100

	FOR GOODS	POINT VALUE
1.	Quality of equipment offered and suitability for the intended purpose	25
2.	Experience and qualifications of personnel in providing the goods	20
3.	Price	20
4.	Small Business Subcontracting Plan	20
5.	Maintenance Support	10
6.	Scope and suitability of training offered to State personnel	5
	TOTAL	100

Note: If the solicitation has been set-aside for small business or no subcontracting opportunities exist (see 3.10 h), the criteria for Small Business Subcontracting Plan and the point value associated with this criteria will be deleted. The point value shall be re-allocated to the other evaluation criteria.

B. AWARD OF CONTRACT: See Appendix B, Section II for the appropriate clause.

VI. REPORTING AND DELIVERY INSTRUCTIONS: This section is mandatory if the anticipated value of the contract exceeds $100,000, to include all renewal periods. When used, this section should identify all documentation, reports, etc., and the specific delivery date for each deliverable item that the contractor must furnish during the contract period. In writing this section, the following typical language is provided as an example:

A. "The contractor shall provide the following documentation to (a specific person or title) for approval by the agency"

B. "The contractor shall provide a (weekly/monthly) progress report to (a specific person or title) outlining the following:"

1. The specific accomplishments achieved during the reporting period.

2. The specific tasks completed pursuant to the provisions of the contract and the completion dates of such tasks.

3. The projected completion dates for the remaining specific tasks required by the contract.

C. "Within thirty (30) calendar days after the award date of the contract, the contractor shall furnish a preliminary outline of the organizational structure of the final report to (a specific person or title)."

1. The preliminary outline shall delineate the main topics and subtopics that will later be described in detail in the final report.

2. Beneath each topic and subtopic, the contractor shall furnish a brief narrative description of the subject matter encompassed by the topic or subtopic.

3. The agency shall have the right to edit, modify and/or rearrange the organizational structure, topics, and subtopics as it deems necessary to insure the inclusion of all work required by the contract.

D. "At least two (2) weeks prior to the submission of the final report, the contractor shall present a preliminary draft of the final report to (a specific person or title). The agency shall have the right to modify and/or to require additional elaboration as it deems necessary to insure a comprehensive and thorough written study of all work required by the contract."

E. "On or before the date specified in the contract, a final report shall be delivered to (a specific person or title) for its approval. The contractor shall furnish ( ) copies of the final report."

F. "The contractor shall make at least one (1) oral presentation of the final report to persons or organizations as deemed necessary by the agency."

NOTE: The requirement to provide a report or other deliverable may be mandatory; however, the specific content of the report, format, etc. may be negotiable. Language which can be used may be, "The contractor shall provide a monthly progress report to (a specific person or title). These reports should contain the following information: . . . ."

G. See 3.10 h. outlining requirements for a Small Business Subcontracting Plan in solicitations where the prime contract is in excess of $100,000. Prime contractors are required to complete Annex 7-G which should be attached to the RFP solicitation. For competitive negotiation, the Small Business Subcontracting Plan shall be used as one of the evaluation criteria. A DMBE-certified small business who serves as prime contractor will receive full credit for subcontracting for work performed by such prime. See Appendix B, Section II, 36 for the special term and condition that may be included in RFPs requiring the contractor to provide evidence of compliance with this requirement. Receipt of a small business subcontracting plan may be a condition of the award and if so, a requirement for a report from the prime contractor must be stated in the solicitation indicating the frequency of the report required in the contract.

VII. PREPROPOSAL CONFERENCE: If a preproposal conference is desired, indicate date, time, place, and whether attendance is mandatory or optional. See Appendix B, Section II for correct wording.

VIII. GENERAL TERMS AND CONDITIONS: Include the general terms and conditions for goods and services. See Appendix B, Section I. Use the additional general terms and conditions in Appendix B, Section III, for non capital outlay construction projects, as appropriate. Delete General Terms and Conditions that are not applicable to the procurement such as clauses Q, R. S which are not applicable to service contracts; clause T for goods purchases.

IX. SPECIAL TERMS AND CONDITIONS: Select from Appendix B, Section II, all applicable special terms and conditions. Other special terms and conditions may be developed and included, if approved by your agency's legal advisor.

The following special terms and conditions must be included in all RFPs or as indicated:

A. AUDIT: Term contracts only.

B. CANCELLATION OF CONTRACT: Term contracts only. Provides for the cancellation of the contract by the agency without penalty when it is determined to be in the best interest of the Commonwealth. This clause is not to be used to terminate a contract for default (see Appendix B, Section II).

C. RENEWAL OF CONTRACT: A term contract normally cannot be renewed unless a clause of this type is included in the RFP (see Appendix B, Section II).

D. SMALL BUSINESS SUBCONTRACTING PLAN AND EVIDENCE OF COMPLIANCE: Required where the prime contract is in excess of $100,000 unless the solicitation has been set-aside for small businesses or no subcontracting opportunities exist. (see 3.10 h and Appendix B, Section II). When this term and condition is used then include Annex 7-G in solicitations to be completed by the offeror.

X. METHOD OF PAYMENT: Specify when payment will be made, i.e., monthly, quarterly, completion of project, etc. In addition, specify when invoices are to be submitted, i.e., by the 10th of the month following the month services were rendered, upon shipment, upon completion of project, etc.

XI. PRICING SCHEDULE: Provide space and specify how price is to be submitted, i.e., lump sum, hourly rate, unit price, etc. For example: Lump Sum $_____

XII. ATTACHMENTS: List any attachments including their purpose.

STEP 3 - ISSUING THE RFP

Prepare the RFP cover sheet, identify potential sources, prepare a vendor mailing list, publicly post in the *Virginia Business Opportunities*, and advertise the RFP in a newspaper or newspapers of general circulation in the area in which the contract is to be performed (see 3.18b).

I. COVER SHEET: Utilize the cover sheet format on Annex 7-B.

A. RFP#: A control number should be assigned to each RFP issued.

B. TITLE: Designate if set-aside for small businesses. Use the following format (in all capital letters): "SET-ASIDE FOR SMALL BUSINESSES" followed by the title of the commodity or service being procured (e.g., SET-ASIDE FOR SMALL BUSINESSES - Security Services).

COMMODITY CODE: Assign the appropriate five digit commodity code for either goods or services.

C. ISSUE DATE: This is the date that appears on the RFP and is the date the RFP is to be publicly posted and mailed to selected sources.

D. PERIOD OF CONTRACT: The RFP must state: From - "date of award" or a specified date, Through - a specified date, a specified number of days after award, "completion of project," or a specified delivery date.

E. SEALED PROPOSALS WILL BE RECEIVED UNTIL: Specify the exact date and time for receipt of proposals, at least 10 calendar days from date of issue. Public openings of proposals is not required but may be held if desired. If a public opening is held, add "And Then Opened In Public" after the date and time stated on the cover page of the solicitation.

II. IDENTIFY POTENTIAL SOURCES: Select the appropriate number of sources and prepare a solicitation list (see 3.10).

III. *VIRGINIA BUSINESS OPPORTUNITIES* (*VBO*): Advertise in the *VBO* if the estimated total value of the pending procurement transaction is over $50,000 for goods, services, or construction. See section 3.18.

IV. PUBLIC POSTING AND ADVERTISING: A RFP over $50,000 must be publicly posted on the DGS/DPS eVA web site under *VBO* Ads. Agencies may also post on a designated bulletin board where the general public has access to it. **If it is over the small purchase limit ($50,000) both posting and newspaper advertising are required** (see 3.18).

STEP 4 - SELECT AN EVALUATION PANEL

Select and assign a proposal evaluation panel. The evaluation panel should be kept small, three to five is recommended, including the buyer or some other person knowledgeable of the *VPPA*, the *Vendors Manual* and the *Agency Procurement and Surplus Property Manual (APSPM)*. Experience has shown that larger panels are unwieldy and make it difficult to coordinate meetings and negotiating sessions and to reach evaluation decisions.

STEP 5 - CONDUCT PREPROPOSAL CONFERENCE AND/OR SITE VISIT

Conduct preproposal conference and/or vendor visit of work site, if required in the RFP. See Annex 6-E for guidelines. If a preproposal conference or site visit is required, a roster signed by those attending shall be made.

STEP 6 - ISSUE ADDENDUM

If necessary, issue an addendum to correct errors, change proposal due date, or to make any other changes that have been agreed to as a result of the preproposal conference, site visit, etc. See Annex 6-F for sample addendum. Addenda must be posted on the DGS/DPS eVA web site.

STEP 7 - RECEIVE PROPOSALS

Receive proposals at the date and time specified. Publicly open them if indicated on the cover sheet. A public opening is not required by law. If a public opening is held, read only the names of the offerors. See 3.1e for proposal opening procedure. Unsealed proposals may be opened and evaluated upon receipt. Late proposals cannot be considered and should be returned unopened.

STEP 8 - BUYER REVIEW OF PROPOSALS FOR COMPLIANCE WITH THE RFP

After proposals are opened, the buyer/contract officer must review them for completeness and compliance with mandatory requirements. If a proposal is found either to be missing items of information required to be included by the Specific Proposal Instructions or to indicate noncompliance with one or more mandatory requirements of the RFP, immediately notify the offeror. Give the offeror a reasonable time to provide the missing information or furnish evidence of intention to comply with the mandatory requirement(s). Failure to furnish the information within the time allowed will adversely affect the scoring of the proposal.

STEP 9 - PROVIDE INSTRUCTIONS TO EVALUATION PANEL

The buyer/contract officer should prepare written instructions for the evaluation panel detailing the actions to be taken to evaluate the proposals and provide the instructions and copies of the proposals to each evaluator. The original proposals are to be retained and readily available.

I. The evaluators are instructed to identify and list areas of apparent noncompliance or areas needing clarification in each proposal.

II. The evaluators are instructed to conduct a preliminary independent and impartial appraisal and prepare a tentative handwritten analysis describing the rationale leading to specific conclusions on the strengths and weaknesses of each proposal.

III. The evaluators should be instructed not to contact any of the offerors. They must also be instructed not to reveal any information or tentative conclusions on the relative merits of proposals.

STEP 10 - EVALUATE PROPOSALS

I. The chairperson should determine that all preliminary studies have been completed by each member.

A. The evaluator's lists of apparent noncompliance and questionable areas are reviewed by the committee as a group and a determination made as to the need for clarification from the offeror.

If a question/answer clarification conference is scheduled, the committee may defer final decisions related to noncompliance with mandatory requirements. Such a conference may be held with any or all of the offerors.

B. If a question/answer conference is considered necessary, the chairperson will schedule the conference using the following guidelines:

1. The conference may be conducted by using one of two methods: (1) in person or (2) via the telephone. On larger and more complicated projects, the in-person technique is encouraged.

2. The activities of the conference are limited to clarification or verification of the offeror's written proposal. Negotiations are not conducted at this point.

3. The offeror may be required to document an answer if such a written clarification is determined to be in the best interest of the Commonwealth.

4. Proposals that are substantially incomplete or fail to meet mandatory requirements and the offeror has failed to agree to remedy the situation should be eliminated from further consideration.

II. If reference checks or any tests or inspections are required by the evaluation criteria, proceed as follows:

A. The evaluation committee must contact the references for each offeror.

B. A written questionnaire identifying the reference and questions asked should be developed. A brief summary of the answers is recorded on the form and becomes part of the file.

C. If equipment is required by the RFP, a demonstration test is permissible provided that such requirements are specifically set forth in the RFP.

D. On-site inspection of an offeror's facilities by the evaluation committee is permissible for the purpose of verifying facts presented in the proposal. Arrangements for on site tests and inspections should be coordinated with the offeror(s) by the buyer/contract officer.

III. COMPLETE EVALUATION BY ASSIGNING POINTS. The proposals must be assigned points in accordance with the evaluation criteria in the RFP.

A. The lowest price shall be scored the maximum number of evaluation points for price.

The lowest price is then divided by each of the higher offeror's proposed price in turn. The quotient is then multiplied by the points assigned for price to determine the evaluation points to be assigned to each higher price proposal.

$$\frac{\text{Lowest Price Offered}}{\text{Price of Offer being Evaluated}} = \text{\% Factor X Maximum Available Points} = \text{Points Assigned}$$

Offeror/ Price	Lowest Offeror's Price / Offeror's Price	=	% Factor	x	Maximum Eval PTS (25)*	=	Points Assigned
A $32,500	24,250 / 32,500	=	75	x	25	=	18.75
B $24,250	24,250 / 24,250	=	100	x	5	=	25
C $26,350	24,250 / 26,350	=	93	x	25	=	23.25
D $27,600	24,250 / 27,600	=	88	x	25	=	22

* Point value shown is only an example and will vary with the RFP based on points assigned to price criteria.

B. When assigning points for subjective evaluation criteria, the best proposal for each criteria shall receive the highest points for that subjective criteria (not necessarily the maximum) with the other proposals receiving fewer points according to the evaluator's judgment. Although the scoring of points for other than cost is a matter of subjectivity, the committee member's judgment must be based on fact as presented in the proposal, question/answer conference, etc. An offeror should not be penalized because of lack of experience with the agency itself, but should be judged, among other considerations, on the relevancy of experience and expertise wherever it occurred. Likewise, an offeror should not be given an unfair advantage of points simply because of a previous contractual relationship with the agency. The relevancy of such experience in terms of the RFPs statement of needs, however, may be judged. Points should not be manipulated to favor a preferred supplier, but be assigned in an impartial manner.

C. One consensus evaluation form should be prepared showing as a minimum: (1) names of the committee members, (2) names of all offerors including those that were removed from further consideration, (3) evaluation criteria and maximum point values for each, (4) average of points assigned to each offeror. Individual committee members' written comments and points assigned should be included in the procurement file once the consensus evaluation form is prepared to support their consensus.

D. When assigning points for the Small Business Subcontracting Plan criteria, a DMBE-certified small business, which shall not exclude women-owned and minority-owned businesses when they have received DMBE small business certification, who serves as the prime contractor, will receive the maximum number of evaluation

points for this criteria. The weight for the small business subcontracting plan shall not be less than 20% of the total point value. See Annex 7-G, Section A of the Small Business Subcontracting Plan. Example: 20 points available for Small Business Subcontracting and the Offeror is a DMBE certified small business then that Offeror would receive 20 points. No further subcontracting would be required.

E. Other businesses that are not DMBE-certified small businesses will receive credit based on their Small Business Subcontracting Plan not to exceed 75% of the points assigned to this evaluation criterion i.e. 20 points X 75%= 15 points. Points will be assigned based on each offeror's proposed subcontracting expenditures with DMBE certified small businesses for the initial contract period as indicated in the offeror's submitted subcontracting plan in relation to each offeror's total price. See Annex 7-G, Section B of the Small Business Subcontracting Plan for proposed small business subcontracting expenditures.

The Offeror's proposed subcontractor use of DMBE certified small businesses is divided by the Offeror's total proposed price. The quotient is then multiplied by the points assigned for the criteria to determine the evaluation points to be assigned.

$$\frac{\text{Offeror's proposed use of DMBE certified small businesses as subcontractors}}{\text{Offeror's Price}} = \text{\% Factor X Available Points} = \text{Points Assigned}$$

Offeror Price	Offeror's proposed use of DMBE certified small businesses as subcontractors / Offeror's Price	=	% Factor	x	Points (15)*	=	Points Assigned
A $152,500	15,250 / 152,500	=	10	x	15	=	1.5
B $158,000	26,800 / 158,000	=	17	x	15	=	2.5
C $166,350	43,251 / 166,350	=	26	x	15	=	3.9
D $177,600	95,904 / 177,600	=	54	x	15	=	8.1

* Point value shown is only an example and will vary with the RFP based on points assigned to Small Business Subcontracting Plan criteria not to exceed 75% of the points assigned to this evaluation criterion i.e. 20 points X 75%= 15 points.

STEP 11 - SELECTION OF OFFERORS AND PREPARATION FOR NEGOTIATION

I. 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 included in the Request for Proposal. The selection is based upon the Evaluation Committee's score. Negotiations shall be conducted with each of the offerors so selected. Should the evaluation committee determine in writing 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. The determination shall be signed by the agency head or designee.

II. Each selected offeror's proposal is then discussed in detail by the committee to determine a plan highlighting the areas of negotiation, e.g., concessions to be requested and possible concessions that may be made by the State. **In preparing for negotiations refer to Annex 7-C, Tips/Guidelines for Negotiation**.

STEP 12 - SCHEDULE AND CONDUCT NEGOTIATIONS

I. Contact each selected offeror and schedule negotiations.

II. Negotiations are then conducted in accordance with the negotiation plan developed in Step 11. Care should be taken to assure that information contained in other proposals is not divulged. Multiple negotiation sessions may be required.

III. Obtain in writing, from each offeror with whom negotiations have been held, confirmation of any changes to their proposals that were agreed to during negotiations. Documentation of the negotiating sessions will be made a part of the file.

IV. If provisions were included in the RFP for receiving Best and Final Offers (BAFO), as described in 7.4b, after negotiations have been held, offerors are given the opportunity to submit their BAFO. The offers will then be rescored, and an award is made.

V. The decision to award is based on rescoring the final negotiated proposals accordance with the evaluation criteria in the RFP and must be documented in the procurement file. If BAFO is not used, then upon completion of all negotiations, the procuring office shall select the offeror, which in its opinion has made the best proposal, and shall award the contract to that offeror.

VI. Once negotiations have been finalized, complete the "Summary of Evaluation of Ratings by Criteria Worksheet" (Annex 7-H) and place in the procurement file. This worksheet should be a compilation of the evaluation committee's ratings and not done by or for each committee member.

STEP 13 - POST A NOTICE OF INTENT TO AWARD

Post for 10 days if protest of the award is anticipated (see Annex 6-G for example of format).

STEP 14 - NOTIFY OTHER OFFERORS

Optional. Notify all other offerors by letter of intent to award or notice of award.

STEP 15 - INSURANCE REQUIREMENTS

If insurance is required in the RFP, the agency has the option of requesting that an insurance certificate be issued. If the agency exercises its option to request such a certificate, it should be requested prior to the work commencing.

STEP 16 - AWARD CONTRACT

The preferred instrument of award for a competitively negotiated contract is the Standard Contract Form (see Annex 7-D). Awards over $50,000 must be posted on the DGS/DPS eVA web site.

STEP 17 - POST AWARD CONTRACT ADMINISTRATION

The award of a contract is the end of one phase of procurement and the beginning of another equally important phase. This latter phase is contract administration. Its purpose is to assure that the contractor's total performance is in accordance with all the terms and conditions of the contract. An individual should be assigned in writing to be responsible for contract monitoring and oversight for service or term contracts. A contract administrator should also be assigned when additional coordination is required by the complexity or criticality of the requirement to the agency. Any deviation from contract requirements should be brought to the attention of the contractor and immediate corrective action required (see Chapter 10).

Annex 7-C

NEGOTIATION TIPS/GUIDELINES

These guidelines were developed primarily for procurement by competitive negotiation for goods and non-professional services. Much of the data, however, is applicable to competitive negotiation for professional services, negotiation for technical proposals, non-competitive negotiation and negotiation for resolution of problems arising out of performance under contract.

Procurement by negotiation is the art of arriving at a common understanding through bargaining on the essentials of a contract, such as delivery, specifications, price, and terms. Because of the interrelation of these factors with many others, it is a difficult art and requires experience and the exercise of judgment, tact, and common sense. An effective negotiator must be thoroughly prepared and aware of the strengths and weaknesses of his/her position versus the other party to the negotiation. Only through an awareness of relative bargaining strength can a negotiator know where to be firm or where permissive concessions in price or terms may be made.

Competitive negotiation really begins with the development of the Request for Proposals (RFP). A well-prepared RFP will strengthen the negotiator's position.

Negotiation consists of four equally important steps: Preparation for Negotiation, Conduct of Negotiation, Post Negotiation Actions and Review of Lessons Learned.

PREPARATION:

Plan sufficient time for the negotiation process. Insufficient time leads to hasty decisions. The vendor will sense the pressure of time and take advantage of the situation.

Make a methodical study of all proposals and compare prices, terms and conditions. This will provide the negotiator with the facts required to place the burden on the vendor to justify prices or contractual terms that appear unwarranted. Notes should be made of issues which are likely to arise during negotiation and plans made to deal with these issues. Determine from the proposals those areas in which assistance may be required; technical, engineering, legal, etc.

If a market survey was not conducted prior to issuing the RFP, conduct one. This type information is essential to sound negotiation.

Establish the parameters for specific points in the RFP and vendor proposals that might be traded for more important issues.

Determine the bargaining authority of the vendor representative. Insist on dealing with someone with full authority to commit the vendor. Otherwise, you may have to do the job twice.

Arrange for adequate facilities for the negotiations.

Prepare an agenda.

Be prepared. Study all issues thoroughly. Do not go into a session without having done your homework! Negotiate with the confidence gained from advanced preparation. If unsure contact DGS/DPS for assistance in negotiation.

CONDUCTING NEGOTIATIONS:

There are many ways in which negotiations may be conducted. Each negotiator, therefore, must develop the techniques which they can use most effectively.

Outline the important contract issues and obtain the vendor's position on each. The vendor may not want to consider the logic of the negotiator's position until he/she has explained his/her side of the issue. Try to identify the areas of weakness in the vendor's position.

The negotiator should then make his or her own position known in general terms, citing such areas as policy or budget as justification for the position. This places the burden on the vendor to find a way to comply or justify the exception.

Here, the negotiator brings into play the information gained in the market survey and the competitors' proposals without disclosing what the competition offered. When the vendor disputes the validity of the information, require him to provide the specific information on which his position is based; i.e., cost price analysis.

Reach an agreement on the most important issues before discussing the less important items. If agreement cannot be reached on the major items, the negotiator may use the minor issues for bargaining on the major issues. Be prepared to explore alternatives in the event of disagreement.

Reach an agreement on all contract terms.

One person should be designated as the spokesperson and negotiate for the agency. Team participation in the actual negotiation may be required but the agency's position is finalized by the spokesperson.

Evidence of negotiation shall be documented and made a part of the procurement file.

POST NEGOTIATION ACTIONS:

Be sure all participants fully understand what has been agreed to.

Reduce the agreements to writing and have both parties sign.

Prepare the final contract, obtain necessary signature and any required supporting documents.

REVIEW OF LESSONS LEARNED:

Critique the negotiations with members of your team, pointing out the strong and weak points observed during the negotiation.

Determine if future requirements can be competitively bid.

DO'S AND DON'TS OF NEGOTIATION

DO

Develop your own technique for negotiation.

Be well prepared.

Identify each point to be negotiated.

Establish parameters of discussion for each point.

Identify important issues first and consider appropriate points in time for their negotiation.

Try to settle one point before moving to the next.

Discuss budget limitations, policy and restrictions related to the program.

Be prepared to discuss alternatives.

Negotiate on an even basis. If the vendor has legal or technical support, bring your qualified counterparts.

Avoid arguments.

Avoid interruption.

Avoid quick deals.

Be ethical, fair and firm.

Control the negotiation session.

Attempt to reach a WIN-WIN result e.g., both parties at the conclusion of the negotiation believe they have reached a satisfactory contract.

DON'T

Underestimate the ability of the vendor.

Disclose the specific contents of other proposals.

Negotiate areas beyond the scope of the RFP.

Make a concession without obtaining a concession.

Accept the first no.

Be unreasonable or unfair.

Negotiate to the point that the price is no longer fair and reasonable.

Annex 7-D

COMMONWEALTH OF VIRGINIA
STANDARD CONTRACT

(for use with Competitively Negotiated contracts only)

Contract Number: _____

This contract entered into this ___ day of _____ 20___, by_____ hereinafter called the "Contractor" and Commonwealth of Virginia, _____ (Department, Agency, Division) called the "Purchasing Agency."

WITNESSETH that the Contractor and the Purchasing Agency, in consideration of the mutual covenants, promises and agreements herein contained, agree as follows:

SCOPE OF CONTRACT: The Contractor shall provide the goods/services to the Purchasing Agency as set forth in the Contract Documents.

PERIOD OF PERFORMANCE: From _____ through _____.

The contract documents shall consist of:

(1) This signed form;

(2) The following portions of the Request for Proposal dated _____:

(a) The Statement of Needs,
(b) The General Terms and Conditions,
(c) The Special Terms and Conditions together with any negotiated modifications of those Special Conditions;

Attachment _____, Date _____
Attachment _____, Date _____

(3) The Contractor's Proposal dated _____ and the following negotiated modifications to the Proposal, all of which documents are incorporated herein.

IN WITNESS WHEREOF, the parties have caused this Contract to be duly executed intending to be bound thereby.

CONTRACTOR:	PURCHASING AGENCY:
By: _____	By: _____
Title: _____	Title: _____

Note: This public body does not discriminate against faith-based organizations in accordance with the *Code of Virginia*, § 2.2-4343.1 or against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.

Annex 7-E

RFP SOLICITATION AND FILE CHECKLIST

✓	RFP SOLICITATION CHECKLIST	✓	FILE CHECKLIST
	Written Determination: There must be a written determination made in advance and placed in the solicitation file to justify the use of competitive negotiation rather than competitive sealed bidding, signed by the agency head or designee (see 7.2a).		Written determination for use of competitive negotiation.
	Approval: Required approvals should be obtained prior to preparing the solicitation and a copy placed in the solicitation file. Examples include a release from Corrections to purchase a good(s) or service they produce from a commercial source, authority from the DGS/DPS for an agency to make a direct procurement in excess of its delegated purchase authority (see 1.2, 1.4 and 2.1).		Special Approval
	Approved Request: Written approval to expend funds must be included in the file. When considering the value of the procurement, include all possible renewal periods.		Purchase Requisition
	Statement of Needs: The Statement of Needs describes in general terms what is to be procured.		
	Preproposal Conferences/Site Visits: If a preproposal conference or site visit is to be held, the solicitation must state the date, time, place, and whether attendance is optional or mandatory.		Preproposal sign-in sheet
	General Terms and Conditions: The general terms and conditions or "boilerplate" must be included in every solicitation. Taxes, Use of Brand Names, and Transportation and Packaging General Terms and Conditions are not normally required for service contracts. The Insurance clause is not normally required for goods purchases.		
	Special Terms and Conditions: Each procurement is different, and for each solicitation the special terms and conditions used should be carefully reviewed to ensure that the proper ones are included. They should be essential to the requirement, protect the interests of the Commonwealth, and assist the offeror in understanding the agency's intent.		
	Evaluation Criteria: The evaluation criteria must be stated in the solicitation, and be based on the requirements stated therein. Typical evaluation criteria include price, approach to the work, experience and qualifications of offerors. The weights assigned to each criteria must be either included in the RFP or posted prior to receipt of proposals.		Evaluation criteria weights (if not included in the RFP)
	Method of Payment: If payment is to be made prior to final acceptance of the service or goods to be provided, the solicitation should set forth the procedure; e.g., progress payments, partial payments, etc.		
	References: If references are required, the number and type should be specified in the solicitation, and those listed should be checked.		Results of Reference Checks (if requested)

Pre-award, Receipt & Evaluation, and Post-Award			
	Evaluation Committee: Proposal Evaluation Committee is identified.		Names of Evaluation Committee

	Offerors List: If set-aside for small business participation only, solicit a minimum of six (6) DMBE-certified small businesses, if available. If fewer than the required number of sources are solicited, the reasons shall be documented. If not set-aside for small businesses, solicit a minimum of six (6) offerors, including a minimum of four (4) DMBE-certified small businesses if available, unless set-aside for small businesses. If set-aside, solicit a minimum of six (6) DMBE-certified small businesses, if available. Note which vendors are DMBE-certified small businesses. If fewer are solicited, include reason in procurement file.		Offerors List: Name, addresses of Offerors Solicited
	Public Notice: Public notice of the solicitation is required at least ten (10) days prior to the date set for receipt of proposals by posting on the DGS/DPS eVA web site and by publishing in a newspaper of general circulation in the area in which the contract is to be performed. Notices may also be posted in other locations (see 3.18).		Publicly advertise and posted notice of solicitation in *VBO* Advertisement
	Solicitation: The original RFP. After the award, remove excess copies of the solicitation and keep the original RFP as issued as a permanent record in the file.		Original solicitation
	Addenda: Any changes to the original solicitation must be made by written addendum, sent to each offeror solicited, or each offeror who attended a mandatory preproposal conference. A copy of all addenda issued must be uploaded to the DGS/DPS eVA web site and maintained in the file.		Addenda
	Questions/Responses: Answers to questions from potential offerors should be shared with all offeror's who attended a mandatory preproposal conference or who were included on the list of offeror's solicited.		
	Proposal Receipt: Proposals are closed at the date and time specified in the solicitation. See 3.1e. There is no requirement for a public opening. Instructions are provided to the evaluation committee. Proposals are checked for missing information.		
	Review Proposals: Provide detailed written instructions to evaluation committee, outlining specific actions. Members review proposals against mandatory requirements. If missing required information, contact offeror. Allow opportunity for them to provide information.		Copy of each evaluation committee member's score sheet
	Review Member Evaluations: Schedule conferences as appropriate or necessary. Conduct reference checks and inspections as required.		
	Oral Presentations: Schedule oral presentations if they are necessary to clarify any ambiguities or omissions in the proposals.		
	Proposal Evaluation: Individual evaluations are prepared and proposals are evaluated based upon the evaluation criteria and weights.		
	Select Offerors and Determine Issues to Negotiate: The committee will decide who to negotiate with based upon the logical division in the point spread as determined by the points received on the evaluation score sheets. The issues to negotiate will be determined by the evaluation committee.		
	Schedule and Conduct Negotiation: A record is maintained of the negotiations with each offeror so selected.		Documentation of negotiations.
	Best and Final Offers: If it is planned for Best and Final Offers (BAFO's) to be considered from offerors, then this provision must be made a part of the RFP. If the responses have been scored and a BAFO is received after negotiations, then the affected and previously scored proposal will be rescored with the new information contained in the BAFO being considered. No further negotiation shall take place with offerors providing BAFO's. The offeror who has made the best proposal is given the award.		Best and final offers (if requested in the RFP)

	Review Insurance Requirement or other Requirements: If insurance is required in RFP, the agency has the option to request the insurance certificate prior to commencement of work.		
	Notice of Award or Notice of Intent to Award: Post a Notice of Intent to Award for 10 days on the DGS/DPS eVA web site if a protest of the award is anticipated; otherwise, issue the Notice of Award.		Award document
	Bonds: Obtain Performance and payment Bonds prior to commencement of work, if required in the RFP.		
	Successful Proposal: A copy of the successful proposal is retained in the active procurement file.		Successful proposal
	Contract: A standard two-party contract is typically used for negotiated procurements. Be sure to include by reference, all of the terms and conditions of solicitation, and the RFP as may have been changed through subsequent negotiation.		Copy of the contract
	Contract Administration: If the contract requires administration by other than the buyer, those responsibilities are assigned in writing.		Contract Administrator assignment
	Licenses/References: If other information was required of the contractor, these items must be retained in the procurement file.		Licenses, References
	Unsuccessful Proposals: A copy of the unsuccessful proposals are retained as a part of the inactive permanent record.		Unsuccessful proposals
	Post-Award Correspondence: All post- award correspondence should be maintained in the procurement file.		

The following items should be considered when developing the solicitation:	
	For BOTH Goods and Service Procurements:
	Availability of Funds: Funds to support a procurement solicitation must be available. If funds are limited, the file should contain a statement of dollar ceiling that cannot be exceeded, to ensure that a buyer does not make an award in excess of the funds available. See Appendix B, Section II, Special Terms and Conditions for the appropriate clause which should be used in the solicitation. Use with term contracts only.
	Bonds: For the procurement of goods or services other than construction, for any dollar amount, consider if performance or payment bonds are necessary to protect the Commonwealth's interest.
	Cancellation Clause: If the solicitation will result in a term contract this clause should be included. This is not an appropriate clause for spot purchases. (See Appendix B for sample clause.)
	Performance Period: The performance period stated in the contract must include a starting and ending date, or the contract period must be for a specific period of time after a starting point; e.g., 120 days after date of award. If an option to renew the contract for an additional period is desired, the option must be stated in the solicitation.
	Liquidated Damages: If time and delivery are critical, it may be necessary to include a provision for liquidated damages. The basis for the amount of liquidated damages assessed must be supportable and reasonable, considering the service or goods being purchased and the impact of delay on the Commonwealth. **A liquidated damages clause is not to be used as a penalty** but as a means to access for damages which may be incurred by late delivery.

	Ownership of Documents: If the contract will result in the production of plans, camera ready copy, art work, or any other material that has been paid for by the Commonwealth and is required for subsequent or future production, then the appropriate special clause should be used in the solicitation to ensure ownership and retention by the Commonwealth.
	Required Delivery/Completion Time: If applicable, a specific date must be stated in the solicitation.
	Small Business Subcontracting and Evidence of Compliance: Use in solicitations for goods, nonprofessional services, or non capital outlay construction when a small business subcontracting plan is a condition of the award. Required in solicitations valued over $100,000 that are not set-aside for small business unless a written determination is made, signed by the chief purchasing officer and supported by factual evidence explaining in sufficient detail why no subcontracting opportunities exist.
	Vendor Data Sheet: If the agency wishes to check the offeror's references or to verify the offeror's experience, the Vendor Data Sheet should be included as an attachment to the solicitation (see Annex 6-C).
	For Goods Procurements:
	Inside Delivery: If inside delivery is required, the solicitation should so state. Consider specifying access requirements, e.g., inside delivery is required, the solicitation must so state.
	Samples/Demonstration or Demonstration Models: If samples, demonstration or demonstration models are required, the type, quantity, size, the place, and time for submission must be stated in the solicitation.
	Technical Data: If technical data will be required for evaluation, the solicitation should specify when and where the data should be submitted.
	For Service Procurements:
	Bonds: For the procurement of services other than construction, for any dollar amount, consider if performance or payment bonds are necessary to protect the Commonwealth's interest. If services are being solicited where personal bonding is required such as financial or security service, the requirement must be stated in the solicitation.
	Facilities: If the agency will provide facilities for use by the contractor, such as a storage area, this should be stated in the solicitation. If the contractor is required to provide equipment or facilities, it should also be stated in the solicitation.
	Hours of Work - Access to Agency Facilities: If the hours of work and access to the agency's facility are restricted to certain time periods and dates, the solicitation should so specify. If the resulting contract is not a fixed price contract and overtime work can be anticipated, the pricing schedule should require a statement of overtime rates.
	Insurance: This General Term and Condition should be included on service purchases when the contractor is required to work on state owned, leased or rented property. The contractor must have the proper liability insurance and worker's compensation to protect the Commonwealth from claims resulting from the contractor's work or personnel. For information, call the Division of Risk Management at 804-786-3152.
	Licensing Requirements: State any requirements for licensing. Contractors must comply with licensing requirements (see 3.4).
	Material/Supplies: If there is agency furnished material to be supplied to the contractor, the solicitation must provide for its control, and return, or disposition. If the contractor is to furnish material or supplies, the quantity, quality, and availability must be specified.
	Personnel Approval: If the agency desires to approve individuals employed by the contractor under the terms of the contract, or to exercise some degree of control over contractor's personnel, the requirement must be included in the solicitation.
	Response Time/Service Calls: If the vendor must respond to a service call within a specific time frame, the time frame must be specified in the solicitation.
	Sub-Contractor Approval: If sub-contractors may be involved in satisfying the requirement and there is a need to

	approve the sub-contractors on a project, then the solicitation should state what approvals the Commonwealth wishes to exercise (see page Annex B, Special Condition on Subcontracts).
	For Construction Procurements:
	See 4.24 - The procurement of "construction" for "Capital Outlay Projects" is governed by the rules of the *Construction and Professional Services Manual*, issued by DGS/Division of Engineering and Buildings.
	Bonds: For construction contracts in excess of $100,000, a bid bond, performance and payment bonds are required.
	Drawings, As-Built: If "as-built drawings" are required, specify the number of copies, when, and to whom they are to be delivered.
	Drawings, Shop: If shop drawings are required, specify when and to whom they are to be submitted, approvals required, and time limits for review or changes, by both the agency and the contractor.
	Material/Supplies: If there is agency furnished material to be supplied to the contractor, the solicitation must provide for its control, and return, or disposition. If the contractor is to furnish material or supplies, the quantity, quality, and availability must be specified.

Annex 7-F
Best Value Criteria, Evaluation Methods & Scoring

Examples of Subjective/Objective Criteria:

Objective	Subjective
Certification/Qualifications	Appearance
Compatibility	Durability
Total Ownership Costs	Experience
E-Commerce	Facilities
Environmental Impact	Value
Material	Staff Qualifications
Performance	Past Performance
Resources	Technical Approach
Size	Testing
Response Time	Quality Assurance
Past Performance	User Friendly
Warranty	* Incentives
* Risk (High, Medium, Low)	* Risk (High, Medium, Low)

* Definitions below

Definition of Risk:

High – Offeror's proposal approach is likely to cause significant disruption of schedule, increase in cost or degradation of performance and will require a high level of contractor emphasis and government monitoring to overcome difficulties.

Medium – Offeror's proposal approach is likely to cause a moderate disruption of schedule, increase in cost, or degradation of performance and will require a medium level of contractor emphasis and government monitoring to overcome difficulties.

Low – Offeror's proposal approach is likely to cause minimal or no disruption of schedule, increase in cost, or degradation of performance and will require a low level of contractor emphasis and government monitoring to overcome difficulties.

Definition of Incentives: Incentives are designed to motivate vendors to surpass specific requirements of the solicitation while discouraging inefficiency and waste. The offerors proposal should include additional benefits or rewards to the entity to encourage acceptance of their proposal. (Examples of incentives may include additional warranties, rebates or royalties, gifts-in-kind, recycling services, training, and advertising.)

Examples of Best Value Rating Methods:

1) **Adjectival** – Adjectives such as exceptional, acceptable, marginal, and unacceptable are used to indicate the degree to which the proposals have met the evaluation criteria (price is not scored).

Adjectival Rating Method (Example)

Rating	Description
Exceptional	Proposal exceeds requirements and demonstrates an exceptional understanding of goals and objectives of the procurement. One or more major strengths exist. No significant weaknesses exist.
Acceptable	Offeror's proposal demonstrates an acceptable understanding of goals and objectives of the procurement. There may be strengths and weaknesses, however strengths outweigh the weaknesses.
Marginal	Offeror's proposal demonstrates a fair understanding of the goals and objectives of the procurement. Weaknesses have been found that out balance any strengths that exists. Weaknesses will be difficult to correct.
Unacceptable	Offeror's proposal fails to meet an understanding of the goals and objectives of the procurement. The proposal has one or more significant weaknesses that will be very difficult to correct or are not correctable.

2) **Color Rating Method** - Use colors such as Blue, Green, Yellow or Red to indicate the degree to which the proposals have met the evaluation criteria (price is not scored).

Color Rating Method (Example)

Color	Description
Blue	Offeror's proposal exceeds requirements and demonstrates an exceptional understanding of goals and objectives of the procurement. One or more major strengths exist. No significant weaknesses exist.
Green	Offeror's proposal demonstrates an acceptable understanding of goals and objectives of the procurement. There may be strengths and weaknesses. Strengths outnumber any weaknesses that exit.
Yellow	Offeror's proposal demonstrates a fair understanding of the goals and objectives of the procurement. Weaknesses have been found that outnumber any strengths that exist. Weaknesses will be difficult to correct.
Red	Offeror's proposal demonstrates an unacceptable understanding of the goals and objectives of the procurement. The proposal has one or more significant weaknesses that will be very difficult to correct or are not correctable.

3) **Numerical Rating Method -** Apply a numerical weight to each criteria. Choose a point value and assign each criteria a percentage of the total points (price is not scored).

Numerical Rating Method (Example)

Range	Description
91 – 100	Offeror's proposal exceeds requirements and demonstrates an exceptional understanding of goals and objectives of the procurement. One or more major strengths exist. No significant weaknesses exist.
75 – 90	Offeror's proposal demonstrates an acceptable understanding of goals and objectives of the procurement. There may be strengths and weaknesses. Strengths outnumber any weaknesses that exit.
55 – 74	Offeror's proposal demonstrates a fair understanding of the goals and objectives of the procurement. Weaknesses have been found that outnumber any strengths that exist. Weaknesses will be difficult to correct.
< 55	Offeror's proposal demonstrates an unacceptable understanding of the goals and objectives of the procurement. The proposal has one or more significant weaknesses that will be very difficult to correct or are not correctable.

Evaluation Sheet (Example Only)

EVALUATION CRITERIA	**Vendor 1**	**Vendor 2**	**Vendor 3**	**Vendor 4**
Technical/Management				
1. Technical & Organizational Approach				
2. Qualifications of Personnel				
3. Resource Commitment				
4. Past Performance				
Overall Proposal Rating				
Overall Cost to Agency				
Overall Best Value Selection				

Annex 7-G

Small Business Subcontracting Plan

Definitions

Small Business: "Small business " means an independently owned and operated business which, together with affiliates, has 250 or fewer employees, or average annual gross receipts of $10 million or less averaged over the previous three years. Note: This shall not exclude DMBE-certified women- and minority-owned businesses when they have received DMBE small business certification.

Women-Owned Business: Women-owned business means a business concern that is at least 51% owned by one or more women who are citizens of the United States or non-citizens who are in full compliance with United States immigration law, or in the case of a corporation, partnership or limited liability company or other entity, at least 51% of the equity ownership interest is owned by one or more women who are citizens of the United States or non-citizens who are in full compliance with United States immigration law, and both the management and daily business operations are controlled by one or more women who are citizens of the United States or non-citizens who are in full compliance with the United States immigration law.

Minority-Owned Business: Minority-owned business means a business concern that is at least 51% owned by one or more minority individuals or in the case of a corporation, partnership or limited liability company or other entity, at least 51% of the equity ownership interest in the corporation, partnership, or limited liability company or other entity is owned by one or more minority individuals and both the management and daily business operations are controlled by one or more minority individuals.

All small businesses must be certified by the Commonwealth of Virginia, Department of Minority Business Enterprise (DMBE) by the due date of the solicitation to participate in the SWAM program. Certification applications are available through DMBE online at www.dmbe.virginia.gov (Customer Service).

Offeror Name: _____

Preparer Name: _____ Date: _____

Instructions

A. If you are certified by the Department of Minority Business Enterprise (DMBE) as a small business, complete only Section A of this form. This shall not exclude DMBE-certified women-owned and minority-owned businesses when they have received DMBE small business certification.

B. If you are not a DMBE-certified small business, complete Section B of this form. For the offeror to receive credit for the small business subcontracting plan evaluation criteria, the offeror shall identify the portions of the contract that will be subcontracted to DMBE-certified small business in this section. Points will be assigned based on each offeror's proposed subcontracting expenditures with DMBE certified small businesses for the initial contract period as indicated in Section B in relation to the offeror's total price.

Section A

If your firm is certified by the Department of Minority Business Enterprise (DMBE), are you certified as a (**check only one below**):

_____ Small Business

_____ Small and Women-owned Business

_____ Small and Minority-owned Business

Certification number:_____Certification Date:_____

Section B

Populate the table below to show your firm's plans for utilization of DMBE-certified small businesses in the performance of this contract. This shall not exclude DMBE-certified women-owned and minority-owned businesses when they have received the DMBE small business certification. Include plans to utilize small businesses as part of joint ventures, partnerships, subcontractors, suppliers, etc.

B. Plans for Utilization of DMBE-Certified Small Businesses for this Procurement

Small Business Name & Address **DMBE Certificate #**	**Status if Small Business is also: Women (W), Minority (M)**	**Contact Person, Telephone & Email**	**Type of Goods and/or Services**	**Planned Involvement During Initial Period of the Contract**	**Planned Contract Dollars During Initial Period of the Contract**
Totals $					

Annex 7-H

Offeror:_____ **Summary of Evaluation Ratings by Criteria Worksheet** **RFP # _____**

Criteria	Narrative Summary of Ratings

CHAPTER 8

SOLE SOURCE PROCUREMENT

In this Chapter look for . . .

8. Definition
8.1 Approval for Sole Source Procurements to $50,000
8.2 Procurements Over $50,000
8.3 Negotiating a Contract
8.4 Price Reasonableness Determination
8.5 Posting Requirements
8.6 Award Document

Annexes
8-A Sole Source Process Flowchart
8-B Sole Source Checklist
8-C Sole Source Non-Technology Procurement Approval Request Form
8-D Standard Contract Format (Non-Competitively Negotiated Contracts)
8-E Notice of Sole Source Award

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

8.1 **Approval for Sole Source Procurements to $50,000**. All sole source procurements for non-technology goods and services to $50,000 must be approved in advance by the agency head or designee, which shall be the chief purchasing officer or a direct report to the agency head [see 1.2e(2)]. The written determination, using the Sole Source Procurement Approval Request form in Annex 8-C, documenting that there is only one source practicably available for that which is to be procured, must be included in the procurement file. In addition, a memorandum must be attached to the request which addresses the four points shown in 8.2. The writing shall document the basis for the determination, which should include any market analysis conducted in order to ensure that the good or service required was practicably available from only one source.

8.2 **Procurements Over $50,000**.

PIM 98-027

Sole source procurements for non-technology goods and services over $50,000 must be approved by DGS/DPS prior to commencement of the actual procurement using the Sole Source Procurement Approval Request form found in Annex 8-C which must be signed by the agency head or designee, who shall be a direct report to the agency head. [see 1.2e(2)]. Sole source procurements that originally included a renewal provision, for which approval for multi-years was obtained, do not need to be forwarded for approval until expiration of the term for which approval was obtained. In addition, a memorandum must accompany the request form, which addresses the following four points:

- Explain why this is the only product or service that can meet the needs of the purchasing agency.
- Explain why this vendor is the only practicably available source from which to obtain this product or service.
- Explain why the price is considered reasonable.

PIM 98-027

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

Once written approval has been given, agencies and institutions are delegated the authority to proceed with awarding the contract.

Sole source procurements for entertainment (speakers, lecturers, musicians and performing artists) over $50,000 do not require DGS/DPS approval, but must be approved prior to commencement of the actual procurement by the agency head or designee, who shall be a direct report to the agency head. Use the Sole Source Procurement Approval Request form in Annex 8-C, documenting that there is only one source practicably available for the entertainment to be procured, and include the signed form in the procurement file. In addition, a memorandum must be attached to the form which addresses the four points shown above.

8.3 **Negotiating a Contract**. Upon satisfying the requirements of paragraphs 8.1 and 8.2 above, a contract shall be negotiated and awarded without competitive sealed bidding or competitive negotiation. In making sole source procurement, it is the buyer's or contracting officer's responsibility to negotiate a contract that is in the best interest of the Commonwealth. Negotiations can be conducted on adding terms and conditions favorable to the Commonwealth and deleting or changing terms that are one-sided, in favor of the contractor. It is important to know the market and the contractor's situation in regard to the market. In noncompetitive negotiation, one must be exceptionally well prepared and negotiate to the extent that is practicable. Written documentation of the negotiations shall be included in the procurement file. For assistance in conducting negotiations, please see Annex 7-C.

8.4 **Price Reasonableness Determination**. The buyer or contracting officer should carefully research the good or service and determine in writing what is a fair and reasonable price (see 4.10 for additional guidance). For example, if the good or service has been provided before, find out what price was previously paid. Research and determine if another agency has purchased the same commodity. This will provide valuable pricing information that can be used in the course of negotiations and in determining price reasonableness.

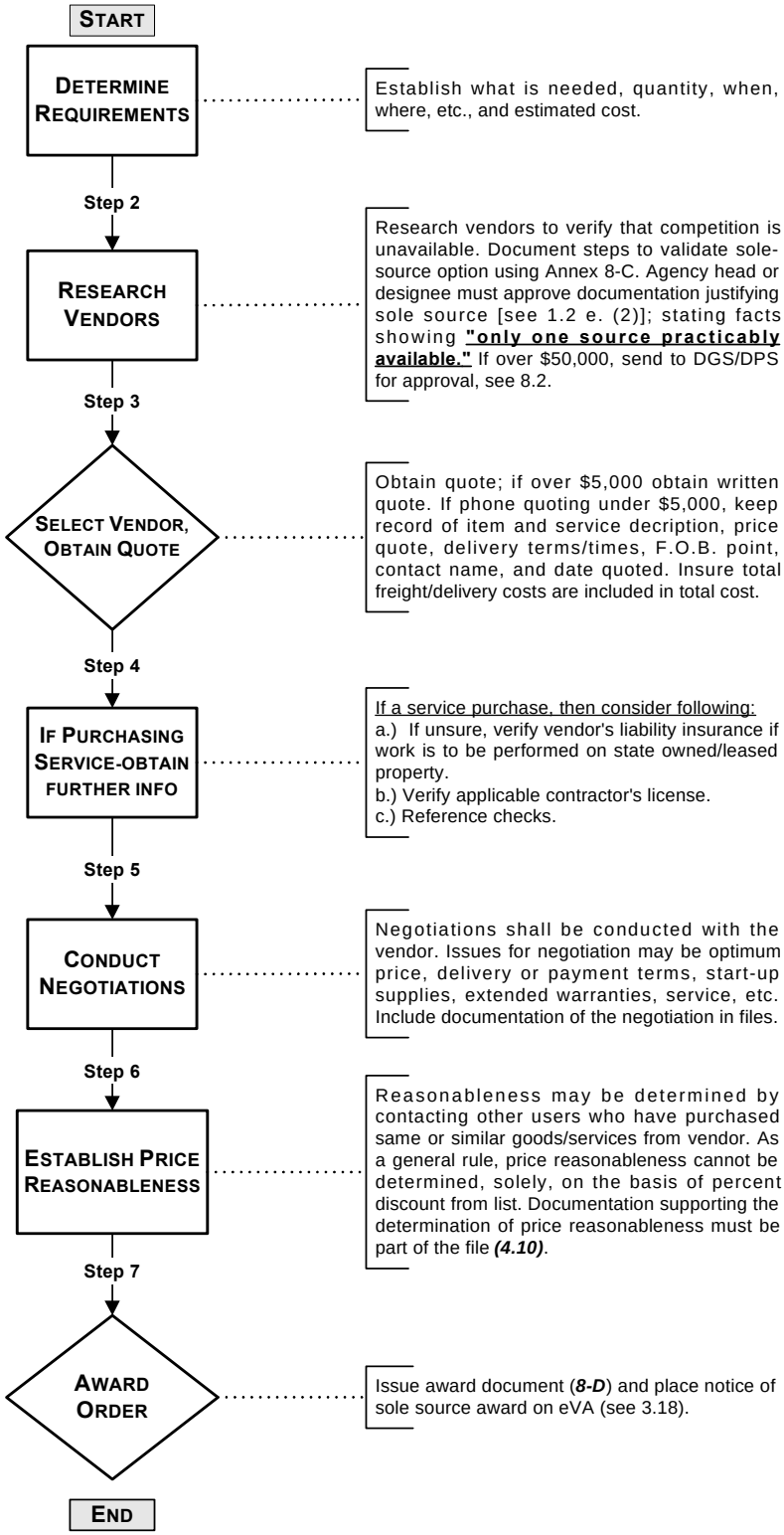
8.5 **Posting Requirements**. For sole source procurements over $50,000, award notices must be posted on eVA and at a minimum state that only one source was determined to be practicably available and must also state that which is being procured, the contractor selected, and the date on which the contract was or will be awarded (see 3.18 for additional guidance). Public award notices may be posted at locations in addition to posting on eVA, at the discretion of the entity (public posting notice board, entity website, etc.) but if posted in additional locations, the form in Annex 8-E should be used.

8.6 **Award Document**. Agencies must issue an award document (PO or contract) for sole source purchases in accordance with the provisions of Chapter 14. When a quote has been obtained from the vendor and no further negotiations are needed, a purchase order is acceptable. When complicated negotiations have been involved, it may be in the agency's best interest to use the Commonwealth of Virginia Standard Contract form found in Annex 8-D.

Annex 8-A

SOLE SOURCE PROCESS (CODE OF VA § 2.2-4303E)

For Goods and Non-professional Services when competition is not practicably available.



Annex 8-B

SOLE SOURCE CHECKLIST

_____ 1. Written determination approved by the agency head or designee as provided in 8.1, for procurements to $50,000. The procurement must address the four points shown in 8.2.

_____ 2. Approval for sole source, non-technology procurements over $50,000 must be signed by the agency head or designee, as provided in 8.2 and sent to DGS/DPS for approval prior to commencement of the actual procurement.

_____ 3. Noncompetitive negotiation shall be conducted. The file shall include the results of the negotiations.

_____ 4. Evidence that a determination of price reasonableness was conducted.

_____ 5. Sole source notice of award posted for purchases over $50,000.

_____ 6. PO or contract issued.

DGS 41-080
(Rev.7/10) **Annex 8-C**

Sole Source Procurement Approval Request
Non-Technology Goods and Services

All requests for non-technology sole source purchases must meet the criteria established under § 2.2-4303 E. of the *Code of Virginia*. The agency head or designee, as required in 8.1 or 8.2, must sign this form. The Department of General Services/Division of Purchases and Supply (DGS/DPS) must review and approve all non-technology requests exceeding $50,000 except for entertainment (speakers, lecturers, musicians and performing artists) before issuance of any contract or purchase order. In addition, the agency must also (1) assign an identifying number to the request, (2) attach a brief description of the contract, and (3) attach the sole source justification in accordance with the instructions contained in 8.1 or 8.2 and Annex 8-C, *Agency Procurement and Surplus Property Manual*.

Agency Code _____ Request Number _____ Date _____

Agency Name _____

Agency Head Signature: _____
I certify that I am the agency head or designee and I am authorized to approve this request.

Print Agency Head Name_____

Contact Person _____ Telephone Number _____

Total Amount of Sole Source $ _____ Facsimile Number _____

Commodity Code _____ Description _____

_____

_____

_____

_____

_____

_____

_____

Division of Purchases and Supply

☐ **Approved**

☐ **Disapproved**

☐ **More information needed (specify and return to agency)**

Signature _____ Date _____

Note: This form must be filed with the contract/purchase order. Agencies and institutions are delegated authority to make contract award after appropriate approval. (Purchase using noncompetitive negotiation.)

SOLE SOURCE PROCUREMENT INSTRUCTIONS

It is the policy of the Commonwealth of Virginia that contracts be awarded on a competitive basis and that the use of a sole source procurement must be limited to those instances where only one source is practicably available.

Sole source requests must contain a memorandum from the purchasing agency that addresses in a direct and concise manner the following four points (by number and in order):

1. Explain why this is the only product or service that can meet the needs of the purchasing agency.

2. Explain why this vendor is the only practicably available source from which to obtain this product or service.

3. Explain why the price is considered reasonable.

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

Agencies must use the Sole Source Procurement Approval Request form, Annex 8-C, as the cover routing form for all sole source procurements. Complete the "Agency" portion of the form and forward the sole source procurement request, not related to information technology, above $50,000, to the Division of Purchases and Supply. Routing for DPS approval is not required for sole source procurements for entertainment (speakers, lecturers, musicians and performing artists.)

Questions one through four (noted above) and their respective answers must be submitted with the Sole Source Procurement Approval Request.

Annex 8-D

COMMONWEALTH OF VIRGINIA

STANDARD CONTRACT

(for use with noncompetitively negotiated contracts only)

Contract Number:

This contract entered into this _____ day of _____ 20___, by _____ hereinafter called the "Contractor" and Commonwealth of Virginia, _____(Department, Agency, Division) called the "Purchasing Agency."

WITNESSETH that the Contractor and the Purchasing Agency, in consideration of the mutual covenants, promises and agreements herein contained, agree as follows:

SCOPE OF SERVICES: The Contractor shall provide the services to the Agencies of the Commonwealth of Virginia as set forth in the Contract Documents.

PERIOD OF PERFORMANCE: From _____ through _____

The contract documents shall consist of:

(1) This signed form;

(2) The attached purchasing description, which consists of:

(a) The Scope of Work, and/or item description
(b) The General Terms and Conditions,
(c) The Special Terms and Conditions all of which documents are incorporated herein.

IN WITNESS WHEREOF, the parties have caused this Contract to be duly executed intending to be bound thereby.

CONTRACTOR:	PURCHASING AGENCY:
By: _____	By: _____
Title: _____	Title: _____

Note: This public body does not discriminate against faith-based organizations in accordance with the *Code of Virginia*, § 2.2-4343.1 or against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.

Annex 8-E

(Agency Letterhead)

COMMONWEALTH OF VIRGINIA

NOTICE OF SOLE SOURCE AWARD

DATE OF AWARD _____

COMMODITY _____

PURCHASE ORDER OR CONTRACT NO.

CONTRACTOR(S)/VENDOR(S)_____

IT HAS BEEN DETERMINED THAT ONLY ONE SOURCE IS PRACTICABLY AVAILABLE FOR THE COMMODITY LISTED ABOVE.

RECORDS FOR THIS PROCUREMENT ARE NOW AVAILABLE FOR INSPECTION.

(PURCHASE OFFICER/CONTRACT OFFICER) _____(SIGNATURE)_____
NAME TYPED OR PRINTED

CHAPTER 9

EMERGENCY PROCUREMENT

In this Chapter look for . . .

9. General
9.1 Types of Emergency Procurements
9.2 Award of Emergency Procurements
9.3 Documentation
9.4 Emergency Planning

Annexes
9-A Emergency Procurement Process Flowchart
9-B Notice of Emergency Award

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

9.1 **Types of Emergency Procurements**. The nature of the emergency will determine what pre-award action may be taken:

a. For an emergency purchase required to protect personal safety or property, efforts should be directed to finding a source and directing the contractor to proceed; however, such procurement shall be made with such competition as is practicable under the circumstances (*Code of Virginia*, § 2.2-4303F). This does not relieve the agency from negotiating a fair and reasonable price and subsequently documenting the procurement action.

b. For other types of emergencies, competition should also be sought to the maximum extent practicable. Vendor's qualifications may be checked and verification of insurance coverage, if applicable, information on warranty offered, and any other data pertinent to the procurement. An agency may procure materials, equipment or supplies above its delegated authority with the advance written approval of DGS/DPS without requisitioning through DGS/DPS. The Procurement Exemption Request form in Annex 13-D should be used for this purpose.

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

9.3 **Documentation**.

a. **Written Determination**. Prepare a written determination for signature by the agency head or designated representative indicating the nature of the emergency, the reason for selection of the particular contractor and include such determination with the file.

b. **Posting Requirements**. Issue, post and/or publish required written notice. Emergency notices shall be posted on the DGS/DPS eVA web site (see 3.18 and www.eva.virginia.gov for instructions for uploading procurement notices). For emergency procurements over $50,000, notices must be posted on eVA and at a minimum state that the procurement has been declared an emergency and must also state that which is being procured, the

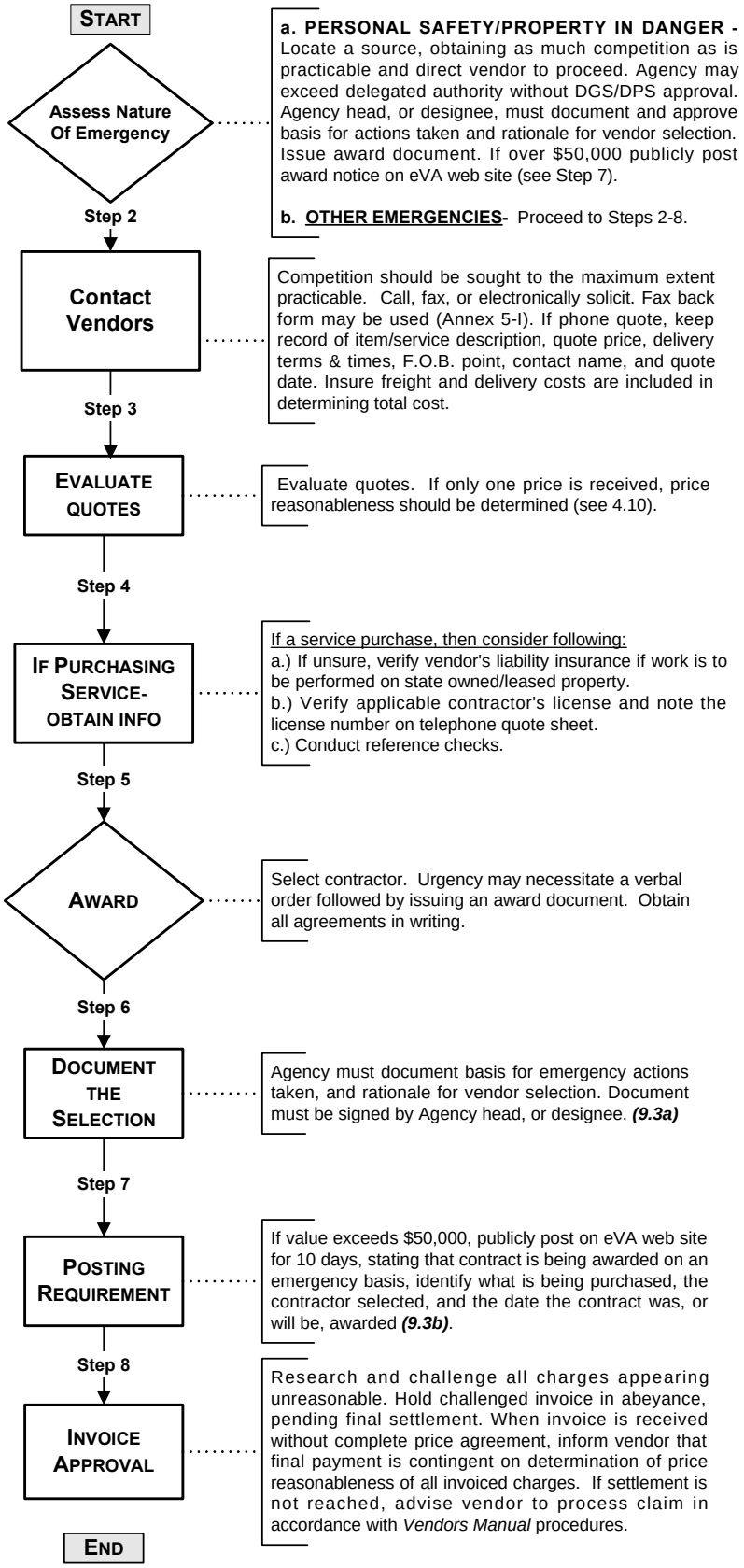
contractor selected, and the date on which the contract was or will be awarded (see 3.18 for further guidance). See Annex 9-B for the proper form for internal posting, if desired.

9.4 **Emergency Planning**. In many cases, procurement planning can reduce the need for using emergency procedures. Each agency should prepare and keep current a list of local sources of goods and services that might be needed in an emergency. Information on rates and charges should be established and agreed upon in advance. In addition, "on call," "as needed" annual contracts for various services may be competitively bid to expedite action, ensure adequate support, and reduce the cost of meeting emergency requirements.

Annex 9-A

EMERGENCY PROCUREMENTPROCESS (CODE OF VA 2.2-4303F)

For Goods and Services



Annex 9-B

(Agency Letterhead)

COMMONWEALTH OF VIRGINIA

NOTICE OF EMERGENCY AWARD

DATE: _____

COMMODITY: _____

P. O. OR CONTRACT NUMBER: _____

CONTRACTOR(S)/VENDOR(S): _____

THIS CONTRACTOR(S)/VENDOR(S) WAS SELECTED BECAUSE:

THE NATURE OF THE EMERGENCY:

RECORDS FOR THIS PROCUREMENT ARE NOW AVAILABLE FOR INSPECTION.

AGENCY HEAD:_____
(Signature of Agency Head or Authorized Designee)

NAME TYPED OR PRINTED: _____

CHAPTER 10

CONTRACT ADMINISTRATION

In this Chapter look for...

10. General
10.1 Planning and Checklist
10.2 Contract Administrator
10.3 Procurement Records
10.4 Delivery of Goods
10.5 Inspection
10.6 Acceptance
10.7 Rejection
10.8 Restocking Charges
10.9 Overshipments/Overruns
10.10 Lost or Damaged Shipments
10.11 Payment and Invoice Processing
10.12 Modifications and Change Orders
10.13 Contract Renewal and Extension
10.14 Termination for the Convenience of the Commonwealth
10.15 Cancellations of Purchase Orders and Contracts
10.16 Default
10.17 Vendor Performance Complaints
10.18 Notice to Cure
10.19 Termination for Default and Reprocurement Costs
10.20 Debarment and Reinstatement
10.21 Cooperative Procurement Contract Administration
10.22 Administration Efforts - Contract Types and Pricing Arrangements

Annexes
10-A Post Award Administration Checklist
10-B Contract Administration “Tips”
10-C Sample Designation Letter
10-D Sample Contractor Performance Evaluation Survey
10-E Request to DGS/DPS for Purchase Order Change
10-F Agency Purchase Order Change
10-G Contract Modification Agreement
10-H Procurement Complaint Form
10-I Cure Letter
10-J Default Letter
10-K Request for Payment Letter
10-L Default and Request for Payment Letter

10. **General**. Contract administration begins after award of the contract. Its purpose is to assure that the contractor’s and agency's total performance is in accordance with the terms and conditions of the contractual agreement. The integrity of the public purchasing system demands that goods or services be furnished, received, invoiced and paid as specified in the contract. Contract administration includes all actions taken by the state relative to a specific contract after the award is made. Each agency in its implementing procedures shall ensure that effective contract administration is included. Agencies should assemble and maintain a master listing of all their term contracts to

include the initial period and number of renewals. For assistance with contract administration, contact DGS/DPS at 804-225-4045.

After issuance of a contract award document including those awarded by DGS/DPS, the agency is responsible for contract administration to assure that the services or goods are provided in accordance with the terms of the contract. Planning and proactive management of a contract are crucial to effective contract administration. All vendor noncompliance shall be reported on a Procurement Complaint Form and, when warranted, telephonic contact should be made with the DGS/DPS Contract Compliance Section for immediate assistance (see Annex 10-H).

10.1 **Planning and Checklist**. Contract administration planning should occur during the preaward phase and be reflected in solicitation and award documents. All purchases should encompass some post-award administrative efforts--with the degree determined by evaluating purchase complexity, value, delivery or performance schedule, commodity or service type, and risks to the agency. A contract checklist or milestone chart should be developed for each contract that requires multiple or scheduled actions by the contractor during the contract period. This checklist or chart is developed directly from the contract by extracting specific requirements, scheduled delivery dates, start-up and a completion date, plus other related items such as performance guarantees (e.g., bonds, certificates of insurance, catalogs, copies of warranties, volume reports, as-built drawings, maintenance manuals, parts lists, maintenance, scheduled testing, etc.). These actions are essential if the contract administrator is to ensure that the contractor fulfills the obligations of the contract. Successful service contract administration usually involves a team approach with specific administrative tasks delegated to end-users or others who can closely monitor contract performance. The anticipated contract administrator or end user and the buyer should work together in establishing administrative requirements or tasks while developing the solicitation.

10.2 **Contract Administrator**. The administrator should be the end user of the contract or one who has a vested interest in the procurement who will be responsible for the proper adherence to all contract specifications by the contractor. Contract administration shall be delegated in writing by the buyer designating a specific individual or position, highlighting important aspects of the contract, and distinguishing between the administrator's authority and that which must remain a function of the purchasing office. Specific delegated tasks should be outlined in the designation letter which may include acceptance of goods or services, approval of invoices, scheduling and monitoring of project progress, coordination of the provision of agency or other resources when part of the contract, and favorable or critical feedback to the contractor and buyer. All continuous or term contracts shall be assigned an administrator in writing. (See Annex 10-C).

10.3 **Procurement Records**. A complete file should be maintained in one place for each purchase transaction, containing all the information necessary to understand the why, who, what, when, where and how of the transaction. Generally, records are open to the public in accordance with the *Virginia Freedom of Information Act* and should be made available for review after the award has been made. See guidance for record review and exemptions in 3.17. A record must be established for a procurement transaction which has reached the solicitation stage. It must contain as a minimum, as applicable, the description of requirements, sources solicited, a copy of the *Virginia Business Opportunities (VBO)* receipt, cancellation notices, the method of evaluation and award, a signed copy of the contract or purchase order, contractor performance reports submitted by the administrator, modifications or change orders, vendor complaint forms, cure letters, usage data such as release orders or obligation registers, and any other actions relating to the procurement.

10.4 **Delivery of Goods**. The basic policy of the state is to request bids for goods F.O.B. Destination, which means the quoted price includes shipping costs (see 4.13). Receiving personnel or the contract administrator should have a copy of the purchase order or award document in order to be aware of the type or method of delivery the contractor is required to perform and what is to be delivered. The contractor may be required by the contract to deliver in a specific manner such as one of the following: tailgate only, at dockside only, deliver on pallets, make inside delivery by floor and room number, deliver and install and remove all debris, or deliver at only certain specified hours. Delivery instructions should be made clear in the award documents specifying any conditions or issues impacting delivery such as restrictive loading areas or limited elevator access. Delivery must be made by the date or period specified in the contract or the contractor will be considered to be in default.

10.5 **Inspection**. Agencies are responsible for inspecting and accepting goods or services purchased. Inspection is the close and critical examination of goods or services delivered to determine conformance with applicable contract requirements or specifications. It includes the determination that:

a. Unless otherwise specifically ordered, the delivery consists of new and unused merchandise.

b. Goods or services of the quality, quantity, grade, or standard specified in the purchase order or contract have been delivered.

c. The design, construction, ingredients, size, kind, type, make, color, style, etc., of the commodities conform to the requirements of the purchase order or contract and where applicable, to the manufacturer's published specifications.

d. The packaging and labeling, marking, or other means of identification meet specifications. The commodities comply with specification requirements in all essential respects, are in good condition, and delivery has been made in accordance with the terms and conditions of the purchase order or contract.

10.6 **Acceptance**. Proper notification of the acceptance of goods or services usually involves the requisitioner, the purchasing and accounting departments. Notification of the acceptance of the delivery should be noted on a receiving document such as a packing slip or copy of the purchase order. Timely and proper payment of invoices requires expedient review and acceptance of the delivery against the terms of the purchase. Computerized purchasing systems greatly facilitate this process.

10.7 **Rejection**. Rejection of goods or services is the responsibility of the receiving agency whenever the goods or services do not meet contract requirements. In the event of a partial or total rejection, the agency should take immediate action to notify the contractor as to the reasons for rejection and to request prompt replacement. When a rejection is made, the appropriate purchase officer or contract officer should be notified followed by rendering a Procurement Complaint Form DGS-41-024 (see Annex 10-H and *Vendors Manual*).

10.8 **Restocking Charges**. A restocking charge may be assessed by a contractor for those deliveries rejected by an agency due to no fault of the contractor. The value of these charges should be identified prior to making the decision to return. *Code of Virginia,* § 8.2-710, allows the seller incidental damages after the buyer's breach in connection with return of the goods resulting from the breach.

10.9 **Overshipments/Overruns**. An agency should not accept goods in excess of those specified on the purchase order or contract unless it is recognized as a custom of that industry (e.g. printing, cable, fabric), is so stated in the bid, and is accepted by the buyer. Increases or decreases exceeding $500 shall be provided for by a change order (see 3.5 and 10.12) and shall be provided whenever requested by a supplier to ensure the supplier's eVA transaction fee is accurate or as may be required by internal policy, and as required in 14.6. In the event that an overshipment is not recognized until after receipt and not provided for in the award, the agency must notify the contractor that the overshipment will not be accepted and, unless the overshipment is picked up by the contractor, it will be returned at the contractor's expense. An agency, however, may for a valid and justified basis accept up to a 10% overrun in printing. Prices for overruns must not exceed the quoted base price per unit or the quoted price for additional copies run at the same time. Whichever price is less will prevail. Prices for underruns will be calculated at the quoted base price per unit. If an agency will not accept underruns or overruns, it must be stated in the specifications.

10.10 **Lost or Damaged Shipments**. It is the agency's responsibility to promptly inspect deliveries for shipping damage at the receiving location. Concealed damage or latent defects should be reported to the carrier and contractor within seven days of receipt and prior to removal from the point of delivery if possible. It is difficult to fix responsibility for deliveries once the agency has moved goods to another location or when the inspection has not been made in a timely manner. If latent defects are found, the contractor is responsible for replacing the defective goods within the delivery time originally stated in the solicitation and is liable for any resulting expenses incurred by the state. The state accepts title only when goods are received regardless of the F.O.B. point. (See *Vendors Manual*, 7.5 for passage of title information).

10.11 **Payment and Invoice Processing**.

a. **Invoice Processing**. Invoice processing is to be performed in accordance with the rules and regulations set forth by the Department of Accounts. To maintain good vendor relationships and a competitive environment, it is imperative that invoices be processed promptly and in accordance with the contract terms. The *Code of Virginia,* § 2.2-4350A, requires agency's and institutions to pay for the completely delivered goods or services by the required payment date. If no payment date has been established by contract, then payment is due 30 days after receipt of a proper invoice by the agency or its agent responsible under the contract for approval of such invoices for the amount of payment due, or 30 days after the receipt of the goods or services, whichever is later *(Code of Virginia,* § 2.2-4347). When a large purchase requires performance over an extended period of time, agencies should make arrangements to process partial payments upon receipt of evidence indicating that the goods or services have been received (see *Vendors Manual*, 8.3). Agencies and institutions with separate

accounting and purchasing offices are strongly encouraged to develop a Memorandum of Understanding (MOU) between the two offices. These MOUs should establish a clear framework for an effective discrepancy resolution process, so contractor payments are not delayed.

b. **Charge Cards Payments**. In an effort to streamline invoice and payment processing steps and sharply reduce paperwork, the Department of Accounts (DOA) has established a contract allowing agencies and institutions to use charge cards through two programs, the small purchase charge card (SPCC) and Gold Card. Unlike the typical consumer charge card, this program incorporates the features of corporate charge cards - national concept designed for business applications. Major program benefits include the reduction in the number of invoices processed by Commonwealth agencies and institutions, reduction in internal requisitioning reduced vendor collection costs, and payment to the vendor by the charge card company within as little as three business days. State agencies are required to participate in the SPCC program; participation in the Gold Card program is optional. Agencies, institutions and cardholders must follow all policies and procedures established in the Commonwealth Accounting Policies and Procedures (CAPP) Manual Section 20355 *Purchasing Charge Card.* Information can be obtained by calling DOA at 804-371-4350. Charge card purchases shall be processed through eVA unless the purchase is exempt from processing through eVA in 14.9 b.

(1) **Small Purchase Charge Card (SPCC)**. The SPCC is issued for cardholder use for transactions up to $5,000 and the cardholder's monthly transaction limit up to $100,000 for the purchase of small dollar goods and services in accordance with the issuing agencies polices and procedures, Agency Procurement and Surplus Property Manual and Virginia Public Procurement Act.

(2) **Gold Card**. Gold Cards are issued for purchase transactions up to $50,000 for small dollar goods and services and a monthly transaction limit up to $250,000. The Gold Card program is established to optimize the Commonwealth's participation in eVA and reduce the number of checks issued by the Commonwealth. The Gold Card program is administered through DOA Program Administrator who can be contacted at 804-371-4350. Gold Cards are only issued to full-time classified purchasing/procurement professionals or their staff deemed responsible by the Agency Head. An individual may not hold a SPCC and a Gold Card.

c. **Zero Overrun**. DGS/DPS encourages agency finance offices to promote a "zero overrun" tolerance policy when dealing with order/invoice price discrepancies. For discrepancies with dollar values below the values cited as requiring issuance of a formal change order, approval to pay the excess amount should be obtained from the buyer prior to payment of the additional amount. Agencies should distinguish the tradeoff between the additional amount charged and the administrative costs required to contest that amount, with action taken accordingly. Considerable attention needs to be directed in this regard to assure that neither the integrity of the bidding process gets compromised, nor the standing of bidders altered.

10.12 **Modifications and Change Orders**. Any request for change affecting price, quality, quantity, delivery or cancellation requires a thorough written explanation by the agency prior to approval. A contractor shall not be notified that a change has been approved until that change has been authorized by the appropriate buyer or contract officer. All change requests should be evaluated for contract validity and a price reasonableness determination of the change shall be made in writing. See 3.5 on when an official change order is required and which form to use to document modifications, changes or cancellation.

10.13 **Contract Renewal and Extension**.

a. **Renewal**. A term contract may contain a renewal clause describing the conditions under which it may be renewed for a stipulated period of time. However, no contract may be renewed and no additional consideration may be paid unless specifically provided for in the original contract. Often indices such as the Consumer Price Index (CPI) or Producer Price Index (PPI) are used as a benchmark in pricing renewal options and assist in determining price reasonableness. Price increases should not be given automatically at renewal. It is the responsibility of the contractor to request a price increase, if desired, up to the amount authorized by the index referenced in the contract. The agency may then negotiate the amount of the increase up to the indexed amount.

Prior to renewing a contract that contains the requirement of Small Business Subcontracting, the agency shall review the contractor's compliance with their submitted plan. Failure to meet the small business participation levels as submitted in the plan shall be considered prior to executing the renewal (see 3.10 h).

b. **Extension**. An agency may extend the term of an existing contract for services to allow completion of any work undertaken but not completed during the original term of the contract. No additional consideration

exceeding the contracted price may be paid to the contractor. Also, in exceptional or extenuating circumstances a contract may be extended by mutual consent for a limited period of time, not to exceed six (6) months. This action should be taken in writing prior to the expiration of the current contract.

10.14 **Termination for the Convenience of the Commonwealth**. Occasions may arise when an agency purchase order or agency contract may need to be terminated for the convenience of the Commonwealth. The termination date and the extent of termination must be specified in writing to the contractor. The contractor may submit any termination claim within 120 days after receipt of the notice of termination, or such longer period as the state may allow. The procedures for such action are outlined in paragraph 7.18 of the *Vendors Manual*.

10.15 **Cancellations of Purchase Orders and Contracts**. Cancellation of contracts may only be made in writing by the issuing purchasing office. Any request for cancellation should include an explanation of the basis for the request. A contractor may request cancellation, and the state will grant relief, if the contractor is prevented from specific performance including timely delivery, by an act of war, order of legal authority, act of God, or other unavoidable causes not attributed to the contractor's fault or negligence. See cancellation of contract clause in Appendix B, Section II.

10.16 **Default**. A contractor is considered in default if he or she fails to perform in accordance with the terms and conditions of the contract (e.g., late delivery, nonconformance to specifications). The following factors should be considered prior to taking any action:

a. The specific reasons for such failure (see *Vendors Manual*, 7.14).

b. The period of time needed to obtain the goods or services from other sources compared to the time delivery or performance could be accomplished by the delinquent contractor.

If it is determined that a contractor is in default, a Procurement Complaint Form should be issued and distributed followed by a "Notice to Cure" if unacceptable vendor response, resolution, or action is received. A cure letter may also be issued at the same time as the Procurement Complaint Form. Resolution of performance issues should progressively start with the filing of the Procurement Complaint Form.

10.17 **Vendor Performance Complaints**. Complaints and/or discrepancies on vendor performance should be reported as they occur using the Procurement Complaint Form, DGS-41-024 (see Annex 10-H). Vendors are required to respond to the agency and send a copy to DGS/DPS. Failure to respond within ten days may result in removal from the Vendors List. These complaint reports are necessary in order for DGS/DPS to develop vendor history, evaluate vendor performance, and, if required, to take appropriate and timely action (see 13.6).

Complaints concerning telecommunication services will be forwarded to the Virginia Information Technologies Agency (VITA), Acquisition Services Division, utilizing the DGS/DPS Procurement Complaint Form, DGS 41-024.

10.18 **Notice to Cure**. A Cure letter is used when a contractor has failed to perform or deliver as substantiated by a Procurement Complaint Form. It provides the contractor a period of time to correct or "cure" the deficiency and places the contractor on notice as to the consequences for failure to take the required corrective action. The notice may be given either orally or in writing advising the contractor that non-delivery or non-conformance is a breach of a contract and, if the deficiency is not corrected within a stated number of days, the Commonwealth will terminate the contract for default and hold the contractor liable for any excess costs. When the notice to cure is given orally, it should be confirmed in writing when warranted, i.e., complex agreements and/or concern about willingness of the contractor to voluntarily comply (see sample Cure letter, Annex 10-I).

10.19 **Termination for Default and Reprocurement Costs**. Upon the expiration of the time period stated in the "Notice to Cure," if a satisfactory resolution has not been reached, send the contractor a Termination for Default letter and take repurchase action. This letter states that the contract is being terminated for default and that when the Commonwealth repurchases the goods or services, any additional cost to the Commonwealth will be billed to the contractor (see sample Default letter, Annex 10-J). Normally repurchase should be by competitive means in order to secure a fair and reasonable price. If the repurchase results in increased costs to the Commonwealth, a letter shall be sent to the delinquent contractor demanding payment of the excess costs (see sample request for payment letter, Annex 10-K). Until the excess repayment costs have been received, the contractor shall be removed from the Vendors Mailing List (see *Vendors Manual*, 7.15). Concurrently with this letter, notify DGS/DPS in writing of the removal. In no case should the Termination for Default letter be held up to obtain repurchase costs since the contractor still has a valid contract until notification. If repayment has not been made by the end of the specified

period of time, subsequent collection action shall be taken in accordance with the Office of Attorney General's Collection Procedure Guidelines.

In some instances a contractor will notify the state that they refuse to or cannot deliver or complete performance on a contract. In those situations, it is not necessary to follow the procedure of using a cure notification. However, a Procurement Complaint Form should be filed to provide a historical file for future determinations of responsibility, etc. Refusals are usually timely, in which repurchase would consist of re-awarding to the next lowest of the current slate of still valid bids allowing the submissions of a combined Default and Request for Payment letter. Occasionally, other contractual failures happen quickly enough to allow this same approach. In those instances, a Procurement Complaint Form (Annex 10-H) is required to substantiate the action before notice of default and repayment cost.

10.20 **Debarment and Reinstatement**. In addition to the above default procedures, concurrent action to have the defaulted contractor debarred shall be initiated by sending a letter to the Director of the Division of Purchases and Supply recommending debarment and providing all the pertinent facts to support that recommendation. Debarment means action taken by the Director to exclude individuals or firms from contracting with state agencies for particular types of goods or nonprofessional services for specified periods of time. Debarment does not relieve the contractor of responsibility for existing obligations. The purpose of debarment is to protect the Commonwealth from risks associated with awarding contracts to persons or firms having exhibited an inability or unwillingness to fulfill contractual requirements, and to protect state interests and the integrity of the state's procurement process by preventing individuals or firms who have displayed improper conduct from participating in state requirements for specific periods of time. Grounds for debarment of vendors and procedures for disqualification and reinstatement of vendors are contained in paragraph 7.20 of the Commonwealth of Virginia *Vendors Manual*.

10.21 **Cooperative Procurement Contract Administration**. Overall administration of multi-user contracts (cooperative procurements) shall remain the responsibility of the issuing state agency or institution. Procedures for contract administration by the issuing agency include:

a. Providing authorized users a complete copy of the contract or a summary of its terms to include, at a minimum: contract period, contractor address and phone number, pricing schedule, ordering procedure, payment terms, shipping terms and any other pertinent information.

b. Providing a copy of all contract changes to authorized users.

c. Maintaining a master list of all authorized users.

d. Instructing users to refer all contract complaints in accordance with paragraph 10.17 with one copy of the Procurement Complaint Form furnished to the issuing agency.

e. The issuing agency must obtain a volume purchase report from the contractor prior to contract expiration or renewal action. This data can be used to support estimated usage for the next solicitation or when evaluating contractor requested price adjustments.

Participating agencies should fully administer their portion of the contract without direct administration from the issuing agency. Procedures for contract administration by the using agency include:

a. Notifying the issuing agency of any changes desired in the contract or any problems with performance by the contractor.

b. If applicable, appointing a contract administrator in writing.

c. Relaying contract information to the end users or contract administrator.

d. Providing accounts payable with a pricing/payment schedule.

10.22 **Administration efforts - contract types and pricing arrangements**. The type of contract and pricing arrangement will prescribe the type and extent of required administrative efforts. See 4.3d for use of contract types. The firm fixed-price contract type is usually less costly to administer. It typically requires proper receiving and verification of the contract price or lump sum amount. The following contract types describe special administrative considerations:

a. **Requirements-Type Contracts**. Effective administration of open-ended agreements requires that agency purchasing offices maintain a record of the degree of activity against these contracts verifying the activity is within the scope of the contract and is paid in accordance with the contracted price. Contractor performance and contract expenditure activity should always be examined prior to the exercise of any renewal provision or re-solicitation.

b. **Time and Materials Contracts**. It is essential that billed costs be analyzed (and challenged when appropriate) prior to their approval for payment because there is usually no incentive for contractors to contain costs when using this type of contract. Agencies have an obligation to verify the legitimacy and accuracy of any costs submitted for reimbursement. When a time and materials agreement is used, agencies must request a detailed job estimate and evaluate the reasonableness of its cost elements before authorizing the work to be performed. If it is determined that the estimate is not reasonable or in accordance with the terms of the contract, negotiations or the solicitation of additional estimates should be considered. Invoices should specify the amount and type of labor that is contained in the contract with the associated rates and the material costs so that verification of contract terms and pricing can be accomplished. The material costs should be supported with documentation as required in the contract (i.e., price list or invoiced cost). See 4.3d(3).

c. **Consultant Services**. When the services of a consultant are utilized, especially when analysis and research are involved and the contractor's performance is to culminate in a written report or other document (i.e., the deliverable), it is imperative that procuring agencies periodically check the contractor's performance and assure that it is progressing to the degree anticipated. Crucial milestone or progress reports may be required to be submitted by the contractor in the solicitation which would assist in post-award administration of the contract. If performance is found not to be up to expectations, the contractor shall be given a "cure" notice with specific guidance on what must be done to adequately meet performance expectations (see 4.22d).

d. **Revenue Sharing Contracts**. Certain agencies and institutions possess statutory authorization to generate revenue. Service contracts for the management of cash operations (e.g., food services, canteen or bookstore operations, etc.) commonly permit agencies and institutions to share in the revenues these activities generate rather than require any expenditure of funds. Commissions should normally be based as a percentage of gross receipts, and there should be some incentive for the contractor to contain costs. It is imperative that agencies have some ability to verify gross sales under agreements of this type. Consideration should be given to consulting with internal auditors for administrative suggestions and/or requesting an annual audit. In addition, the disposition of any purchased capital equipment at termination, and additions to real property during the term of the agreement should also be addressed in the contract. Agencies are cautioned that any attempts to establish such contracts should include input from their legal advisor to assure compliance with *Code of Virginia*, § 2.2-1802 and Virginia Constitution, Article X, Sect. 7.

Annex 10-A

POST AWARD ADMINISTRATION CHECKLIST

Award contract and post notice of award. (If performance and payment bonds are required, be sure copies have been obtained and validity verified by confirming with surety underwriter prior to issuing the award.)		
List contract on the agency's master contract list or schedule to include period of performance and any renewal option(s) - this will allow for the planning of renewal or rebidding actions.		
Appoint a contract administrator in writing outlining duties and responsibilities and any limitation of authority (see Annex 10-C). Duties may include the following:		
a.	Requirement for periodic evaluation reports of contractor performance and/or progress reports be furnished the purchasing office.	
b.	That maintenance manuals, parts lists and as-built drawing have been obtained prior to authorization of final payment or as required by contract terms.	
c.	A clear understanding of all contractor supplied warranties or bonding commitments.	
d.	The need to advise the purchasing office if changes to the contract, follow-up maintenance, or other services, etc., may be required.	
e.	Acceptance and approval of the receipt of goods and services and documenting the contractor's invoices for approval of payment.	
Be sure the user has encumbered funds to pay for services which overlap fiscal years.		
Provide a copy of the contract and any subsequent changes to accounts payable for invoicing/payment action verification.		
Establish and plot critical contract performance milestones required of contractor (e.g., checklist, progress reports or other written deliverables).		
Compile a tracking report on payments made against the contract.		
If the contract can be renewed be sure that price and all other requirements are based upon conditions of the basic contract.		
If contractor's performance or delivery is unsatisfactory, issue a Procurement Complaint Form, Cure or Termination letter (as appropriate). Sample letters are included in this chapter's annexes. Should action not yield satisfactory results or assistance is needed, contact DGS/DPS's Contract Compliance Section.		

Annex 10-B

CONTRACT ADMINISTRATION "TIPS"

a. Provide for administration of all service and term contracts/purchase orders. The ones you ignore may cause trouble!

b. Identify the "stake holders" of the procurement in the presolicitation phase of the procurement or as soon as possible especially for more complicated, multi-tasked or expensive purchases. Consult with these individuals on the assignment and role and responsibilities of the contract administrator.

c. During the solicitation development phase of the procurement, discuss and plan with the future contract administrator his/her role and projected contract administration actions. Plan for these actions in the solicitation.

d. Conduct a post-award mobilization meeting with the contractor, contract administrator, buyer, and other appropriate individuals soon after award but prior to performance to review the intent and scope of the contract, contract milestones and deadlines, the administrator and buyer's role, and contract performance evaluation.

e. Facsimile or electronic (E-mail, etc.) transmission should be liberally employed to expedite administrative actions.

f. Remember, time and materials contracts places all risk on the agency and little upon the contractor. Emphasize the need to commit agency personnel to closely monitor contractor activity, verify hours billed on the invoice and insist on supporting documentation for any materials reimbursement requests. Contractors should be required to submit an estimate specifying the amount and type of labor at the contracted rates with an estimate of materials to be used. The contract administrator should review and approve this estimate for price reasonableness, and if necessary, negotiate the amount or type of labor and/or material.

g. Do not get complacent on approving "routine" invoices for payment; verify the variables as well as the "frequency" of billed tasks. Verify that you in fact, received the service at the contracted price.

h. Once a contractor is in default, do not postpone the initiation of administrative action and documentation based solely on vendor's promises to comply.

i. Remember that when problems arise, there are at least two parties to a contract and the problem could arise from either side or, in typical cases of miscommunication, from both sides.

j. The Procurement Complaint Form is the only official method of problem notification. If the contractor fails to cure the specific breach of contract and/or has multiple failures, the documentation establishes a basis for corrective action against the contractor. For information, contact DPS Contract Compliance at 804-225-4045.

k. Consider seeking legal advice/assistance early in the process whenever complex default possibilities could result.

Annex 10-C

SAMPLE DESIGNATION LETTER

Designation and Responsibilities of Contract Administration

TO: Contract Administrator,_____

FROM: Contract Officer, _____

The contract referenced below has been awarded and services or performance may be commenced. You have been assigned as the contract administrator for this contract and are assigned the following responsibilities. A copy of the contract, a performance evaluation report sample, and other related information are attached for your use. Review this information; if you have any questions, please call the contract officer.

Contract Number:_____

Contractor: _____

Project: _____

Period of Contract: _____ to _____

Renewals: _____ successive _____ year options

Contract amount $_____

Payment schedule or instructions:

You, as contract administrator, are responsible for: (select or modify)

- Day to day coordination of the delivery of this service (or goods);
- Assurance that services (or goods) are delivered in accordance with the contract terms and conditions;
- Obtaining and approving job estimates and verifying labor hours and classifications if required (time and material contracts);
- Certifying receipt of services (or goods) billed were delivered in accordance with the contract terms and conditions;
- Prompt reporting of delivery failures or contractor performance problems to the Contract Officer;
- Completing and submitting periodic evaluations of contractor performance (evaluation form attached);
- Initiating Procurement Complaint Form if required;
- Assurance that the contract amount is not exceeded without proper authorization from Contract Officer;
- Assurance that the contract terms and conditions are not extended, increased, decreased, or modified in any way without action through the Contract Officer;
- Coordinating contract “start-up” activities with appropriate agency personnel (facilities management, security, etc.)
- Recommending solutions to Contract Officer if performance problems or contract issues persist.

c: Fiscal Officer or Accounts Payable
Others (initiator if different from contract administrator, management, etc.)

Annex 10-D

SAMPLE CONTRACTOR PERFORMANCE EVALUATION REPORT

Contract Number: _____

Contractor: _____

Evaluator/Administrator: _____

Date Submitted: _____

Period of Evaluation From: _____ To: _____

RATE CONTRACTOR'S PERFORMANCE ON A SCALE OF 1 TO 5 (by circling)

1.	Overall Evaluation						
	Unsatisfactory	1	2	3	4	5	Satisfactory
2.	Delivery Performance						
	Late/Early (if problem)	1	2	3	4	5	On Time
3.	Quality of Goods/Services						
	Unacceptable	1	2	3	4	5	Acceptable
4.	Number of Complaints						
	High Explain any complaints below.	1	2	3	4	5	Low
5.	Contractor's Responsiveness to requests to correct deficiencies:						
	Nonresponsive	1	2	3	4	5	Takes prompt corrective action

6. Renew this contract?

YES___ NO___ If No, Please explain in comments below.

Note: Any score of 3 or less must be described in detail below as to what action was taken to remedy the contractor's poor performance and what steps the contractor took to correct the deficiency cited. (Continue on separate sheet if necessary.)

7. COMMENTS: _____

_____

_____

_____

Annex 10-E

DGS-41-008

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF GENERAL SERVICES
DIVISION OF PURCHASES AND SUPPLY
REQUEST FOR CHANGE OF PURCHASE ORDER AND

CHANGE ORDER

DATE: 1

CHANGE ORDER NO. 2

PURCHASE ORDER NO. 3

YOU ARE HEREBY NOTIFIED THAT THE ORDER LISTED HEREON HAS BEEN CANCELED OR CHANGED AS INDICATED BELOW, AND THAT NO COMMODITIES MAY BE DELIVERED OR ACCEPTED, NOR SHALL ANY INVOICE BE APPROVED FOR PAYMENT EXCEPT AS SPECIFIED. ALL OTHER TERMS REMAIN UNCHANGED

CONTRACT NO. 4

REQUISITION NO. 5

DELIVER TO 6

VENDOR 7

ORIGINAL ORDER TOTAL: INCLUDING CHANGE ORDER/S (disregard any payments)

CHANGE ORDER AS FOLLOWS: SHOW DELETIONS AND/OR ADDITIONS ONLY. FULLY EXPLAIN CHANGE:

TOTAL AMOUNT 8

Item NO.	COMM. CODE	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	
9	10	11	12	13	14	15

REASON FOR CHANGE: 16

AMOUNT OF INCREASE/DECREASE SHOW IN CODE AREA 17

NEW TOTAL INCLUDING THIS CHANGE 18

INTRA, INST. CODE: 20

CHECK OF CONTINUATION SHEET ATTACHED 19

AGENCY AUTHORIZED SIGNATURE AND TITLE;

APPROVED BY;

PURCHASE OFFICER, D.P.S., COMMONWEALTH OF VIRGINIA 21

TRANS	AGENCY	GLA	FUND		FFY	PROGRAM			OBJECT	REVENUE SOURCE	AMOUNT					PROJECT		
			FUND	DET		PROG	SUB	ELE								PROJECT	TK	PH
22																		

COST CODE	FIPS	PSD	AGENCY REFERENCE	INVOICE		DUE DATE			REFERENCE DOC		
				DATE	NUMBER	MM	DD	YY	NUMBER	SX	Y

DESCRIPTION	CURRENT DOCUMENT		SUBSIDIARY ACCOUNT	MULTI-PURPOSE	CHECK IF EXPENDITURE DISTRIBUTION CONTINUATION
	NUMBER	SX			
					SHEETS ARE ATTACHED

REQUEST FOR CHANGE OF PURCHASE ORDER AND CHANGE ORDER - FORM DGS-41-008

When Used: For use when a change to a DPS awarded purchase is required.

How to Prepare This Form

1. Insert the date that this form was prepared.
2. Insert the change order number. (Number in numerical sequence, i.e., 1, 2, 3, etc.)
3. Insert the purchase order number affected.
4. Insert the contract number if applicable.
5. Insert the requisition number affected.
6. Insert the full name, address and zip code of the delivery point. A post office box number is unacceptable.
7. Insert the name, eVA Vendor ID or DUNS number, mailing address and zip code of vendor.
8. Insert the original order total including any previous changes.
9. Insert the item number from the purchase order which is to be changed.
10. Insert the commodity code number as shown on the purchase order form opposite each deletion or addition.
11. Show deletions and/or additions and describe briefly the commodity affected. If only making a Department of Accounts accounting code correction, "ONLY DOA CODE CORRECTION."
12. Insert the quantity deleted or added.
13. Insert the unit.
14. Insert the unit price.
15. Insert the amount of change. Use minus sign to show a decrease.
16. Explain the reason for change. Please be specific.
17. Insert the amount of increase or decrease and cross out the inappropriate word.
18. Insert the new total.
19. Check if a continuation sheet is used.
20. Signature and the title of an authorized person at the agency.
21. Must be approved and signed by a purchase officer of DGS/DPS or change order is not valid.
22. Insert the necessary coding required by the Department of Accounts for the CARS System. (Note: 064 = increase; 068 = decrease)

Annex 10-F

DGS-41-011

COMMONWEALTH OF VIRGINIA
AGENCY

PURCHASE ORDER CHANGE

2

eVA Vendor ID or DUNS Number. _____

1

PURCHASE ORDER NUMBER AFFECTED 3 _____

REQUISITION NO. AFFECTED 4 _____

CONTRACT NUMBER 5 _____

DATE 6 _____

USING AGENCY

7

HEREBY YOU ARE REQUESTED TO MAKE THE FOLLOWING CHANGE IN PURCHASE ORDER ABOVE DESIGNATED

ORIGINAL ORDER TOTAL: INCLUDING CHANGE ORDER/S (DISREGARD ANY PAYMENTS)

CHANGE ORDER AS FOLLOWS: SHOW DELETIONS AND/OR ADDITIONS TO FULLY EXPLAIN CHANGE:

TOTAL AMOUNT 8

COMM. NO.	DESCRIPTION OF ARTICLES OR SERVICES	QUANTITY	UNIT	UNIT PRICE
9	10			

REASON FOR CHANGE: 12

AMOUNT OF INCREASE/DECREASE SHOW IN CODE AREA 11

NEW TOTAL CHANGE ORDER NO.

INTRA. INST. CODE: 13

CHECK IF CONTINUATION SHEET ATTACHED

AUTHORIZED SIGNATURE AND TITLE 14

BY_____ TITLE_____

TRANS	AGENCY	GLA	FUND		FFY	PROGRAM			OBJECT	REVENUE SOURCE	AMOUNT					PROJECT		
			FUND	DET		PROG	SUB	ELE								PROJECT	TK	PH
15																		

COST CODE	FIPS	PSD	AGENCY REFERENCE	INVOICE		DUE DATE			REFERENCE DOC		
				DATE	NUMBER	MM	DD	YY	NUMBER	SX	Y

DESCRIPTION	CURRENT DOCUMENT		SUBSIDIARY ACCOUNT	MULTI-PURPOSE	CHECK IF EXPENDITURE DISTRIBUTION CONTINUATION
	NUMBER	SX			
					SHEETS ARE ATTACHED

REQUEST FOR CHANGE OF PURCHASE ORDER AND CHANGE ORDER - FORM DGS-41-011

When Used: For use on all agency- issued purchase orders.

How to Prepare This Form

1. Insert the contractor's name and address.
2. Insert the contractor's assigned number.
3. Insert the assigned number of the Agency Purchase Order being changed.
4. Insert the requisition number assigned by the agency which generated the original Agency Purchase Order.
5. If the Agency Purchase Order is being used to place an order against a term contract, list the contract number; otherwise, leave blank.
6. Insert the date of the Agency Purchase Order Change.
7. Insert the name and address of the agency.
8. Insert the amount of the original Agency Purchase Order.
9. Insert the assigned commodity number.
10. Describe the articles or services.
11. Insert the amount of the change.
12. State the specific reason for the change.
13. This is for agency use.
14. Insert the approved signature.
15. Insert the Agency 3-digit code and estimated amount in appropriate columns; however at agency's option, all CARS II coding may be inserted.

Annex 10-G

(Agency Letterhead)

CONTRACT MODIFICATION AGREEMENT

(For use in modifying an existing contract)

Date:

Contract No.:

Modification No.:

Issued By: COMMONWEALTH OF VIRGINIA,

(Department, Agency, Division)

Contractor:

Commodity:

This Supplemental Agreement is entered into pursuant to the provision of the basic contract.

Description of Modification:

Except for the changes provided herein, all other terms and conditions of this contract remain unchanged and in full force and effect.

NAME OF CONTRACTOR	COMMONWEALTH OF VIRGINIA
By: _____	By: _____
_____	_____
Name and Title (Type or Print) Date Signed	Name and Title (Type or Print) Date Signed

Annex 10-H

COMMONWEALTH OF VIRGINIA

Department of General Services
Division of Purchases and Supply

PROCUREMENT COMPLAINT FORM

INSTRUCTIONS FOR COMPLETING THE PROCUREMENT COMPLAINT FORM:

Form Preparation Instructions

Heading: Vendor /Agency information and distribution instructions.

1. Insert the full name and address of the vendor/agency and Insert the eVA Number when submitting the report.
2. Name the person that is to be contacted.
3. **Any responsible person's signature is acceptable (Authorized Vendor/Agency Signature).**
4. Insert phone number of contact person.

Closure: Agency and Order Entry Information

1. Insert the full name and address of the agency/vendor against which this report is filed.
2. Insert the agency representative/buyer/vendor you last contacted, including the phone number and extension.
3. Insert buyer /agency/vendor representative signature.
4. Insert date this form was initiated.
5. Insert the bid number if not an agency order.
6. Insert the purchase order number
7. Insert the purchase order date.
8. Insert the contract number if using state or single agency contract.
9. Insert generic commodity name of the item. Example: chair, etc.
10. Insert Agency Code/ eVA number.

Nature of Complaint: Insert (X) for principle reason (s) for complaint. Attach additional information and documentation.

NOTE:
1. Additional documentation can be attached to e-mail or faxed.
2. Transmit Copy by e-mail, fax or postal delivery.
3. Send via Email to: valerie.deloach@dgs.virginia.gov , fax (804) 786-5413 or mail to 1111 E. Broad Street, Richmond ,VA 23218-1199.
4. Agency/Vendor must print or save a copy for their files.
5. **This form may be used by both Agency and Vendor for complaint issues concerning contracts.**

DGS-41-024 revision: 06/2008

FOR DPS USE ONLY	File Date:	Status:	File No:
	Action/Date:		

COMMONWEALTH OF VIRGINIA
Department of General Services
Division of Purchases and Supply
PROCUREMENT COMPLAINT FORM

TO:

Name of Vendor and eVA# / Agency & Agency Code :		
Address:		
City:	State:	Zip Code:

Contact Name:	Title:
Signature:	
Phone No:	

NOTE: VENDOR/AGENCY MUST SUBMIT THEIR WRITTEN REPLY BELOW WITHIN TEN (10) DAYS OF RECEIPT OF THIS REPORT. INDICATE YOUR COUNTERMEASURE/CORRECTIVE ACTION BELOW AND MAIL A COPY TO THE ORIGINATING AGENCY AND A COPY TO THE CONTRACT COMPLIANCE OFFICER, DIVISION OF PURCHASES AND SUPPLY, P.O. BOX 1199, RICHMOND, VA 23218-1199. ATTACH ADDITIONAL SHEETS FOR YOUR RESPONSE IF REQUIRED.

FROM:

Agency/Vendor Name:		
Address:		
City:	State:	Zip Code:

Agency /Vendor Contact :
Phone No:
Buyer/Vendor Signature:

Date:	Agency Code/ Vendor eVA#:	Contract No:	P.O. No:	P.O. Date:	Description:

NATURE OF COMPLAINT

INVOICE/PAYMENT	**DELIVERY**	**SPECIFICATION/AGREEMENTS**	**OTHER**
☐ NON-PAYMENT	☐ DELIVERY REFUSED	☐ SPECS DELAYED	☐ AGENCY DELAYS
☐ LATE PAYMENT	☐ SHIPPED TO WRONG LOCATION	☐ MODIFICATION (NO CHANGE ORDER)	☐ UNAUTHORIZED CANCELLATION
☐ INCORRECT PAYMENT	☐ PARTIAL DELIVERY	☐ BID SAMPLE PROBLEMS	☐ UNAUTHORIZED PURCHASE FROM NON-CONTRACT VENDOR
☐ REFUSED LATE CHARGES	☐ TIME OF DELIVERY INAPPROPRIATE	☐ DID NOT MEET SPEC.	☐ POOR CUSTOMER SERVICE
☐ INVOICE PRICE INCORRECT	☐ IMPROPER METHOD OF DELIVERY	☐ UNAUTHORIZED SUBSTITUTION	☐ SHORT/OVER WEIGHT OR COUNT
☐ INCORRECT QUANTITY	☐ DAMAGED SHIPMENT	☐ DAMAGED PRODUCT	☐ UNSATISFACTORY INSTALLATION
☐ ITEMS DID NOT SHIP	☐ LATE/NO DELIVERY	☐ LACKS INSPECTION REPORT	☐ FAILURE TO IDENTIFY SHIPMENT PER CONTRACT TERMS
OTHER OR FURTHER EXPLANATION:			

COMMONWEALTH OF VIRGINIA

Department of General Services

Division of Purchases and Supply

PROCUREMENT COMPLAINT FORM

COUNTERMEASURES:

(Agency/Vendor: Be accurate, complete and factual. Indicate manner in which you suggest complaint be settled.)

FOR DPS USE ONLY	File No:
	Action/Date: Resolved_____ Removed from Bidder List _____ Suspension_____ Debarment_____ Contract Compliance Officer_____

Annexes 10 -I, 10-J, 10-K, and 10-L:

NOTICE TO USERS

The following four letters are sample Cure, Default, Request for Payment, and Default and Request for Payment letters. Revise them as appropriate. For complex dispute situations, contact your attorney advisor.

Annex 10-I

CURE LETTER
(Agency Letterhead)

(May be done orally or in writing.)

Date

Contractor's Name and Address

Subject: Notice of Contract Deficiency and Required Action

Dear _____:

As substantiated by the submission of a Procurement Complaint Form, you have failed to meet the requirement(s), i.e., *(delivery), (specifications), (performance standards), etc. on P.O. (or Contract) _____ dated _____. You are to satisfy this deficiency within _____days of the date of this letter or be terminated for default and reprocurement action taken under paragraph 7.14 of the *Vendors Manual*. In addition, your firm will no longer be solicited until this matter is satisfactorily resolved.

Sincerely,

Contract Officer/Contract Administrator
Telephone No. (___) _____

c: DGS/DPS Contract Compliance Section

* Choose appropriate condition.

Annex 10-J

DEFAULT LETTER
(Agency Letterhead)

Date

Contractor's Name and Address

Subject: Notice of Termination for Default on (Title and Number of the Purchase Order or Contract in Default)

Dear _____:

Reference is made to our submission of a Procurement Complaint Form and * (Notice of Contract Deficiency and Required Action Letter) or (telephone conversation) this date between (Name of Vendor Representative) and (the undersigned) or (Name of DGS/DPS Contract Compliance Officer).

This is to advise that your firm has been placed in default and referenced * (purchase order), (contract) has been terminated for failure to take corrective action within the specified time as referenced above. The Commonwealth will repurchase the specified * (goods), (services). You will be promptly notified of any additional purchase or administrative costs for which you become liable as a result of this default. In addition, your firm will no longer be solicited until this matter is satisfactorily resolved.

Sincerely,

Contract Officer/Contract Administrator
Telephone No. ( )

c: DGS/DPS Contract Compliance Section

* Choose appropriate condition.
Note: If this letter is used, follow up with Request for Payment (Annex 10-K) if additional repurchase costs are incurred.

Annex 10-K

REQUEST FOR PAYMENT LETTER
(Agency Letterhead)

Date

Contractor's Name and Address

Subject: Repurchase Costs Against (Purchase Order No./Contract No._____)

Dear _____:

Reference is made to our letter dated _____, subject: Notice of Termination For Default. The specified * (goods), (services) have been repurchased at an additional cost to the Commonwealth of $_____. Your firm is indebted to the Commonwealth in the amount of $_____and is requested to submit a check to this office payable to the Treasurer, Commonwealth of Virginia. If the payment is not received within 60 days, we will initiate collection action and proceed with a recommendation of debarment as stated in paragraph 7.20 of the *Vendors Manual*.

Sincerely,

Contract Officer/Contract Administrator
Telephone No. (____)_____

c: DGS/DPS Contract Compliance Section

* Choose appropriate condition.

Annex 10-L

DEFAULT AND REQUEST FOR PAYMENT LETTER
(Agency Letterhead)

Date

Contractor's Name and Address

Subject: Notice of Termination for Default on (Title and Number of the Purchase Order or Contract in Default)

Dear _____:

Reference is made to * (your letter dated_____), (our telephone conversation (s) of _____), (Procurement Complaint Form), (Notice of Contract Deficiency and Required Action Letter) concerning your firm's * (refusal), (inability), to honor the terms and conditions on the referenced * (purchase order), (contract) above.

This is to advise that your firm has been placed in default and referenced * (purchase order, (contract) has been terminated for failure to take corrective action within the time specified as referenced above. The specified * (goods), (services) have been repurchased at an additional cost to the Commonwealth of $_____. Your firm is indebted to the Commonwealth in the amount of $_____ and is requested to submit a check to this office payable to the Treasurer, Commonwealth of Virginia. In addition, your firm will no longer be solicited until this matter is satisfactorily resolved. If payment is not received within 60 days, we will initiate collection action and proceed with a recommendation of debarment as stated in paragraph 7.20 of the *Vendors Manual*.

Sincerely,

Contract Officer/Contract Administrator
Phone (____)_____

c: DGS/DPS Contract Compliance Section

* Choose appropriate condition.

CHAPTER 11

APPEALS AND DISPUTES

In this Chapter look for . . .

11. General
11.1 Goods Appeals
11.2 Services Appeals
11.3 Disputes
11.4 Alternative Dispute Resolution

11. **General**. The *Virginia Public Procurement Act* (*VPPA*) provides remedies that are available to a vendor in the event of a challenge on a procurement action. The discussion on remedies in this chapter is divided into goods and services.

11.1 **Goods Appeals**. Chapter 9 of the *Vendors Manual* sets forth DGS/DPS policy and Appeals Board procedures relating to the purchase of supplies, materials, equipment, and printing. The DGS/DPS Procurement Appeals Board (hereinafter referred to as the Board) is established under the *Code of Virginia*, § 2.2-4365, to provide an impartial administrative review of contested decisions on the procurement of goods made by any agency of the Commonwealth.

11.2 **Services Appeals**. *Code of Virginia***,** § 2.2-4365, provides that certain agencies may establish an administrative procedure for hearing appeals from refusals to allow withdrawal of bids, appeals from disqualifications, appeals from determinations of nonresponsibility, appeals of denials of protests of award or decision to award a contract, and appeals from decisions on disputes arising during the performance of a contract, or any of these which relate to contracting for services. Such administrative procedures shall provide for a hearing before a disinterested person or panel, the opportunity to present pertinent information, and the issuance of a written decision containing findings of fact. The disinterested person or panel shall not be an employee of the governmental entity against whom the claim has been filed. The findings of fact shall be final and conclusive and shall not be set aside unless the same are fraudulent, arbitrary, or capricious, or so grossly erroneous as to imply bad faith. No determination on an issue of law shall be final if appropriate legal action is instituted in a timely manner. Any party to the administrative procedure, including the public body, shall be entitled to institute judicial review if such action is brought within thirty days of receipt of the written decision (*Code of Virginia*, § 2.2-4365). Any appeals procedures that are established must be consistent with the *VPPA***,** can apply only to appeals filed after the procedure is established, and must provide for the vendor to receive written notification of the action taken.

a. **Ineligibility**. Any bidder, offeror, or contractor refused permission to, or disqualified from participation in public contracts shall be notified in writing. Prior to the issuance of a written determination of disqualification or ineligibility, the public body shall (i) notify the bidder in writing of the results of the evaluation, (ii) disclose the factual support for the determination, and (iii) allow the bidder an opportunity to inspect any documents which relate to the determination, if so requested by the bidder within five business days after receipt of the notice.

Within ten business days after receipt of the notice, the bidder may submit rebuttal information challenging the evaluation. The public body shall issue its written determination of disqualification or ineligibility based on all information in the possession of the public body, including any rebuttal information, within five business days of the date the public body received such rebuttal information.

If the evaluation reveals that the bidder, offeror or contractor should be allowed permission to participate in the public contract, the public body shall cancel the proposed disqualification action. If the evaluation reveals that the bidder should be refused permission to participate, or disqualified from participation, in the public contract, the public body shall so notify the bidder, offeror or contractor. Such notice shall state the reasons for the action taken. This decision shall be final unless the bidder, offeror, or contractor appeals within ten days of receipt by invoking administrative procedures meeting the standards of § 2.2-4365, if available, or in the alternative by instituting legal action as provided in § 2.2-4364 of the *Code of Virginia*.

If, upon appeal, it is determined that the action taken was arbitrary or capricious, or not in accordance with the Constitution of Virginia, statute or regulations, the sole relief shall be restoration of eligibility (*Code of Virginia*, § 2.2-4357).

b. **Appeal of Denial of Withdrawal of Bid**. A decision denying withdrawal of bid under the provisions of § 2.2-4330 of the *Code of Virginia* shall be final and conclusive unless the bidder appeals the decision within ten days after receipt of the decision by invoking administrative procedures meeting the standards of § 2.2-4365, if available, or in the alternative by instituting legal action as provided in § 2.2-4364 of the *Code of Virginia*.

If no bid bond is posted, a bidder refused withdrawal of a bid under the provisions of the *Code of Virginia*, § 2.2-4330, prior to appealing, shall deliver to the agency a certified check or cash bond in the amount of the difference between the bid sought to be withdrawn and the next low bid. Such security shall be released only upon a final determination that the bidder was entitled to withdraw the bid.

If, upon appeal, it is determined that the action taken was arbitrary or capricious, or not in accordance with the Constitution of Virginia, statute or regulations, the sole relief shall be withdrawal of bid (*Code of Virginia*, § 2.2-4358).

c. **Determination of Nonresponsibility:**

(1) Following public opening and announcement of bids received on an Invitation to Bid, the public body shall evaluate the bids based upon the requirements set forth in the IFB, 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 (*Code of Virginia*, § 2.2-4301, Definition of Competitive sealed bidding, Element 4). At the same time, the agency shall determine whether the apparent low bidder is responsible. If the agency so determines, then it may proceed with an award to the lowest responsive and responsible bidder (*Code of Virginia*, § 2.2-4301, Definition of Competitive sealed bidding, Element 5). If the public body determines that the apparent low bidder is not responsible, it shall proceed as follows:

(a) Prior to the issuance of a written determination of nonresponsibility, the public body shall (i) notify the apparent low bidder in writing of the results of the evaluation, (ii) disclose the factual support for the determination, and (iii) allow the apparent low bidder an opportunity to inspect any documents which relate to the determination, if so requested by the bidder within five business days after receipt of the notice.

(b) Within ten business days after receipt of the notice, the bidder may submit rebuttal information challenging the evaluation. The public body shall issue its written determination of responsibility based on all information in the possession of the public body, including any rebuttal information, within five business days of the date the public body received such rebuttal information. At the same time, the public body shall notify, with return receipt requested, the bidder in writing of its determination.

(c) Such notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within ten days after the receipt of the notice, by invoking administrative procedures meeting the standards of the *Code of Virginia*, § 2.2-4365, if available, or in the alternative by instituting legal action as provided in the *Code of Virginia*, § 2.2-4364.

(d) The provisions of this subsection shall not apply to procurements involving the prequalification of bidders and the rights of any potential bidders under such prequalification to appeal a decision that such bidders are not responsible.

(2) If, upon appeal pursuant to the *Code of Virginia*, § 2.2-4364 or § 2.2-4365, it is determined that the decision of the public body was not an honest exercise of discretion, but rather was arbitrary or capricious or not in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation for Bids, and the award of the contract in question has not been made, the sole relief shall be a finding that the bidder is a responsible bidder for the contract in question. If it is determined that the decision of the public body was not an honest exercise of discretion, but rather was arbitrary or capricious or not in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation for Bids, and the award of the contract has been made, the relief shall be as set forth in § 2.2-4360B of the *Code of Virginia*.

(3) A bidder contesting a determination that he is not a responsible bidder for a particular contract shall proceed under this section, and may not protest the award or proposed award under § 2.2-4360 of the *Code of Virginia*.

(4) Nothing contained in this section shall be construed to require a public body, when procuring by competitive negotiation, to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous.

d. Protest of Award or Decision to Award. Any bidder or offeror may protest the award or decision to award a contract by submitting such protest in writing to the procuring agency, or an official designated by the agency, no later than ten days after public notice of the award or the announcement of the decision to award, whichever occurs first. Public notice of the award or the announcement of the decision to award shall be given by the public body in the manner prescribed in the terms or conditions of the IFB or RFP. Any bidder, offeror, or contractor, or a potential bidder or offeror on a contract negotiated on a sole source or emergency basis who desires to protest the award or decision to award such contract shall submit such protest in the same manner no later than ten (10) days after posting or publication of the notice of such contract as provided in 3.18c. The written protest must be received in the purchasing office no later than 5:00 p.m. on the tenth day. If the tenth day falls on a weekend or an official holiday, the ten-day period expires at 5:00 p.m. on the next regular workday. However, if the protest of any actual or potential bidder or offeror depends in whole or in part upon information contained in public records pertaining to the procurement transaction, then the time within which the protest must be submitted shall expire ten (10) days after those records are available for inspection by such bidder or offeror, or at such later time as provided in this section. No protest shall lie for a claim that the selected bidder or offeror is not a responsible bidder or offeror. The written protest shall include the basis for the protest and the relief sought. The procuring agency or an official designated by that agency shall issue a decision in writing within ten (10) days stating the reasons for the action taken. This decision shall be final unless the bidder or offeror appeals within ten (10) days of receipt of the written decision by invoking administrative procedures under § 2.2-4365 of the Code of Virginia, if available, or in the alternative by instituting legal action under § 2.2-4364 of the Code of Virginia. Nothing in this subsection (§ 2.2-4364) shall be construed to permit a bidder to challenge the validity of the terms or conditions of the Invitation for Bids or Request for Proposals.

If prior to an award it is determined that the decision to award is arbitrary or capricious, then the sole relief shall be a finding to that effect. The agency shall cancel the proposed award or revise it to comply with the law. If, after an award, it is determined that an award of a contract was arbitrary or capricious, then the sole relief shall be as hereinafter provided. Where the award has been made but performance has not begun, the performance of the contract may be enjoined. Where the award has been made and performance has begun, the agency may declare the contract void upon a finding that this action is in the best interest of the public. Where a contract is declared void, the performing contractor shall be compensated for the cost of performance up to the time of such declaration. In no event shall the performing contractor be entitled to lost profits (*Code of Virginia***,** § 2.2-4360).

When an agency, an official designated by that agency, or an appeals board determines, after a hearing held following reasonable notice to all bidders, that there is probable cause to believe that a decision to award was based on fraud or corruption the agency-designated official or appeals board may enjoin the award of the contract to a particular bidder (*Code of Virginia***,** § 2.2-4360).

e. **Effect of Appeal Upon Contract**. Pending final determination of a protest or appeal, the validity of a contract awarded and accepted in good faith in accordance with this manual shall not be affected by the fact that a protest or appeal has been filed (*Code of Virginia,* § 2.2-4361).

f. **Stay of Award During Protest**. An award need not be delayed for the period allowed a bidder or offeror to protest, but in the event of a timely protest or the filing of a timely legal action, no further action to award that contract will be taken unless there is a written determination that proceeding without delay is necessary to protect the public interest or unless that bid or offer would expire (*Code of Virginia,* § 2.2-4362).

g. **Legal Actions**. If injunctive relief is granted, the court, upon request of the public body, shall require the posting of reasonable security to protect the public body. In the event the apparent low bidder, having been previously determined by the public body to be not responsible in accordance with § 2.2-4301, is found by the court to be a responsible bidder, the court may direct the public body to award the contract, forthwith, to such bidder in accordance with the requirements of the *Code of Virginia* and the Invitation for Bids. A contractor may bring an action involving a contract dispute with a public body in the appropriate circuit court. A bidder, offeror, or contractor need not utilize administrative procedures meeting the standards of § 2.2-4365 of the *Code of Virginia*, if available, but if those procedures are invoked by the bidder, offeror, or contractor, the procedures shall be exhausted prior to instituting legal action concerning the same procurement transaction unless the public body agrees otherwise. Nothing herein shall be construed to prevent a public body from instituting legal action against a contractor (*Code of Virginia,* § 2.2-4364).

11.3 **Disputes**.

a. **Claims**. Written notice of the contractor's intention to file a claim must be given at the time of the occurrence or beginning of the work upon which the claim is based. Contractual claims whether for money or other relief shall be submitted in writing no later than sixty days after final payment. Nothing herein shall preclude a contractor from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of claims shall not delay payment of amounts agreed due in the final payment (*Code of Virginia,* § 2.2-4363).

A contractor may not institute legal action prior to receipt of the purchasing office's decision on the claim unless that office fails to render such decision within thirty (30) days. The decision of the purchasing office shall be final and conclusive unless the contractor, within six months of the date of the final decision on the claim, institutes legal action as provided in the *Code of Virginia,* § 2.2-4364.

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

b. **Claims Relief**. Under certain circumstances, beyond the control of the contractor such as acts of God, sabotage, and fire or explosion not caused by negligence, relief from performance of the contract or performance within the time required by the contract may be granted by the purchasing office (see Liquidated Damages Clause, Appendix B, Section II).

c. Each public body shall include in its contracts a procedure for consideration of contractual claims. Such procedure, which may be contained in the contract or may be specifically incorporated into the contract by reference and made available to the contractor, shall establish a time limit for a final decision in writing by the public body. If the public body has established administrative procedures meeting the standards of § 2.2-4365, such procedures shall be contained in the contract or specifically incorporated in the contract by reference and made available to the contractor.

11.4 **Alternative Dispute Resolution (ADR)**

a. Alternative Dispute Resolution is designed to increase the opportunity for relatively inexpensive and expeditious resolution of contract disputes. If an agency's final decision denying a contractual claim is

challenged, the contractor and the agency are encouraged to resolve the dispute through the informal ADR process described below. However, participating in the ADR process does not relieve the contractor from complying with the filing deadlines for claims listed in 11.3, and does not imply that the agency's previously-issued decision is suspended or no longer final.

b. The contractor requesting ADR shall give written notice to the agency purchasing office identifying the portions of the agency's decision that are in dispute and requesting that ADR be used. If the agency agrees to ADR, the agency and contractor shall each appoint a representative to participate in ADR on its behalf. Each party's representative shall be a senior manager who is not an attorney and who was not previously involved in the dispute. Each party shall furnish to the other party all non-privileged documents and information with respect to the dispute that either party believes to be appropriate and germane. The representatives may then negotiate in an effort to resolve the dispute without the need for legal counsel. The use of a facilitator to accelerate the resolution process is encouraged.

c. No obligation to negotiate or continue negotiating shall be inferred from this paragraph 11.4 or from the parties' agreement to use ADR, and each party shall remain free to discontinue ADR at any time. No agreement shall be deemed to arise from any communication during the ADR process, unless the agreement is reduced to writing and signed by duly-authorized representatives of both parties. Any settlement or compromise of claim must be approved by the Commonwealth's Office of the Attorney General.

d. Any compensation and expenses paid to the facilitator shall be shared equally by the two parties. In no event shall either party be entitled to reimbursement from the other party for any other cost incurred or effort expended as a result of the ADR process.

CHAPTER 12

STATE & FEDERAL SURPLUS PROPERTY

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State Surplus Property

12.0 **General**. Section 2.2-1124 of the *Code of Virginia* provides the Virginia Department of General Services (DGS) with statutory responsibility to establish procedures for the disposition of surplus materials from all Commonwealth departments, divisions, institutions, and agencies, as well as any local public body. (*Code of Virginia*, § 2.2-1124)

Section 2.2-1123 of the *Code of Virginia* also identifies DGS as the agency of state government responsible for acquiring surplus personal property, including but not limited to materials, supplies, and equipment, by purchase, gift, or otherwise, from the United States government or any of its agencies for distribution to departments, agencies, institutions and political subdivisions of the Commonwealth, and to eligible, nonprofit, nongovernmental organizations for use in the organizations' activities within the Commonwealth. (*Code of Virginia*, § 2.2-1123)

Both the state and federal surplus property programs are managed by the DGS Office of Surplus Property Management (OSPM).

This chapter contains policy, guidance and instructions for state agencies, institutions, and local government in:

- Identifying, documenting, and disposing of their surplus property
- Obtaining state-owned personal property
- Obtaining and understanding the federal surplus property program, which offers surplus federal property to state agencies, including documentation procedures and federal requirements for use.

Information about surplus property, including the surplus inventory listings, the auction schedule, internet sales and competitive bids, as well as forms, are listed on the DGS website http://www.dgs.virginia.gov/surplus/.

12.1 **Definition**. Surplus materials means personal property including, but not limited to, materials, supplies, equipment, and recyclable items, but does not include property as defined in *Code of Virginia*, § 2.2-1147 (real property or real estate), that is determined to be surplus.

Additionally, surplus materials shall not include finished products that a mental health or mental retardation facility sells for the benefit of its patients or residents, provided that (i) most of the supplies, equipment, or products have been donated to the facility; (ii) the patients or residents of the facility have substantially altered the supplies, equipment, or products in the course of occupational or other therapy; and (iii) the substantial alterations have resulted in a finished product.

12.2 **Authority and Responsibility for State Surplus Property**.

a. **DGS**. The *Code of Virginia*, § 2.2-1124B directs DGS to establish procedures for the disposition of surplus materials from departments, divisions, institutions, and agencies of the Commonwealth. These procedures include the handling, transfer, donation, public sale or other disposition of surplus property.

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Computers and information technology (IT) Assets. Prior to the sale for reuse, or recycling or other transfer of computers or other IT assets, each agency shall ensure and certify to DGS that all policies for their transfer or other disposition to be consistent with the data and information security policies developed by the Virginia Information Technologies Agency (VITA). Certification to DGS and adherence to VITA policies are to ensure the secure data removal of any confidential state data or personal identifying information of citizens of the Commonwealth.

DGS/OSPM shall determine the method of disposal of state-owned computers and other IT assets. IT assets owned by Northrop Grumman Information Technology, Inc. (NG) as a part of the Comprehensive Infrastructure Agreement between the Commonwealth of Virginia and NG are not deemed state property, so will be disposed of in accordance with NG policies and procedures.

Any Commonwealth entity disposing of a Commonwealth IT asset shall follow the VITA Information Technology Resource Management Standard (ITRM) Standard SEC514-03, Revision 3, dated March 15, 2008 and entitled "Removal of Commonwealth Data from Electronic Media," and located at the VITA URL http://vita.virginia.gov/uploadedFiles/Library/PSGs/COV%20ITRSEC514-03_Data_Removal2008.pdf, or any then current successor VITA document that provides further information for the disposal of Commonwealth IT assets.

At the present time, an optional data cleaning contract offers data cleaning, transfer to surplus property and recycling services to state agencies and other public bodies in the Commonwealth of Virginia, and is available at this link: http://www.vita.virginia.gov/procurement/contractDetail.cfm?contract_id=1000477 or by searching "VITA Secure Data Destruction."

Additional information from VITA on removing data from surplus computer equipment is available online at http://www.vita.virginia.gov/library/default.aspx?id=5046

b. **Other Agency Authority and Responsibility.** The following agencies are provided authority for disposal of the following designated commodities:

1. **Timber/Pulpwood**. Management of the state's forest has been assigned to the Department of Forestry (DOF), *Code of Virginia*, § 10.1-1120 through 10.1-1123, and sale or disposal shall be through them.

2. **Real Property**. Management of real property land, buildings, and/or other improvements is managed by the DGS, Division of Real Estate Services (DRES), and sale or disposal shall be through them.

3. **Unclaimed or Abandoned Property at Agency**. All tangible and intangible property that is held and has remained unclaimed by the owner for more than five years after it became payable or distributable is presumed abandoned (for full legal definition see *Code of Virginia*, § 55-210.2:1). Such property that is unclaimed or abandoned must be reported to the Unclaimed Property Division, Department of the Treasury, which is responsible for implementing the provisions of *The Uniform Disposition of Unclaimed Property Act*. Contact 804-225-2393 for additional information or online at http://www.trs.virginia.gov/.

4. **Personal Property Submitted to the Division of Consolidated Lab Services.** Personal property, including drugs, which has been submitted to the Division of Consolidated Lab Services for analysis or exam, may be disposed of by DCLS pursuant to *Code of Virginia* § 2.2-1107 and -1108.

12.3 **Services Available for Local Government Use.** In accordance with the *Code of Virginia*, § 2.2-1124(F), any local public body of the Commonwealth is authorized to use the services or facilities of the Commonwealth's DGS/OSPM to dispose of their surplus property, pursuant to the policies, procedures, and guidelines established herein.

For questions or information about the disposal of their surplus property, local government representatives should contact the Director, DGS/OSPM at (804) 236-3675 or email statesurplus@dgs.virginia.gov with a description of their surplus material.

Proceeds from the sale of the surplus property shall be returned to the local body minus a service fee. The service fee charged by the Department shall be consistent with the fee charged by the Department to state public bodies

12.4 **Agency Responsibilities Related to Surplus Property.**

a. **Surplus: A Non-Mandatory Source of Supply**. In procurement planning, surplus property is deemed a non-mandatory source of supply to be considered before initiating a purchase action. This is described further in Chapter 2, Sources of Supply, section 2.2.b. Agencies can save money by purchasing surplus items, some of which are in "like new" condition, and can include federal surplus property that OSPM may be able to obtain through the federal surplus system. Agencies are encouraged to visit the surplus warehouses periodically to "shop" for their agencies. Items are available for purchase to authorized persons, with the distribution centers operating on a supermarket plan on a first-come, first-served basis. The Wytheville facility now offers a surplus "store" that is open to both agencies' and the public with items being offered for a fixed price. For additional information, please refer to the Surplus Property information on the DGS website: http://www.dgs.virginia.gov/surplus/.

b. **Designation of Agency Surplus Property Officer**. Agency heads should designate an Agency Surplus Property Officer who is responsible for all matters for the management of their agency's surplus state property. This person may also be designated as the surplus property officer for federal surplus property acquisitions. In the absence of specific delegation of this authority, the Agency Head possessing the property must sign all required documents. Agencies are to provide the name of their Agency Surplus Property Officer to DGS by submitting a Surplus Property Officer Designation Form (Annex D). This form is also available in the Surplus section of the DGS website under "Find a Form" at http://www.dgs.virginia.gov.

Each Agency Head or their designated Surplus Property Officer is required to:

1. Follow the Commonwealth's surplus policies and procedures as described in this chapter
2. Evaluate surplus reutilization/disposal options and request authorizations as appropriate from DGS/OSPM
3. Ensure forms and records of surplus disposal are completed and maintained
4. Efficiently and carefully manage the Commonwealth's surplus property generated by the agency
5. Provide information, policies, and guidance concerning disposal procedures and related surplus property information to their agency staff involved in property acquisition, storage, moves, and disposal.

Surplus Property Officers should consult DGS/OSPM staff for guidance when necessary. Training for agency Surplus Property Officers is routinely offered by DGS through VCO classes, the Procurement Forum, and other venues.

c. **Designation of Agency Staff with Surplus Purchasing Authority**. In addition to the Surplus Property Officer, each agency may designate other designees authorized to sign for surplus property. Such authorization allows several individuals from an agency to visit surplus warehouses and select and sign for surplus property. Agencies should complete and submit to DGS the Signature Authorization Form (Annex C) to designate such individuals or to update authorization information. Every three years, DGS will request an update or verification of the designated designees or an agency can send updates as required when there are staff changes.

d. **Security and Handling of Property**. Agencies are accountable and responsible to ensure reasonable care and security of the Commonwealth's surplus property during the entire disposal process in order to maintain full residual property value. This includes the periods of time for storing surplus items and/or delivery to a surplus warehouse, or while conducting an internet sale or auction, which includes sale preparation, inspection, payments, release, and final pickup. Surplus property must be handled carefully and stored properly, in a manner that minimizes breakage or damage from rough handling, improper stacking, excessive wear, or inappropriate storage outside that exposes property to weather, or any other poor storage condition. The conscientious handling of the Commonwealth's surplus property is the responsibility of the Agency Head, and their designees, as well as all agency individuals who use or handle it, and is not solely the responsibility of the Surplus Property Officer. Additionally, surplus property, which includes recyclable materials, shall NOT be taken for personal use or personal sale by any Commonwealth employee.

Even though Commonwealth property may be designated "surplus," as long as the property is physically located at the agency or selling entity, then it is the responsibility of that agency or entity to safeguard it. The safeguarding of surplus property become the responsibility of DGS/OSPM only after the property is transferred or delivered into the physical custody of DGS/OSPM, either through use of DGS transportation assets or delivery to a DGS Surplus Property Distribution Center. Once an agency or selling entity turns the property over to the custody of DGS/OSPM, then the ownership, accountability and responsibility for reasonable care and security, etc., transfers to DGS/OSPM. Once transferred, DGS/OSPM retains any revenue from the sale of items and there is no financial liability to the transferring agency or entity.

e. **Changes in Availability**. If items are reported to DGS/OSPM as surplus, but are put back into use or transferred to another agency, then the agency must notify DGS/OSPM immediately. Failure to report deletions or misplaced property creates inconveniences and unnecessary expenses for all parties. Items sold via the internet and not available for inspection or pickup may result in the agency becoming liable to the bidder.

f. **Property Records.** In order to track their inventory and assets both upon acquisition and during their use, agencies should maintain records of their property using the Commonwealth's Fixed Asset Accounting and Control System ("FAACS") or other appropriate entity-specific, property asset record-keeping systems. Such records are important and helpful when items become surplus property, as the purchase date, age, model and manufacturer of the item can then be traced from such information.

DGS/OSPM does not have access to agencies' FAACS inventory listings or any other inventory systems used by agencies. Therefore, regardless of how an agency codes its inventory system, an agency remains responsible for its fixed asset property records until the property is disposed of. Surplus property may be disposed of in several ways and examples include: transfer within an agency or to another agency, delivery to a surplus warehouse, delivery to a buyer (if sold at auction or on the internet, delivery to or collection by a contracted recycler, or delivery to a landfill, if authorized by a disposal letter from DGS/OSPM.

For records related to the surplus and disposition of surplus property, follow the procedures in Section 12.11 of this chapter of the APSPM. State agencies or institutions disposing of surplus property are to maintain their records in accordance with the policies established for public records management from the Library of Virginia, which can be accessed at http://www.lva.virginia.gov/agencies/records/ or any then-current successor URL.

12.5 **Purchases by State Employees and Their Families**. Except within the limits noted below, the *Code of Virginia*, § 2.2-3106 of the Conflict of Interests Act prohibits State employees and their immediate family from purchasing surplus property. An employee's immediate family includes the employee's spouse, and any other person living in the employee's household who is a dependent of the employee or on whom the employee is dependent.

A $500 limit to purchasing surplus property applies to surplus property sales, such as auctions or internet sales, even if the State employee buyer works for a different agency than the selling agency. Employees of the selling agency should not purchase property if they influence the maintenance, surplusing, pricing or disposition of the property item. An exemption to the $500 limit applies if the property is purchased in any sale of surplus property at uniform (fixed) prices that are available to the public. Certain other exceptions are listed in *Code of Virginia*, § 2.2-3110, but these exceptions rarely apply to surplus property sales.

12.6 **Disposal Authority.**

a. **DGS Disposal Authority and Classification of Surplus Property**. DGS/OSPM has overall disposal authority for surplus material and is responsible for determining the method of surplus disposal for most items. The Commonwealth's surplus property may be assessed and classified by DGS/OSPM as follows:

1. Items that have value for transfer, trade-in, or sale
2. Scrap items that have sale value for material content only, such as recyclable material
3. Items that have little commercial value and can be donated to appropriate entities
4. Items that have little or no commercial value and are acceptable for landfilling or trash disposal

b. **Delegation of Disposal Authority**. Delegation may be granted that permits an agency to independently dispose of surplus materials when this appears to be in the Commonwealth's best interest. The agency will abide by and follow the provisions of the *Code of Virginia* and this chapter of the *APSPM* when exercising delegated authority. All requests for delegation authority must be made in writing to DGS/OSPM for approval by the Director, DGS/OSPM. Revenue generated shall be promptly deposited into the state treasury and such deposits reported to the State Comptroller. Additionally, a reconciliation of the sale action shall be sent to the Director, DGS/OSPM. Virginia State Sales Tax must also be collected and paid to the Department of Taxation, if applicable. Types of delegated authority that may be requested are as follows:

1. **Commodity-Based Delegation**. Certain commodities generated on an on-going basis, may be annually delegated by DGS/OSPM for sale action by agencies and institutions. Agencies receiving and using this delegation authority shall submit a Quarterly Sales Report to the Director, DGS/OSPM. Suggestions for items to be included may be submitted to the Director in writing, by email to statesurplus@dgs.virginia.gov or by fax to 804-236-3663.

2. **One-Time Local Sale Authority**. Agencies may request one-time authority to sell low-dollar value property locally, such as certain types of chairs, designated furniture and outdated books.

12.7 **Surplus Property Disposal Methods and Procedures.**

a. **Assessment of Surplus Property to Determine Disposal Method**: The disposal method that is selected by DGS/OSPM for the sale of surplus property takes into consideration several factors, which includes:

1. Assessment of the condition and age of item(s)
2. Quantity of the surplus item or items
3. Current market demand and pricing for such materials
4. Size and weight of the material and related transport and storage issues
5. Location of potential buyers or donees (local or out of area)

To effectively manage the Commonwealth's surplus property disposal processes, DGS/OSPM assists all of the Commonwealth's agencies, institutions, and local government entities in several ways, by providing enterprise-wide surplus property management of:

1. Policies, procedures, guidance, and training
2. Market information, property valuation and disposal recommendations, and
3. Managed and contracted services to best facilitate and optimize the reuse, public sale, or recycling of Commonwealth property.

This assistance is provided with the additional goals of obtaining the highest revenue possible from the sale of materials, while at the same time, striving for the highest level of efficiency in time, labor, and resources needed.

b. **Surplus Property Disposal Methods**. Disposition of surplus property is accomplished in any one of various ways to best meet the needs of the disposing agency or entity, as well as maximize either the reutilization or resale value of the property. Initially, the Commonwealth encourages maximum re-use of materials, whenever possible, after which, disposal is then accomplished through one of the following:

1. **Transfer within Same Agency**. Agencies are encouraged to reuse property by transferring needed property from one activity to another within the same agency. Agencies are encouraged to post listings of such equipment, materials and supplies available for intra-agency reuse on internal websites, develop "reuse rooms" to store and offer these items for re-use, or employ any other methods that can make these items available for re-utilization. This does not require notification of DGS or use of the Surplus Property Report, DGS 44-001, and DGS/OSPM does not need a copy of any paperwork for these transactions.

2. **Transfer and Sale to another State Agency**. Re-utilization of surplus property between state agencies is encouraged. Agencies may post listings of such equipment, materials and supplies available for reuse on their agency websites or agencies may post these items on internet sites designated by DGS/OSPM. Items may be transferred to another agency with or without the transfer of funds. A transfer letter/document, describing the property, is prepared by the owning agency and forwarded to the receiving agency. If there is a charge for the property being transferred, the owning agency bills the receiving agency for the agreed amount. Proceeds from sale shall promptly be deposited into the account fund for surplus property sales for the agency and reported to the State Comptroller. Documentation supporting the property transfer with appropriate signatures must be maintained in the files of the owning and receiving agencies. A transfer form for agency use, DGS 44-012, is included in Annex B. DGS/OSPM does not need a copy of paperwork of these transactions.

3. **Preliminary Sales Offering of Surplus Property to Eligible Organizations: Political Subdivisions, School Divisions and Qualified Non-Profit 501(c) Organizations**. Part of the mission of the Commonwealth's surplus property activity is to support public institutions and certain non-profit organizations by making available useful materials and property at a reasonable price. Therefore, prior to initiating any public sale or auction, surplus materials must first be offered at the items fair market value to these institutions, which are political subdivisions of the Commonwealth (local governments and other public bodies), schools, and qualified non-profit 501(c) organizations. Qualified non-profit 501(c) organizations are defined as approved for the distribution of federal surplus materials. Contact the OSPM office for eligibility questions. Additionally, direct sales may be also be made to the following organizations as established in §2.2-1124, of the *Code of Virginia*:

   - Volunteer rescue squads and fire departments established pursuant to *Code of Virginia*, §15.2-955;
   - Virginia charitable organizations with a 501(c)(3) tax-exempt status that operate as children's homes;
   - Virginia charitable corporations with a 501(c)(3) tax-exempt status operating as clinics for the indigent and uninsured that are organized for the delivery of primary healthcare services (i) as federally qualified health centers designated by the Health Care Financing Administration or (ii) at a reduced or sliding fee scale or without charge;
   - Public television stations located in the state;
   - Local social service departments for the purpose of resale at cost of surplus motor vehicles, when direct sales are made to Temporary Assistance for Needy Families (TANF) recipients.
   - Through local social services boards, surplus clothing may be transferred to an appropriate department, division, institution, or agency of the Commonwealth for distribution to needy individuals.

   Sale prices of less than market value may be considered with the submission of written justification supporting a reduced price. Attach copies of justification letters reflecting prices proposed. Upon approval from the Director, DGS Office of Surplus Property Management, a Surplus Property Sales Award will be issued, and the item will be available for purchase to the requesting organization.

4. **Public Sales or Auctions**. For state agencies or institutions, all public sales or auctions shall be conducted by DGS, unless specific delegation is received by the state agency or institution from DGS/OSPM. The type of sale will be determined solely by DGS/OSPM in order to achieve the optimum return from the sale, but any action shall be in cooperation with the state agency or institution. DGS/OSPM shall also work cooperatively with any local government entities to determine the best method of sale.

Public sale property postings, auction dates and other types of information are made available on the Surplus Property website at http://www.dgs.virginia.gov/surplus/.

(a) **Live Auctions**. Live auctions are scheduled throughout the state at DGS/OSPM warehouses, agency sites or at contracted auction service locations. Notices and lists of auction items are posted on the DGS website http://www.dgs.virginia.gov under "Public Auction." See below for information about on-line auctions over the Internet.

(b) **On-line Auctions.** Property may be sold through internet on-line auctions, and in some cases, items will remain at the agency location while posted for sale. Surplus items will be listed for sale using websites that have been approved by the Director, DGS/OSPM, and the sale will be managed by DGS/OSPM personnel. Except as otherwise authorized on an individual case basis, surplus on-line auction items should not be released by the owning agency to the awarded recipient without the recipient displaying the copy of the Surplus Property Bill of Sale. The owning agency is responsible for the release of the correct item(s) to the appropriate party.

The following procedures apply to on-line auction sales of surplus property:

1) **Submission of Surplus Property Report.** Agencies must submit a Surplus Property Report, Form DGS-44-001, (Annex 12-A) and pictures detailing as much information as possible to disclose the operating condition of property, or any known defect. Additionally, agencies must include accounting code data to enable the transfer of funds back to the owning agency. All property is sold in "where is/as is" condition, and agencies should not make claims as to the general condition of the property. Any specific known defect (broken part, transmission, etc.) must be disclosed on the Surplus Property Report.

2) **Photographs.** Each agency shall provide recent photographs or digital images of their surplus property when property is reported for sale. Potential buyers expect to see clear photographs of the item being offered for sale. It is recommended that several pictures be taken of an item shot at different angles or views. Photographs or images must be current and of the actual item being reported, unless there are more than five items reported at the same time that are identical and all items are in the same condition. In this case, an image of one of the items would suffice, with a note included in the report that indicates that the photograph is representative of each item in the lot.

(c) **Set-Price**. Surplus property may be offered to the public at a set- or fixed-price with approval of the Director, DGS Office of Surplus Property Management. The sales price of an item is based on known sales experience and/or assessed current market value. Generally, set-price sales should be publicly advertised at least a week in advance. Reference section 12.6.b.2, regarding one-time sales.

(d) **Contracts**. Contracts may be established for certain surplus items that are generated on a continuing basis. DGS may offer the property on a single sale, a term, or an open-ended contract basis. Once a contract is established, items will be sold in accordance with its terms and conditions, and a Surplus Property Report is usually not required. Examples of commodities of this nature include scrap metal, printer cartridges and other recyclables.

(e) **Negotiated Sale**. Under exceptional circumstances, surplus property may be sold through negotiation, such as when property has not been sold despite all efforts at public sale. Sales may be concluded only by the Director, DGS/OSPM upon receipt of written documentation of the circumstances.

5. **Recycling**. Upon determination that the property has no reuse value, and an agency receives disposal authority from DGS/OSPM, there are opportunities to recycle an agency's surplus materials. The benefits of recycling include reducing waste, lowering trash disposal costs, conserving material resources and landfill space, and saving energy. Depending on the quantity of material recycled and the market conditions, your agency may receive revenue from recycling.

The types of material that can be recycled is increasing, and includes paper products such as cardboard, brochures, newspapers and office paper, beverage and food containers, scrap metal, printer cartridges, electronics, as well as yard and food waste. Resource information, such as a list of recyclable materials commonly generated in institutional settings, and a waste audit worksheet, are posted in the Surplus Section on the DGS website, under

"Recycling Assistance" at www.dgs.virginia.gov/surplus/. Additional waste reduction and recycling information is also available from the Virginia Department of Environmental Quality: www.deq.virginia.gov

Currently DGS/OSPM offers a statewide surplus scrap metal contract, electronics recycling options and a printer cartridge recycling program—see the website under "Recycling Assistance" for details.

In accordance with *Code of Virginia*, § 10.1-1425.6, §2,2-1124, the Governor's Management Objectives and Executive Orders, it shall be the duty of each agency of the Commonwealth to establish programs for the use of recycled materials and for the collection of recyclable materials.

6. **Donations**. Departments, divisions, institutions, or agencies of the Commonwealth, or the Governor, may donate surplus materials to political subdivisions, and qualified non-profit 501(c)(3) organizations approved for the distribution of federal surplus materials, but only according to the guidelines listed below (contact the Director, DGS/OSPM for eligibility questions). Donations are to be recorded by agencies through the completion of the Surplus Property Donation Form, DGS-44-018, (Annex 12-F). Donations are permissible by state agencies under the following circumstances:

   (a) Property Valued under $500. When the market value of the surplus material, which shall be donated for a public purpose, and with DGS approval, is less than $500, then a donation as outlined here is permissible. The total market value of all surplus materials so donated by any department, division, institution, or agency shall not exceed twenty-five percent (25%) of the revenue generated by such department's, division's, institution's, or agency's sale of surplus materials in the fiscal year, except these limits shall not apply in the case of surplus computer equipment and related items donated to those organizations listed in the following paragraph, 12.6.b. Agencies should use the previous fiscal year's surplus sales revenue amount to calculate the "25% of revenue" donation limit.

   (b) Surplus Computers and Related Equipment. Surplus computers and related equipment may be donated, without DGS approval, to public schools in the Commonwealth and to Virginia charitable corporations granted 501(c) tax-exempt status that provide services to persons with disabilities, at-risk youths, or low-income families. "At-risk youth" are school-age children who are eligible to receive free or reduced price meals in the federally funded lunch program.

   (c) Emergencies. Any emergency declared in accordance with *Code of Virginia*, § 44-146.18.2 or § 44-146.28.

   (d) Budget Bills. As set forth in the budget bill as defined by *Code of Virginia*, § 2.2-1509, provided that

      (1) The budget bill contains a description of the surplus materials, the method by which the surplus materials shall be distributed, and the anticipated recipients, and

      (2) Such information shall be provided to the Department of Planning and Budget in sufficient time for inclusion in the budget bill.

   (e) Local Emergencies. During a local emergency, and upon written request of the head of a local government or a political subdivision in the Commonwealth to the head of a department, division, institution, or agency.

7. **Surplus Computers and Related Equipment**: Surplus computers and related equipment often have value in the resale market. Older systems may not have resale value and should be recycled for scrap content. Contact the Director, DGS/OSPM for guidance for resale potential and approved recycling outlets. Agencies must manage their surplus electronics responsibly in order to conform to local, state and federal environmental regulations. The following disposal options are available to agencies:

   (a) Agencies can utilize a state contract which provides pick-up, data cleaning, and disposal. The contract is currently administered by VITA. For more information, search for "VITA Secure Data Destruction" or visit the following or any successor link:
   http://www.vita.virginia.gov/procurement/contractDetail.cfm?contract_id=1000477

(b) Agencies can perform data cleaning in-house per VITA standards, available at the following or any successor link: http://www.vita.virginia.gov/uploadedFiles/Library/PSGs/Data_Removal_Standard_514_03%2010_07_2008_r3.pdf

After data cleaning is performed, agencies can surplus their computers by delivering them to one of the DGS/OSPM Distribution Centers, offering them for internet sale, or by recycling.

(c) When computers and related equipment are obsolete, broken, or do not have resale value as determined by DGS/OSPM, recycling, to the extent practicable, should be utilized in accordance with *Code of Virginia* § 2-2-1124.B.15, and in consideration of environmental regulations. For additional information and resources on electronics recycling, please visit the recycling section of the DGS Surplus website at http://www.dgs.virginia.gov/surplus/ and the electronics recycling section of the Virginia Department of Environmental Quality at http://www.deq.virginia.gov/ecycling/.

8. **Disposal by Landfill**. Property that is unusable and is determined to have no commercial and/or recycling value, or if the cost of sale would exceed expected returns, may be disposed of through the use of a landfill, with prior written approval from DGS/OSPM. This is a necessary method of disposal of various types of waste, not including hazardous or medical waste, but such actions shall be carefully controlled and documented to conform to good property management practices and avoid abuse. All property to be landfilled is to be identified in a property listing with signatures and dated by at least two agency officials. One signature is to be the person who determines the property classification and can certify the disposal. The second signature is an agency reviewing and approving authority. The completed document will be the agency's authority for removing items from inventory and will serve as an audit trail.

"Dumpster Diving" is not permitted. State agencies and institutions shall not throw anything away in a trash container in such a manner that would allow any agency employees or other parties to remove the materials for their personal benefit.

12.8 **Disposal Methods for Regulated or Special Items.**

a. **Hazardous Material**. The DGS/OSPM Distribution Centers do not accept hazardous wastes or any surplus materials generally regarded as hazardous; however, certain products may be accepted that are still reusable that may contain hazardous ingredients. Examples are janitorial cleaning supplies, paint, developer and toner for copy machines, automotive antifreeze, etc. Call the Director, DGS/OSPM for specific guidance regarding the acceptability of sending a surplus product with hazardous components to a DGS/OSPM surplus warehouse.

1. **Disposal of Hazardous Material**. Federal and State laws have been enacted placing strict compliance requirements on the disposal of hazardous materials. Any agency that generates 220 pounds or 25 gallons of hazardous materials in one month is considered to be a Hazardous Waste Generator by federal definition and is required to comply with these statutes. Agencies are advised to contact the Department of Environmental Quality (DEQ) at (276) 676- 4847 for technical assistance, copies of applicable regulations, permit applications for registering with the U.S. Environmental Protection Agency (EPA), and for obtaining information to prepare appropriate manifests used in transporting materials.

Hazardous materials must be disposed of by contracting with contractors qualified in the proper identification, packaging/labeling and transporting of materials to EPA-authorized storage sites. Agencies that generate substantial quantities should have a hazardous waste management plan in effect under the responsibility of a qualified staff specialist. Under current federal statutes, agencies are held responsible for all hazardous materials, even after having been delivered to an EPA-authorized storage facility. It is important, therefore, that careful and thorough planning be conducted prior to entering into a contractual arrangement. Costs can be minimized by agencies that have an effective program established with all waste materials fully identified and properly stored pending final packaging and delivery by an EPA-registered transporter.

2. **Hazardous Waste Disposal Contract**. A state-wide "Hazardous Waste Disposal and Recycling Services" contract, #PF-507-70VAPP, is available through the DGS, Division of Purchases and Supply, and is posted on-line at http://dps.dgs.virginia.gov/dps/contracts/covacontractsinfo.aspx. Additional hazardous material reduction information may be obtained at the Department of Environmental Quality's website, under Pollution Prevention: http://www.deq.virginia.gov.

b. **Special Handling for Regulated Materials**. Some surplus items require special handling and/or documentation for disposal. Such special handling or documentation may be required by law, regulation, or an administrative policy decision. Examples of such items are firearms (see section 12.13) or certain devices and containers (i.e., drums, liquor stills, drugs, and drug apparatus), etc.

c. **Flags**. Both United States and Commonwealth of Virginia flags should be disposed of properly and not by landfill. The American Legion Auxiliary Department office accepts both U.S. and state flags for appropriate disposal at no charge. The flags are burned in a ceremony twice yearly. Please contact your local American Legion Office for further information http://www.legion.org/members/locators/posts.

d. **Police Dogs**. Any dog especially trained for police work may be sold, at an appropriate price, to the handler who was last in control of such dog. This sale shall not be deemed a violation of the State and Local Government Conflict of Interest Act, § 2.2-3100 et seq.

e. **Insurance Claim - Salvage**. This type of sale is authorized when the Department of Treasury/Division of Risk Management (TRS/DRM) advises DGS that a claim will involve salvage. The sale price of an item(s) will be set as the result of the claim adjusting firm's securing three (3) or more written bids, or justifying why three bids could not be obtained. The claims adjuster will secure a cashier's or certified check from the highest bidder for the amount of the bid. Upon delivery of the written bids and the check to the state agency's representative, the agency's representative may release the item(s) getting a delivery receipt for same from the highest bidder. The agency's representative shall then see that a Surplus Property Report, DGS-44-001, (Annex 12-A) is processed according to state policy, along with bids, check, and copy of the delivery receipt to DGS, if item(s) has been picked up. Upon receipt of Form DGS-44-001, bids, and check, DGS will issue a paid Surplus Property Sale Award, and a copy will be sent to TRS/DRM. In this instance, the Sale Proposal Number will be "Ins. Salvage Claim No. _____." The Claim Number will be that number assigned by TRS/DRM. DGS will consider this an occasional sale because of its anticipated infrequent use and because the sale is handled by an insurance claims adjuster. No State Sales and Use Tax will be charged.

f. **Licensed or Copyrighted Materials:** For materials that are licensed or have a copyright, a review of the license or copyright agreement needs to be made by the owning agency prior to trading in or declaring the item as surplus, to determine what right, if any, the licensee has regarding the surplus or reuse of the property.

g. **Firearms:** Refer to section 12.13

12.9 **Trade-ins**. Trade-in items are not considered surplus property. According to policy set by DGS, Division of Purchases and Supply, trade-in items may only be traded in for the purchase of property of the same general three-digit commodity class code, without prior DGS approval. Material are considered a trade-in item only if the supplier's removal of the material and provision of a replacement occur at substantially the same time, and if the purchase price of the replacement item has been reduced to reflect a fair allowance for the trade-in item. A trade-in should not be considered if the monetary allowance offered is substantially below the known current sales range. Assistance with documenting recent sales prices may be obtained by contacting Surplus Property at (804) 236-2781.

Consignment of sales of surplus property to a nongovernmental entity is not permitted, unless by DGS Contract.

Notice Regarding Licensed or Copyrighted Materials: Prior to trading in licensed or copyrighted materials, a review of the license or copyright agreement needs to be made by the owning agency to determine what right, if any, the licensee has to the property.

12.10 **Surplus Warehouses/Distribution Centers.** Agencies are encouraged to visit the surplus warehouses to see the state and federal surplus property available to them. There are 2 state surplus property warehouses in the Commonwealth; a Richmond warehouse in central Virginia, located at 1910 Darbytown Road and a retail store/warehouse in Wytheville, located in southwestern Virginia, at 800 East Main Street, Suite 220. Items are available for purchase to authorized persons, with the distribution centers operating on a supermarket plan on a first-come, first-served basis. The Wytheville facility now offers a "surplus store" open to the public with items offered for a fixed price. For additional location information, please refer to the Surplus Property information on the DGS website: http://www.dgs.virginia.gov/surplus/.

Agencies may transfer surplus property to either warehouse location. After delivery of surplus property to a DGS/OSPM warehouse, ownership of the surplus property transfers to DGS. The surplus warehouse/distribution centers accept delivered material by appointment on any day, Monday through Friday, 8:00 a.m. to 4:00 p.m., except official holidays. Since both warehouses are open to qualified organizations, transfer of property to a warehouse satisfies the agency's reutilization requirement to offer items to eligible institutions for reuse prior to public sale (see Section 12.7.b.3).

12.11 **State Surplus Property Forms and Reporting Procedures**. The following is a list of forms and instructions to use for documenting items designated as State Surplus Property.

a. **Surplus Property Report DGS-44-001** (Annex 12-A). This form is used by the agency to report surplus property to DGS/OSPM that will remain at the agency for disposal. Prior to reporting an item as surplus, an internal agency review should be conducted to determine if items could be used by another department or office at the agency.

The original of this report must be forwarded to the DGS/OSPM in Richmond at the following address: VA. Dept. of General Services, Surplus Property, 1910 Darbytown Road, Richmond, VA 23231 or sent by email to statesurplus@dgs.virginia.gov. This report provides the descriptive information used in notices about the item to organizations; therefore, its complete and accurate preparation is essential. Information on manufacture identification, model numbers, age and condition assists the buyer in making a decision to buy items. An agency must not withhold any specific known defects, such as a broken or missing part, etc.

Each item or group of items must be listed on the Surplus Property Report with the 5-digit Procurement Commodity Code. Agencies are encouraged to submit these reports on a continuing basis to aid in the timely processing of surplus property. With careful and accurate planning, items may be reported surplus when still in use, as long as an estimated release date is provided and buyer inspection can be arranged during the interim use period.

The processing of information on the Surplus Property Report Form DGS-44-001 is not related to each agency's internal inventory record system, such as FAACS, and therefore agencies must update their own inventory records separately, as the systems are not related.

1. **Surplus Other Than Vehicles:** The completed Surplus Property Report Form DGS-44-001, (Annex 12-A along with digital photos of the property, should be emailed to the State Surplus designated representative.

2. **Vehicles or Title-Bearing Equipment**: Surplus cars, trucks, boat, utility or equipment trailers, etc. not delivered to a Surplus warehouse and not disposed of through DGS/OSPM outsourced services contracts for surplus property sales, must be reported on the Surplus Property Report Form DGS-44-001, submitted with the original title and a compact disc (CD) with several photo's of the item, and mailed to the Virginia Dept. of General Services, Office of State Surplus Property Management, 1910 Darbytown Road, Richmond, VA 23231. Motor vehicle photos should include a picture of the interior and multiple views of the vehicle. Reports without the titles will be returned to the agency. Only one vehicle or other titled equipment may be on a report. Boat registration/titles must also be submitted with the report. Surplus vehicles delivered to the warehouse MUST have the original title attached to the Manifest

b. **Surplus Property Transfer Document** DGS-44-012 (Annex 12-B). Used by agencies, for their records, to transfer surplus items between state agencies. DGS/OSPM does not need a copy of this document.

c. **Surplus Property Manifest DGS-44-014 Sup** (Annex 12-E). Agencies desiring to transfer property to the warehouses can accomplish this by filling out the Surplus Property Manifest. **To avoid duplication, DO NOT fill out the Surplus Report Form DGS-44-001**.

Note: The Surplus Property Manifest replaces the Surplus Tag for property being transferred to the centers.

1. To schedule delivery, call the appropriate center for a date and a time for your delivery. Richmond deliveries, 804-236-2757, or Wytheville deliveries, 276-228-6803.

2. The Manifest must accompany the delivery to the surplus warehouse. Property delivered without the manifest may be refused and returned to the agency at agency expense.

3. Upon receipt of the property, the SSP center personnel will verify the items on the manifest and return a receipt copy to the agency. Receipt will signify the property has been transferred to the Surplus Property Program at no charge. The agency may then remove the property from the agency inventory records. No further documentation will be submitted to the agency.

4. Property located at the warehouses is made available to state agencies, political subdivisions and public schools.

12.12 **Proceeds From the Sale or Recycling of Surplus Materials**. Proceeds from the sale or recycling of surplus materials pursuant to *Code of Virginia*, § 2.2-1124 shall be promptly deposited into the state treasury by agencies receiving sales revenue or by the DGS/OSPM, in accordance with *Code of Virginia*, § 2.2-1802. Such deposits are to be reported to the State Comptroller and to the Director, DGS Office of Surplus Property Management, along with a statement of total proceeds and the amount of such proceeds derived from the sale or recycling of surplus materials purchased in whole or in part from general fund appropriations.

Service fees may be charged by DGS/OSPM for surplus services related to internet sales, auctions, state contracts or other sales methods. Additionally, pursuant to *Code of Virginia*, § 2.2-1125, the State Treasurer will transfer fifty percent of the total of proceeds derived from the sale of surplus materials purchased in whole or in part from general fund appropriations to the Conservation Resources Fund of the Department of Conservation and Recreation. If the agency meets the Governor's Management Standards requirements, the agency may retain the net proceeds from the sale. Departments, divisions, institutions, or agencies may retain the full net profits from the sale of recycled materials diverted from their waste stream, such as office paper, cardboard, beverage containers, etc.

Based on reports of surplus revenues from the State Treasury, the Department of Planning and Budget may increase general fund appropriations to the respective agency by the amount of available proceeds derived from the sale or recycling of surplus materials pursuant to *Code of Virginia*, § 2.2-1124. The department, division, institution, or agency of the Commonwealth may use the additional appropriations to purchase materials, supplies, or equipment, or to defray the cost of disposing of surplus materials.

12.13 **Surplus Firearm Procedures**. These procedures shall apply to all departments, divisions, institutions, and agencies (hereinafter referred to as "agency") of the Commonwealth in the possession of state-owned firearms. An agency in the possession of state-owned firearms shall incorporate these procedures as an appendix to their agency's policies and procedures for the management and accountability of their state-owned firearms.

Pursuant to *Code of Virginia*, § 2.2-1124(B), responsibility for disposing of state-owned surplus firearms shall be delegated to the owning agency to dispose of in accordance with these procedures, developed by DGS/OSPM.

When an agency no longer has a need for a firearm, the agency shall either declare the firearm as surplus state property or pursue trade-in. In such cases, the following disposal procedures shall be followed:

a. **Procedure for "Declaration of Surplus Firearms"**: If the agency does not wish to pursue trade-in, the agency head shall first declare the firearm as surplus property and consent to its disposal using the "Declaration of Surplus Firearms" form (Surplus Firearm Form A, Annex 12-G). Agency surplus property officers are not authorized to make this declaration. The agency will keep the "Declaration of Surplus Firearms" form on file in accordance with records retention requirements established by the Library of Virginia.

b. **Firearm Transfers and Sales to another State Agency:**

1. Firearms may be transferred to another agency that is authorized to have such firearms in its possession, with or without the transfer of funds. It shall be the responsibility of the owning agency making the transfer or sale to ensure the agency receiving firearms is authorized to be in the possession of such firearms.

2. A "Firearms Manifest: Agency Transfer" form (Surplus Firearm Form B, Annex 12-H), describing the property, shall be prepared by the owning agency and forwarded to the receiving agency.

3. If there is a charge for the property being transferred, then the owning agency will bill the receiving agency for the agreed upon amount. Proceeds from the sale shall be promptly deposited, pursuant to *Code of Virginia*, § 2.2-1802, into the State Treasurer's sale of surplus state property fund of the receiving agency, and reported to the State Comptroller.

4. Documentation supporting the transfer with appropriate signatures must be maintained in the files of the owning and receiving agencies to provide a chain of custody record.

c. **Firearm Sales to Local Agencies:** An agency in the possession of surplus firearms may sell firearms directly to a local agency that is authorized to have such firearms in its possession.

1. An owning agency may contact local agencies to sell firearms.

2. It is the responsibility of the owning agency to ensure the local law enforcement agency making the firearms purchase is authorized to be in the possession of the type of firearms being purchased. The owning agency will prepare a "Firearms Manifest: Agency to Local Law Enforcement Agency Sale" form (Surplus Firearm Form C, Annex 12-L). This form shall be maintained in the files of the selling agency to provide a chain of custody record.

3. The owning agency will bill the purchasing local law enforcement agency for the agreed upon amount. The proceeds from the sale shall be promptly deposited pursuant to *Code of Virginia*, § 2.2-1802 into the State Treasurer's sale of surplus state property fund of the agency and reported to the State Comptroller.

d. **Firearm Trade-ins:** Trade-in items are not required to be declared surplus. Firearms may be traded-in by an owning agency on the purchase of equipment of the same general three digit commodity class code.

1. The owning agency will prepare a "Firearms Manifest: Agency Trade In" form (Surplus Firearm Form D, Annex 12-J) to document a chain of custody.

2. The trade-in shall only be conducted with a federally licensed firearms dealer and the owning agency will negotiate the best possible trade-in value for the firearms.

3. If an owning agency is not able to trade in a firearm using the same three-digit commodity code, then the owning agency may contact the Director, DGS/OSPM to request authorization to "barter" the firearm to exchange it for property that is not in the same three-digit commodity code. The following conditions must be met before the Director, DGS/OSPM will consider the owning agency's request:

   (a.) The owning agency will only "barter" the firearms to a Federally Licensed Firearms Dealers;

   (b) The owning agency will negotiate the best possible trade-in value for the firearms; and

   (c) The owning agency will prepare a "Firearms Manifest: Agency Trade-In" form.

4. The owning agency will retain the "Firearms Manifest: Agency Trade-In" form that documents the exchange for chain of custody purposes.

e. **Destruction of Firearms:** If the firearms are unusable, determined to have no commercial value, or the options stated above (paragraphs b, c, and d of these procedures) are not sufficient to dispose of the firearms, then the firearms shall be destroyed. Firearms destruction shall be conducted as follows:

1. The owning agency will fill out a "Firearms Manifest for Destruction" form (Surplus Firearm Form E, Annex 12-K) and forward it to the Director, DGS Office of Surplus Property Management along with the "Declaration of Surplus Firearms" form (Surplus Firearm Form A, Annex 12-G) and "Agency Firearm Destruction Request" form (Surplus Firearm Form F, Annex 12-L) signed by the Agency Head.

2. The Director, DGS/OSPM will log the request, approve if appropriate, and send the request back to the owning agency.

3. The owning agency will ensure that the following conditions exist prior to transporting firearm(s) for destruction:

   (a) All firearms will be unloaded and rendered to the "safe" position, and safely secured prior to transport;

   (b) All firearms will have a serial number or a unique identifier to assure identification; and

   (c) Firearms will have no legal impediments outstanding i.e., are not part of any legal proceeding.

4. The owning agency will make an appointment with the facility of destruction and notify the Director, DGS/OSPM of the scheduled day and time.

5. The owning agency will transport firearm(s) to the facility of destruction on the prearranged scheduled day for destruction with a copy of the “Firearms Manifest for Destruction” form (Surplus Firearm Form E, Annex 12-K) and the “Certificate of Firearms Destruction” form (Surplus Firearm Form G, Annex 12-M).

6. Representatives of both the owning agency and the facility of destruction will inventory and verify all firearms against the “Firearms Manifest for Destruction” form (Surplus Firearm Form E, Annex 12-K) to ensure that no discrepancies exist. If any discrepancy is determined, then the entire lot of firearms must be returned to the owning agency for corrective actions. In this event, the Director, DGS/OSPM will be notified immediately as to the cause of error, and the destruction process herein will be reviewed and restarted.

7. Upon verification of Manifest and firearms, the facility of destruction will proceed with immediate destruction and the “Certificate of Firearms Destruction” form (Surplus Firearm Form G, Annex 12-M) will be completed.

8. A signed copy of the Certificate of Firearms Destruction (Surplus Firearm Form G, Annex 12-M) will be distributed to and maintained by the owning agency for chain of custody purposes and a copy will be distributed to and maintained by the Director, DGS/OSPM to close out the request.

9. All forms requiring an agency head signature must be signed by the agency head. The agency head may not delegate this authority to others within the agency.

Federal Surplus Property

12.13 **Authority and Responsibility for Federal Surplus Property**. The *Federal Property and Administrative Act* of 1949, as amended, is the basic authority for all functions of the Federal Surplus Property Program. The most recent major amendment was Public Law 94-519, effective October 17, 1977. On the federal level, the General Services Administration (GSA) is responsible for administering the program in coordination with state agencies. The *Code of Virginia*, § 2.2-1123, designates the Department of General Services to administer the program in the Commonwealth, in conformance with the *Federal Property and Administrative Act of 1949* and an approved State Plan of Operation.

12.14 **Federal Surplus Property Eligibility Requirements**. The law provides that public agencies and certain other nonprofit institutions may be declared eligible to receive federal surplus property, provided they meet certain criteria. The criteria for public agencies are relatively simple and are covered in an application, "Application for Eligibility-Federal Surplus Property Assistance Program, Form DGS-43-001. Public agencies that have not received eligibility approval, but are interested, can download this form from the DGS website in the Forms section, page at http://www.dgs.virginia.gov/Forms.aspx. An approval notice will be sent by email to applicants that meet the eligibility criteria.

12.15 **Designation of Federal Surplus Property Officer**. If a state or local agency wishes to acquire federal surplus property, then upon being granted eligibility approval, the agency must designate a representative to be responsible for federal surplus property, including the obligation of funds and compliance with certifications and agreements on all property transferred. The Surplus Property Signature Authorization Form, Annex C, is used for this purpose, as well as to identify other persons designated to select and sign for property and also can authorize in writing other individuals to visit a federal distribution center on a specific day to select and sign for property. Such a designee may also be responsible for state surplus property (see also Section 12.4).

12.16 **Federal Property Availability**. The DGS/OSPM acquires federal surplus property through a system of reviewing excess property reports, screening (inspecting and selecting) surplus items at federal installations, and then requesting that GSA allocate to DGS/OSPM the needed items. Property is made available to state agencies in the following ways:

a. **Warehouses and Distribution Centers.** Property is stored and displayed at the two state surplus warehouses/distribution centers, the main center located at 1910 Darbytown Road, Richmond, VA 23231 and a second center is located in southwest Virginia at 800 East Main Street, Suite 220, Wytheville, VA 24382. The warehouses operate on a supermarket plan on a first-come, first-served basis, and authorized persons may visit them on any day, Monday through Friday, 8:00 a.m. to 4:00 p.m., except official holidays. Selected property is listed and invoiced on the Distribution Document and Invoice Form, DGS-43-008, and IAT Form, DAO2-039.

b. **Direct Pick-up from Federal Sites**: Recipients of special and heavy equipment may be requested to pickup items directly from the federal installations. Upon special arrangements with a DGS/OSPM screener or the Richmond OSPM office, agency representatives may visit and screen surplus property at federal installations. This method may be of benefit to the agency. OSPM will request the property desired by an agency, and, upon federal government approval of the request, forward necessary documents to the agency to facilitate pick-up. The OSPM will create an invoice and transmit it to the agency upon federal approval of this request.

It is incumbent on the agency receiving the federal property (also called "donee" by the federal government) to arrange pick-up from the holding agency and to make all necessary plans and coordination to do so. If an agency fails to pick-up approved property within the time period specified by the holding agency, and the holding agency withdraws the property from availability, the OSPM service charge will not be refunded. The Federal Surplus Property Transfer Document, transfers the property and is not an invoice. Upon receipt of the signed document, service charges are billed on an IAT Form, DAO2-039.

c. **Internet Postings**. Eligible donees and customers have two options of screening federal inventory via the internet. Access to inventory listings for both the Richmond and Wytheville distribution centers are located at http://www.dgs.virginia.gov/surplus/. Customers may also go directly to http://www.gsaxcess.gov and view listings of federal property offered at various military and federal locations in Virginia and other states. A user ID and password is required to login. Please contact the DGS Surplus Property Office to obtain this login information. All requests for federal surplus property will be subject to final approval by GSA.

d. **Special Requests or "Wish Lists."** Civilian and military departments of the federal government operate an extensive utilization system of excess and surplus property. Available property may include furniture, business machines, textiles, tools, miscellaneous hardware, electronic equipment, machine tools, industrial and construction equipment, and other categories. It does not include real property. Eligible participants are invited to submit requests for special categories of

equipment such as construction equipment, trucks, and sophisticated electronic equipment. Every effort will be made to fill selected requests through a center or by direct pickup.

12.17 **Federal Surplus Screening and Acquisition.** Assets and items acquired from the federal government shall be kept to a minimum stockage level in the DGS/OSPM warehouses, based on the desires and needs of the Commonwealth's agencies or other entities authorized to acquire donated federal surplus property from the DGS Federal Surplus Property Program. Federal property acquisitions will be made by the Department of General Services Surplus Program Director or designee on the basis that an authorized customer has a need for the acquired item(s) and that such item(s) are available and also can be obtained from the Federal Surplus Property Program.

12.18 **Restrictions and Use Requirements**. Property is transferred to customers with certain restrictions as listed on the back of the Distribution Document and Invoice on the Federal Surplus Property Transfer Document. When signing for the property, all users should become thoroughly familiar with all certifications and agreements. Property is to be obtained for the items primary use. There are exceptions, however, where the property may be cannibalized or utilized for a secondary purpose. Such use must be approved in writing by Director, DGS/OSPM before acquiring the property or after utilizing the property for its primary use purpose. All property must be put in use within 12 months and used for 12 months or consumed, except certain items with a high original federal acquisition cost and licensed motor vehicles which must be used for 18 months, as set forth in the transfer document. During this restrictive use period, items may not be sold, traded, or stripped for parts without approval of the Director, DGS/OSPM. Holding an item without using it as stated above constitutes noncompliance. This may subject the agency to payment of the fair market value as determined by the federal government.

12.19 **Title to Property**. Conditional title to the property passes to the eligible agency when an authorized representative signs for or takes possession, subject to the specified use restrictions. When an agency has complied with all the terms and conditions set forth on the distribution or transfer document, the agency will possess unrestricted title to the item.

12.20 **Federal Surplus Property Disposal Procedures**. If an institution has no further need for an item during the restricted use period or is in need of amending the item's primary use purpose, a request must be submitted to the Director, DGS/OSPM for approval. Possible procedures may be cannibalization and secondary utilization as set forth above or transfer to another agency, trade-in, or sale by GSA. Items which have passed the restricted use period must be disposed of in accordance with established state surplus property policy and procedures (see Section 12.7).

12.21 **Property Management**. All federal surplus property within the agency is subject to the standards of good property management, including accepted practices of proper use, records, care, maintenance, protection, and disposal.

12.22 **Audits and Compliance Surveys**. In general, audits and reviews will focus on the property use requirements as listed under certifications and agreements on the reverse side of the receiving documents, but are not necessarily limited to the requirements stated thereon. This may be accomplished by on-site inspections or through the use of a Utilization Survey/Certification, DGS-43-019, mailed to the agency representative.

12.23 **Service Charges**. The Federal Surplus Property Program is a non-general fund activity; therefore, service charges are assessed for property transferred. Service charges are marked on each Distribution Document and Invoice or in the case of direct pickup, a Transfer Document, followed later by an invoice. Prompt payments are essential and slow processing may be cause for withdrawal of eligibility.

12.24 **Federal Surplus Property Records**. There are certain minimum requirements for maintaining federal property records as follows:

a. In general, records should be maintained on all items in the same manner as records are kept for similar property acquired from other sources.

b. Record requirements for certain property as set forth in the transfer document and licensed motor vehicles are rather specific. A separate file should be maintained on all executed documents covering items in this cost category. A record of inventory status and location must be initiated and maintained. It should include item name and identification, federal acquisition cost, date received, date put in use, location or assignment, state serial number or distribution document and invoice number, and disposal action with authority and date. This requirement may be accomplished by making the pertinent notations on the receiving document or by setting up a separate inventory or document system.

c. A property accounting system for selected items for a commodity group such as vehicles, tractors, business machines, sensitive items, and selected electronic and power equipment.

12.25 **Federal Surplus Property Documentation**. The following is a listing summarizing the documentation associated with Federal Surplus Property activities:

a. **Application for Eligibility** - Federal Surplus Property Assistance Program DGS-43-001. This is the form to apply to DGS for eligibility to receive Federal surplus property.

b. **Signature Form** DGS-43-004. This is the form to designate an agency surplus property officer and others to select and sign for property.

c. **Utilization Survey** DGS-43-019. The agency is to report to DGS the item use status during the restricted period.

ANNEX 12-A

DGS-44-001 (REV. 9/09)

Virginia Department of General Services, Office of Surplus Property Management
1910 Darbytown Road, Richmond, Virginia 23231

SURPLUS PROPERTY REPORT

Reporting Agency
CONTROL NO:
DATE:
(Send One Copy of This Completed Report for Each Item or Each Lot of Identical Items)

The following State-owned property is declared surplus to the needs of this Agency, and is reported for disposal, pursuant to *Code of Virginia*, § 2.2-1124 and Chapter 12, APSPM.

This signed form certifies and describes such surplus item(s) and confirms that the agency will maintain same in its care until authorized disposal is received. Should the agency find need to withdraw item(s) prior to authorized disposal, the Department of General Services, Office of Surplus Property Management is to be appropriately notified. Failure to notify DGS/OSPM may place this agency and/or the Commonwealth in legal liability to the bidder/purchaser.

1. EXACT LOCATION OF ITEM: Agency's Name _____
Street Address _____ City/State/Zip _____ / /
Person to Contact _____ Phone:( ) -
Inspection and Removal Hours: _____

2. SECTION TO REPORT MACHINES, EQUIPMENT, ELECTRICAL ITEMS AND PARTS FOR SAME, ETC.
Name of Item _____ Agency ID No. _____
Make _____ Model _____ Serial No. _____ Quantity _____
Capacity/BTU/AMP/Phase/Voltage/Horsepower/Gallons/Etc. _____
Condition: (check one) New: _____ Good: _____ Fair: _____ Poor: _____ Scrap: _____ Badly Deteriorated _____
Broken _____ Wrecked _____ Other Defects _____ (Explain Under Remarks)
Agency's Estimated Approximate Present Value: _____

3. SECTION FOR REPORTING VEHICLES AND TITLE BEARING EQUIPMENT - (ONE REPORT PER VEHICLE):
Agency ID No. _____ Year/Mfg _____ Make _____
Type(Sedan Dump Pickup Station Wagon, Etc.) _____ Model _____
Doors (2 Door or 4 Door, Etc.) _____ Tonnage _____ **Mileage _____
(**Mileage Information is a Federal and State Requirement. Please be sure to insert.)
Brief Description (Such as Dual or Single Wheels, 2 Wheel or 4 Wheel Drive, Engine Size, Extra Accessories or Missing Parts, Color, Etc.) _____
VIN NO. or Serial No. _____ Title No: _____
Condition: New: _____ Good: _____ Fair: _____ Poor: _____ Scrap: _____ Badly Deteriorated _____
Broken _____ Wrecked _____ Other Defects _____ (Explain Under Remarks)
Agency's Estimated Approximate Present Value: _____
(PLEASE BE SURE TO ATTACH TITLE TO THIS REPORT.)

4. Remarks:

5. Authorized Signature, Title & Agency/Accounting Codes (REQUIRED)
Signature: _____
Title: _____
Phone Number ( ) -
Please Type Name _____ Email:

Agency	Cost	Fund Detail	Revenue Source

Please Note: *Reports submitted without the proper coding will automatically be coded as purchased with General Funds. Remaining proceeds (after the service charge has been deducted) will be split between the agency and the Conservation Fund.*

Questions? Call (804) 236-3670. Visit the Surplus Property webpage at http://www.dgs.virginia.gov/surplus/.

ANNEX 12-B

DGS-44-012

Commonwealth Of Virginia, Department of General Services
Office of Surplus Property Management

STATE SURPLUS PROPERTY TRANSFER DOCUMENT

This form was created to assist agencies with their recordkeeping of surplus property transfers between agencies. Agencies do not need to report transfers between agencies to DGS/OSPM or submit this form to the Department of General Services. However, the owning agency is to provide signed copies for the owning agency file and the receiving agency file.

TO:	FROM:
Agency _____	Agency _____
Address _____	Address _____
_____	_____
Name _____ Phone _____	Name _____ Phone _____
Email _____	Email _____
Title _____ Agency Code _____	Title _____ Agency Code _____

Specific location of Property:	Trans	Agency	Cost	Fund/ Detail	Revenue Source
	136				09999

ITEM NO.	COMM. CODE	ITEM DESCRIPTION	QUANTITY	UNIT	TRANSFER COST	
					UNIT PRICE	TOTAL PRICE
					TOTAL AMOUNT	

NOTICE: This form may be used to Transfer property with or without the exchange of funds. If the transfer is being made at “no charge,” then indicate “NO CHARGE” in the TOTAL PRICE column.

Receiving Agency Approval _____ _____ _____
Commitment of Funds for Transfer Signature Title Date

Property Received _____ _____ _____
Signature Title Date

Commodity codes are available at: http://www.eva.virginia.gov

ANNEX 12-C

Commonwealth Of Virginia, Department of General Services
Office of Surplus Property Management

DGS SURPLUS PROPERTY
SIGNATURE AUTHORIZATION FORM

TO: Kim T. Hayes kim.hayes@dgs.viginia.gov Date: _____
1910 Darbytown Road Richmond, VA 23231
Tel (804) 236-3662 Fax (804) 236-3663

Customer Organization Name:_____

Address: _____

****

The administrative official or authorized designee for the customer organization must sign this form. Individuals not listed on the account must bring a letter signed by the administrative official or designee the date of the purchase.

DESIGNATED REPRESENTATIVE FOR SURPLUS PROPERTY:

PRINT NAME: _____

SIGNATURE: _____

TITLE: _____

TELEPHONE: _____

EMAIL: _____

PLEASE CHECK, if applicable:

___ Deletions (Name of person/s to delete from account) _____

___ Supersedes all prior authorizations_____ (nullify previous authorization forms)

ADDITIONAL DESIGNATED PRINCIPAL PERSONS: A principal designee is allowed to sign for property and send others to receive property.

Signature_____ Signature_____

Name_____ Name_____

Title_____ Title_____

Telephone_____ Telephone_____

Email _____ Email _____

ADDITIONAL PERSONS AUTHORIZED TO SELECT AND SIGN FOR PROPERTY:

Signature_____ Signature_____

Name_____ Name_____

Title_____ Title_____

Telephone_____ Telephone_____

Email _____ Email _____

Signature_____ Signature_____

Name_____ Name_____

Title_____ Title_____

Telephone_____ Telephone_____

Email _____ Email _____

ANNEX 12-D

Commonwealth Of Virginia, Department of General Services
Office of Surplus Property Management

AGENCY SURPLUS PROPERTY OFFICER DESIGNATION FORM

Each agency, or agency location of sufficient size, is to designate a Surplus Property Officer to manage their institution's surplus property and serve as a contact for communications from the DGS Surplus Property Office (OSPM). Please complete this form and return it to:

Surplus Property
Virginia Department of General Services
1910 Darbytown Road Richmond, VA 23231
Fax (804) 236-3663 or Email statesurplus@dgs.virginia.gov

If this is an update or deletion, please list the name of the person to remove from our records as Agency Surplus Property Officer: _____

Date: _____

Agency Name: _____

Address: _____

_____

DESIGNATED SURPLUS PROPERTY OFFICER:

PRINT NAME: _____

SIGNATURE: _____

TITLE: _____

TELEPHONE: _____

EMAIL: _____

Additional Information from Agency:

_____

_____

_____

Other Individuals from this agency may be listed on the *DGS Surplus Property Signature Authorization* form for purchases of Surplus Property (Annex C). The Surplus Property Officer should be listed on the Signature Authorization Form as well.

Questions? Call (804) 236-3670. Visit the Surplus Property webpage at http://www.dgs.virginia.gov/surplus/.

ANNEX 12-E

Commonwealth of Virginia, Department of General Services
Office of Surplus Property Management

SURPLUS PROPERTY MANIFEST FORM

Delivered to: *(please check one address:)*

☐ 1910 Darbytown Rd
Richmond, VA 23231
(804) 236-2757

☐ 800 East Main Street
Wytheville, Virginia 24382
(276) 228-6803

Agency	
Agency No.	
Address	
City, State, Zip	
Contact Name	
Phone no./Email:	
Date	

Description	Qty	Model #	Serial #	Condition

Internal Agency Control #: _____

ANNEX 12-F **DGS-44-018**

Commonwealth of Virginia, Department of General Services
Office of Surplus Property Management

SURPLUS PROPERTY DONATION RECORD FORM

Please complete this form to document your agency's donation of surplus items for a public purpose as authorized by *Code of Virginia*, § 2.1-457.2, and in reference to Section 12.7.6, Chapter 12 of the Agency Purchasing and Surplus Property Manual (APSPM). Keep a copy for your records and send a copy to:

Department of General Services
Director, DGS Office of Surplus Property Management
1910 Darbytown Road
Richmond, Virginia 23231

Owning Agency: _____ Agency Code: _____

Contact Name: _____

Phone: _____ E-mail: _____

Donation made for a public purpose to:

(Donee):_____

Address: _____

Phone: _____ Contact: _____

Please list items donated. Use an additional sheet if needed. _____

_____

Market Value (if applicable) _____How Determined_____

_____

I certify that this organization is a Virginia Public body or a division thereof and eligible to receive donated surplus property as defined by the Code of Virginia. This organization is also an eligible customer of the DGS Federal Surplus Program.

Agency Representative Signature_____

Print name _____ Date _____

Donee Representative_____ Date _____

Print name_____

Guidelines for Surplus Donations (APSPM 12.7.6):

(1) Property Valued at less than $500: In accordance with (Chapter 12 (APSPM) Agency Procurement and Surplus Property Manual, agencies of the Commonwealth may donate low value dollar items when the market value of the surplus materials, which shall be donated for a public purpose, is less than $500; however, the total market value of all surplus materials so donated by any department, division, institution, or agency shall not exceed twenty-five percent (25) of the revenue generated by such department's, division's, institution's, or agency's sale of surplus materials in the fiscal year.

(2) Surplus Computers
Surplus computers and related equipment may be donated to public schools in the Commonwealth and Virginia charitable organizations granted 501(c) (3) status, and providing services to persons with disabilities, at-risk youths, or low-income families. Agencies are responsible for determining eligibility for donations of those eligible organizations not participating in the federal surplus program. Surplus computers are not subject to market value limits, as stated in section (1).

Questions? Call (804) 236-3670. Visit the Surplus Property webpage at http://www.dgs.virginia.gov/surplus/.

ANNEX 12-G

Commonwealth Of Virginia, Department of General Services
Office of Surplus Property Management

SURPLUS FIREARM FORM A

Declaration of Surplus Firearms

Agency:			**Agency Head Signature:**		**Date:**
			Agency Head Name Printed:		**Date:**
Item Number	**Item Type**	**Item Make**	**Item Model**	**S/N (or unique identifier)**	**Quantity**

ANNEX 12-H

Commonwealth Of Virginia, Department of General Services
Office of Surplus Property Management

SURPLUS FIREARM FORM B

Firearms Manifest: Agency Transfer Form

From Agency:			**Agency Head Signature:**		**Date:**
To Agency:			**Agency Head Signature:**		**Date:**
Item Number	**Item Type**	**Item Make**	**Item Model**	**S/N (or unique identifier)**	**Quantity**

ANNEX 12-I

Commonwealth Of Virginia, Department of General Services
Office of Surplus Property Management

SURPLUS FIREARM FORM C

Firearms Manifest: Agency to Local Law Enforcement Agency Sale					
From Agency:			**Agency Head Signature:**		**Date:**
To Local Agency:			**Signature:**		**Date:**
Item Number	**Item Type**	**Item Make**	**Item Model**	**S/N (or unique identifier)**	**Quantity**

ANNEX 12-J

Commonwealth Of Virginia, Department of General Services
Office of Surplus Property Management

SURPLUS FIREARM FORM D

Firearms Manifest: Agency Trade-In

From Agency:			**Agency Signature:**		**Date:**
To Federally Licensed Firearms Dealer:			**Signature:**		**Date:**
Item Number	**Item Type**	**Item Make**	**Item Model**	**S/N (or unique identifier)**	**Quantity**

ANNEX 12-K

Commonwealth Of Virginia, Department of General Services
Office of Surplus Property Management

SURPLUS FIREARM FORM E

Firearms Manifest for Destruction

From Agency:			**Agency Signature:**		**Date:**
To Facility of Destruction:			**Signature:**		**Date:**
Scheduled date of destruction:					
Item Number	**Item Type**	**Item Make**	**Item Model**	**S/N (or unique identifier)**	**Quantity**

ANNEX 12-L

Commonwealth Of Virginia, Department of General Services
Office of Surplus Property Management

SURPLUS FIREARM FORM F

AGENCY FIREARM DESTRUCTION REQUEST

Date of Request_____

Agency Request:

Agency: _____ has attempted to dispose of the firearms on the attached Manifest for Destruction by offering them to other agencies, for sale to local law enforcement agencies, and as trade-in for either like items or through bartering with federally licensed firearm dealers.

All attempts to dispose of the firearms have been unsuccessful and destruction of the firearms is requested.

Cost Code of Requesting Agency: _____

Signature: Agency Employee: _____

Print Name: _____

Signature: Agency Head: _____

DGS Authorization:

Signature/Approved: _____
(Director, DGS Office of Surplus Property Management)

Print Name: _____

Date Approved: _____

Attachment: Firearms Manifest for Destruction

ANNEX 12-M

Commonwealth Of Virginia, Department of General Services
Office of Surplus Property Management

SURPLUS FIREARM FORM G

CERTIFICATE OF FIREARMS DESTRUCTION

Date of Destruction: _____

Destruction Facility Name: _____

Facility Address: _____

_____

_____

_____

Facility Telephone: _____

I certify that the firearms listed on the attached Manifest for Destruction have been destroyed by smelting or otherwise destroyed in accordance with the contract established by DGS for this purpose, and verified by both parties as to Type, Make, Model, Quantity, and S/N.

Signature Facility Representative: _____

Printed Name: _____

Signature Agency Representative: _____

Printed Name: _____

Distribution of Certificate of Firearms Destruction:
Original – Owning Agency
Copies – Director, DGS Office of Surplus Property Management
Facility of Destruction

CHAPTER 13

DGS/DPS SUPPORT AND ASSISTANCE

In this Chapter look for . . .

13. General
13.1 Contacts with DGS/DPS Personnel
13.2 DGS/DPS Home Page
13.3 Vendor Source Assistance
13.4 Specifications/Purchase Descriptions
13.5 Pricing Assistance
13.6 Contract Compliance Assistance
13.7 DGS/DPS State Contracts
13.8 Submission of DGS/DPS Purchase Requisition
13.9 Training
13.10 Procurement Management Reviews
13.11 Increased Delegated Purchasing Authority Requests
13.12 Graphics Services
13.13 Service Contracting

Annexes
13-A DGS/DPS Purchase Requisition
13-B DGS/DPS Organizational Chart
13-C Directory of Procurement Assistance
13-D Procurement Exemption Request Form

13. **General**. DGS/DPS is committed to providing superior value-added service to our customers, consistent with the public's charge, professional standards, ethical principles, and legal requirements essential to their expectations of quality, delivery, and cost. To this end, we have established procurement teams, service groups, and training personnel to assist agencies. This chapter details the support and assistance provided by DGS/DPS.

DGS/DPS is the central purchasing office for goods and printing. It formulates procurement policies and procedures for goods, printing, and nonprofessional services. It is, therefore, essential that communications be maintained between state agencies and DGS/DPS. Comments or suggestions on ways to improve procurement are always welcomed. Appendix C contains a "Suggested Changes" form that can be completed and returned to DGS/DPS with comments or recommended changes. DGS/DPS can assist agencies in the procurement process and will do so within its resources.

13.1 **Contacts with DGS/DPS Personnel**. Agency purchasing office personnel are encouraged to contact DGS/DPS for advice and assistance as appropriate. If calling regarding a specific requisition, please have the requisition number, so the DGS/DPS buyer may help. Organizational charts showing areas of responsibility are located in Annex 13-B. If a problem cannot be resolved by the purchasing or contract officer, contact should be made with the appropriate supervisor (see Annex 13-C).

13.2 **DGS/DPS Home Page**. DGS/DPS has a home page on the Internet. Included on the home page are the *VPPA*, *Vendors Manual*, this manual, staff telephone directory, organizational chart, Procurement Information Memoranda (PIMs), DGS/DPS purchase requisition, master contract list, state contracts, Hotel/Motel Guide, list of mandatory sources, information about the VCO program and other training opportunities, *VBO* information, contract compliance information, vendor registration information, alphabetical list of all state purchasing offices, list of agencies with increased delegated purchasing authority, and information regarding the VDC and surplus property. It also includes hot links to other web sites that have useful information for purchasing professionals. New information is added regularly. The web site address is www.dgs.state.va.us/dps/.

13.3 **Vendor Source Assistance**. A central vendor register is maintained by DGS/DPS by class and commodity number for goods and services. A copy of this register is available, at cost, and agencies are encouraged to obtain a current listing to supplement their source files and to obtain a broader range of competition. For information call 804-786-3842.

13.4 **Specifications/Purchase Descriptions**. The DGS/DPS Specifications Section maintains a library of reference specifications, Virginia standard specifications, and model specifications. Within its resources and available time, this section will provide assistance in developing goods and installation specifications for state agencies. Assistance is available by calling 804-371-8354. For assistance in developing specifications, scope of work, and model solicitations for services, contact the DGS/DPS Service Contracts Section at 804-786-1601.

13.5 **Pricing Assistance**. Assistance in establishing budget projections or assistance in establishing price reasonableness for those items being purchased and for which adequate competition could not be obtained is available from the appropriate DGS/DPS buyer (see Annex 13-C).

13.6 **Contract Compliance Assistance**. Assistance is available from DGS/DPS to ensure timely delivery of goods, services, and printing to state agencies. This includes primary responsibility for processing vendor complaints pertaining to over/under shipments, delinquent deliveries, nondelivery, improper billing, receipt of nonconforming material or services, and initiation of default action. This assistance is available by calling 804-225-4045.

13.7 **State Contracts**. DGS/DPS has responsibility for oversight of statewide mandatory and optional use term contracts for non-technology goods and non-professional services.

a. **Use of State Term Contracts**. DGS/DPS provides support to state agencies through the establishment of both mandatory and optional use term contracts. The contracts may be executed for a single agency, selected agencies, or for the use of all state agencies and political subdivisions. Contracts are entered into in accordance with law and applicable procurement regulations. Agencies are advised of the existence of such contracts by means of written notices from DGS/DPS and are posted under "State Contracts" on www.eva.virginia.gov. These notices identify the contract vendor, prices, and the terms and conditions of the contract. The prices and terms obtained under mandatory use contracts are offered by bidders with the understanding that if the requirements are to be obtained from a nongovernmental source, they will be ordered from the contractor. The use of these contracts is mandatory for all state agencies and institutions for the purchase of items listed and available under the terms of the contract. Orders are placed against a state contract by preparing a purchase order in eVA. An agency or institution may not use its local purchase authority to purchase items from another source which are available under the terms of a mandatory use contract. If the goods or services available under the terms of a mandatory use contract cannot be used by an agency or institution, a request to purchase other goods or services of similar nature shall be submitted to the appropriate DGS/DPS contract/purchase officer for approval (see also 2.1). The Exemption Request form located in Annex 13-D should be used to request an exception from purchasing from a mandatory state contract.

b. **Considerations in the Establishment of Term Contracts**. Before a term contract is established the following factors are considered:

(1) Is there a sustained and recurring need for the product or service?

(2) What quality level is required? Are standard specifications for product quality or service performance available, and can product or service be measured against them?

(3) Do market experience and forecasts show stable pricing?

(4) Is there an adequate qualified vendor base to ensure competition?

(5) Will a term contract result in lower overall unit costs and be in the best interest of the Commonwealth?

(6) Will administrative effort and procurement lead-time be reduced?

c. **Contract Information**. For contract information, contact the contract officer.

d. **Agency or Institution Statewide Term Contracts**. Agencies and institutions desiring to establish statewide term contracts, within their delegated authority, should consider the factors in 13.7 b. and whether the entity has the appropriate number and experience level of contract officers to handle the management of the term contract. A written

request to establish a statewide term contract shall be sent to the DGS/DPS Director for approval, using the Procurement Exemption Request form (Annex 13-D). Upon the approval of the DGS/DPS Director, agencies and institutions may award a statewide term contract in accordance with the approval granted. Contract Management for any agency or institution-established contract shall be the responsibility of the entity establishing the contract.

Important: Purchasing offices are encouraged to establish an internal procedure for distribution of state contract documents to authorized users. The agency's point of contact should be publicized and be the first point of contact for agency personnel.

13.8 **Submission of DGS/DPS Purchase Requisition**. The DGS/DGS requisition is the document that initiates the procurement action for goods and printing, whose value exceeds an agency's or institution's delegated authority. It is also used to initiate procurement action for services contracted by DGS/DPS on behalf of an agency. It should contain all the essential information a DGS/DPS buyer needs to blend the appropriate contract terms and conditions with a full, clear and concise description of the requirement into a solicitation which can be issued to qualified bidders or offerors. Any approvals required or exceptions granted regarding the procurement should also be furnished. Should an agency require special exemption from purchasing through DGS/DPS, the Procurement Exemption Request Form in Annex 13-D must be submitted (facsimile or by mail) to DGS/DPS for prior approval. The following paragraphs highlight essential elements which should be included in every requisition. Requisitions without complete information may be returned causing delay.

a. **Requirement Description**. An adequate description of what and how much is to be procured is one of the most important elements in the procurement process as it establishes the method of procurement, the degree of competition, sources, price and degree of difficulty in administering the contract. Without a full description, considerable time can be lost in the buying cycle when it becomes necessary to return requisitions for clarification and more information. Improper or incomplete descriptions can lead to the wrong vendors being solicited or the wrong items being purchased. Conditions may arise when goods are only available from one manufacturer or supplier and are needed by an agency to meet its specific requirements. In such cases, requisitions shall clearly state the sole source or proprietary nature of the requirement with supporting justification (see 4.4c). Without such information, buyers must obtain maximum competition through use of a "generic" or "Brand Name or Equivalent" level of quality. If the agency is aware of an equivalent product manufactured in Virginia, it should name such product first in the specification.

b. **Review Requested by Agency Prior to Award**. Upon the written request from the agency, solicitation responses will be forwarded to an agency for review prior to an award. If alternate bids or offers are received, which in the opinion of the purchase officer merit consideration, agencies will be afforded an opportunity to review them. If the agency would prefer the alternate, the requirement will be rebid citing the features of the alternate product (see 3.1j). Responses normally are valid for only thirty (30) days after the time set for receipt; therefore, agencies must review and return the bids within ten (10) calendar days, and if the agency review period exceeds ten (10) calendar days, then a proportionate time will be added to the requested delivery date. The agency's recommendation for award must be supported by fact and relate to the evaluation criteria stated in the solicitation. Contents of bids or proposals shall not be discussed with or divulged to other bidders or offerors until evaluation has been completed and an award decision made.

c. **Suggested Vendors**. If the vendor is not suspended or debarred, the buying office will normally honor an agency's request that a vendor receive a solicitation.

d. **Requisition Year End Cutoff Date**. Requisitions for purchases to be charged to each fiscal year must be received by DGS/DPS early enough to allow for processing and delivery prior to June 30. Exceptions may be made for emergencies, in which case the requisition must be accompanied by a letter of justification. Time must be allowed to complete the delivery, submit the invoice, and process payment by June 30. Vendor delivery on requisitions received late may not be made until the new fiscal year, which would then require payment from the new fiscal year funds. A longer lead time is required for procurements made by competitive sealed bidding or competitive negotiation.

e. **Federal Grants**. Restrictions on the use of funds are frequently imposed by the granting federal agency. Agencies shall notify DGS/DPS of any conditions or restrictions applicable to a purchase which will be funded with federal grant or contract funds (see 3.9).

f. **Estimated Funds**. Requisitions must indicate an estimated dollar amount for a proposed purchase. This assists the purchasing office in determining the method of procurement and protects the agency against over-expenditure. If bid responses exceed the estimated amount, the agency will be contacted for approval to proceed. Estimates should be provided for each item, not just a total.

g. **Commodity Codes**. Five-digit codes shall be indicated on all requisitions submitted to DGS/DPS (see 4.9).

h. **Delivery Date**. The desired delivery date shall be indicated on the requisition. The abbreviation "ASAP" will not be accepted. Delivery can be stated as a specific number of days from award such as "30 days from award date" or a definite calendar date. Expedited delivery/solicitation period must be accompanied by instructions and a justification.

i. For detailed instructions on the preparation of a DGS/DPS requisition, see Annex 13-A.

13.9 **Training**. DGS/DPS periodically conducts procurement training workshops at various locations throughout Virginia. These workshops are designed to acquaint agency personnel with procurement policy and procedures, enhance their professional capabilities, and to establish and maintain close liaison between DGS/DPS and agency purchasing personnel. Agencies are encouraged to submit recommendations for subjects to be presented in these workshops. Additional information may be obtained by calling 804-786-4634.

13.10 **Procurement Management Reviews**. DGS/DPS personnel conduct procurement management reviews to assist agencies in implementing more effective purchasing processes. They review local procedures in response to requests for increases in purchasing authority and to ensure compliance with existing procurement laws and regulations. These reviews are also intended to provide the agency with procurement management improvement objectives. Agencies desiring assistance may contact 804-786-1600.

13.11 **Increased Delegated Purchasing Authority Requests**. Agencies and Institutions must meet the standards for increased delegated procurement authority outlined in Annex 1-A. Requests for increased delegated purchasing authority may be made by completing and returning the Agency/Institution Request for Increased Delegated Procurement Authority form found in Annex 1-B. Questions concerning this may be directed to the Procurement Consulting and Review Director at 804-786-1600.

13.12 **Graphics Services**. DGS, Office of Graphic Communications (OGC), has a staff of highly skilled professionals with expertise in creative communications and publication design. OGC provides guidance and technical assistance to state agencies and institutions in the design, development, and production of a broad range of graphic communications including, annual reports; color promotional books, brochures, and posters; college publications; educational materials, magazines, calendars; agency newsletters; slide presentations, and exhibits. For information, call 804-786-4726 or 804-371-8359 (see 2.1f).

13.13 **Service Contracting**. The DGS/DPS Service Contracts section has prepared many model service contract solicitations for use by agencies. It also has an extensive file of examples of solicitations by agencies for various nonprofessional services. Within its resources, the Service Contracts Section will assist agencies in drafting solicitations, or reviewing solicitations prior to issuance, provide a member of its staff to take part in the evaluation of bids or proposals and in negotiations, and will provide general advice and guidance on service contracting. The Service Contracts Section has awarded several multi-agency and statewide contracts and, upon request, will handle a particular procurement on behalf of a single agency.

Annex 13-A

DGS-41-001

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF GENERAL SERVICES
DIVISION OF PURCHASES AND SUPPLY
PURCHASE REQUISITION

FILE

REQUISITION NO. 3

DATE 4

INTRA-DEPARTMENT REQ. NO. 5

PROCURE FOR AND INVOICE TO: 1

SIGNATURES: 6

DATE 7

CHECK HERE IF ITEM IS TO BE FURNISHED AND INSTALLED 8

DELIVER TO: 2

DATE WANTED--SHIP VIA 9

DELIVERY HOURS 10

PLEASE DOUBLE SPACE TYPE AND SKIP FULL LINE BETWEEN ITEMS:

PURCHASES AND SUPPLY USE ONLY

LINE	COMMODITY NO.	CLASS TITLE: Use Separate Requisition for each Class	QUANTITY	UNIT	UNIT BID	PURCHASE ORDER NUMBERS
1	11	12	13	14		
2						
3						
4						
5						
6						
7						
8						

INTRA-INST. Code:

CHECK HERE IF THIS PROCUREMENT IS TO BE TREASURY FINANCED

TRANS	AGENCY	GLA	FUND		FFY	PROGRAM			OBJECT	REVENUE SOURCE	AMOUNT					PROJECT		
			FUND	DET		PROG	SUB	ELE								PROJECT	TK	PH
15																		

COST CODE	FIPS	PSD	AGENCY REFERENCE	INVOICE		DUE DATE			REFERENCE DOC		
				DATE	NUMBER	MM	DD	YY	NUMBER	SX	Y

DESCRIPTION	CURRENT DOCUMENT		SUBSIDIARY ACCOUNT	MULTI-PURPOSE	CHECK IF EXPENDITURE DISTRIBUTION CONTINUATION
	NUMBER	SX			SHEETS ARE ATTACHED

Procurement of items listed, as a charge against the accounts Indicated, hereby is authorized.

DATE_____

SIGNATURE_____ 16

TITLE_____

PRINT NAME_____

PHONE NO._____

PURCHASES & SUPPLY

PURCHASE REQUISITION FORM DGS-41-001

How to Prepare This Form

1. Insert the full name, address, and zip code of the agency to be invoiced. Expenditure code numbers and authorization must match this designation.

2. Insert the full name, address, and zip code of the agency to whom delivery is to be made. When delivery inside the building is required, so state and designate the room number or area; otherwise, sidewalk delivery will be in order. Public carriers and some vendors hesitate to deliver on private property because of ICC Regulations and insurance risks. If the exact spot of delivery is not stated, controversy may arise. Installation is not a part of delivery specifications. This, where required, should be stated in the article description space of the requisition form.

3. Insert the agency requisition number. Beginning with the first requisition coded for expenditure from an allotment for the first calendar quarter of a fiscal year, each agency should begin a new agency requisition series, starting with the number 1. Duplication of numbers within the same agency is to be avoided. If duplication takes place, DGS/DPS will call the agency for a new number. In addition to the requisition number, each agency should show a prefix digit to conform to the last digit of the fiscal year affected. Thus, each requisition issued during the fiscal year beginning July 2002 shows a prefix digit of "3," which will identify the fiscal year and furnish DGS/DPS with a "cut-off" date for filing.

4. Insert the date the requisition is prepared.

5., 6., and 7. These are for agency use and are not required by DGS/DPS.

8. Check here if item is to be furnished and installed.

9. Insert shipping instructions, if applicable. The majority of purchases for agencies are bought F.O.B. Destination. In such instances the cost of shipping is borne by the shipper. Since the agency is invoiced for shipping costs on F.O.B. shipping point purchases, it is desirable that the agency indicate preference as to method of shipment, considering such factors as the nature of commodity, its weight, time allowed for delivery, etc. Avoid phrases such as "Best Way," "Quickest Way," or "Cheapest Way." Specify "Railroad Freight," "Express," "Motor Freight," "Parcel Post," or "Vendor Truck," and explain any unusual transportation conditions.

   Insert the date wanted. An agency has the right to specify when the requisitioned articles should be delivered for use, but only a reasonable delivery requirement may be stipulated. Calling for delivery within a week for items that will require two weeks to fabricate, of course, cannot be regarded by DGS/DPS as reasonable. The specific date or dates on which goods will be required at destination, or the period of time during which goods will be ordered out, should be stated. Avoid the use of "As soon as possible," "Rush," "Urgent," or "Immediate." When the exact date is not important, the phrase "On or before" is appropriate. When the delivery of all items on the requisition is required on the same date, one date only is necessary preceded by the word "All," or otherwise, specify a separate date for each group of items. The information furnished under this heading is important and should be stated with care and discretion because usually it affects both the invoice and transportation costs.

10. Insert the agency delivery hours.

11. Insert the commodity code as shown in the *Commodity Class and Item Book*. In preparing requisitions, classes should not be mixed, and a separate requisition should be furnished for each class. A mixed requisition will delay processing.

12. Give a description of the item or items you desire purchased. Name and Description of Items - In this column directly opposite and in line with the identifying commodity code number, the <u>generic or standard name</u> of the article required should be listed first, followed by a <u>complete</u> description of same. The generic or standard name first is important for information compilation purposes. At least one horizontal block on the requisition form should be used for each item. <u>Two or more items</u> should not be listed in one block. If a specific brand or model number is listed, the article should be named and described first and followed, in parentheses, with the name of the manufacturer, model or brand desired. If the specifications were prepared with assistance or technical information furnished by a vendor, this must be stated on the face of the requisition.

13. Insert the quantity desired.

14. Insert the unit: each, dozen, lbs., bd. ft., etc.

15. Insert Agency 3-digit code and estimated amount in appropriate columns; however at the agency's option, all CARS II coding may be inserted.

16. Signature, date, title, and telephone number of an authorized person at the agency.

When requesting the purchase of used equipment, the following information must be provided on the DPS Form 2:

a. Complete description of item(s) requested including the manufacturer's name, model number, serial number, original purchase date and original purchase price.

b. Give the price per item being offered for purchase to the Commonwealth.

c. Include a statement from a knowledgeable person on the equipment that it has been examined and found to be in excellent, good, new, etc., condition and a written recommendation that it would be in the best interest of the Commonwealth to purchase the equipment.

DISTRIBUTION - (FORM DGS-41-001)

The agency must mail copies 1 and 2 (blue and canary) to DGS/DPS. Retain copies 3, 4, and 5.

Annex 13-B

Department of General Services
Division of Purchases and Supply

Director — **Executive Secretary**

Director, Virginia Distribution Center	Deputy Director, DPS Purchasing Bureau	Director, Administration/ Development	Director, Policy, Consulting & Review	Director, E-Procurement Bureau
Develop Specifications for Distributed Commodities	Perform Supplier & Market Research	Provide Administrative Support for Procurement Activities	Monitor All Agencies for Compliance & Performance Analysis	Facilitate Reassessment of DPS Business Processes & Systems for Effectiveness & Efficiency
Procure Agency Required Commodities	Assist With Specifications Preparation	Provide Daily Support for Automated Systems	Address Matters of Delegation	Research, Design & Implement Automation Technologies in Support of DPS Business Initiatives
Maintain Advisory Committees Which Will Advise VDC on Quality Requirements	Execute Procurements	Manage Budget Development & Execution	Facilitate Code, Policy, Procedure Review & Upgrade	Manage Electronic Commerce Development & Implementation
Monitor/Manage Costs to Ensure Superior Competitive Posture	Administer Contracts	Identify & Deliver Technical Training for Suppliers	Advise Agency on Procurement Issues	Provide Inter-Agency Guidance in Pursuit of Consistency
Optimize Inventory to Ensure Quality Service	Collaborate with Agencies on Current, Future “Unique” Needs	Manage Certification of Virginia Contracting Officer	Analyze Expenditure Data & Recommend Action Plans	eVA Functional Project Management
Conduct a Marketing Program for Distributed Commodities	Monitor Supplier Compliance	Promote Supplier Participation in State Bid Programs	Monitor, Analyze, & Develop Legislation	
Provide Quality Assurance Program Through VDC Laboratory				

Annex 13-C

July 9, 2009 Directory of Procurement Assistance
http://www.eva.virginia.gov/dps/Buyers/docs/asstlist.htm

		Phone Number
ADMINISTRATION/DEVELOPMENT		
Virginia Institute of Procurement, Administrative Support		804-225-4058
FAX (Learning & Development)		804-371-8937
FAX (Administration)		804-371-7877
BID RECEIPT AND ANALYSIS		804-786-5415
		804-786-8873
COMPETITIVE NEGOTIATION		
Advice & assistance in proposal evaluations and negotiations		804-786-3862
CONTRACT COMPLIANCE		804-225-4045
FAX		804-786-0223
DIVISION MANAGEMENT		
Administrative Support		804-786-3846
FAX		804-371-7877
DIVISION RECEPTIONIST		804-786-3842
FAX		804-225-3707
E-PROCUREMENT		
eVA Customer Care	http://www.eva.virginia.gov	1-866-289-7367
Administrative Support		804-371-8363
FAX		804-371-7877
FAX		804-786-5413
MANUALS		
Agency Procurement and Surplus Property Manual (*APSPM*)		http://www.eva.virginia.gov
Vendors Manual		http://www.eva.dgs.virginia.gov
Virginia Public Procurement Act		
POLICY, CONSULTING & REVIEW		
Administrative Support		804-371-8355
FAX		804-786-5712
PURCHASE MANAGEMENT		
Statewide Contracts and Services Administrative Support		804-786-3862
FAX		804-786-5413
Commodity; Spot Purchases, Printing and Single Agency Contracts		
Administrative Support		804-786-8996
FAX		804-786-0223
VIRGINIA DISTRIBUTION CENTER		
Accounting	VDCweb@dgs.virginia.gov	804-328-3232, x4
Administrative Support		804-328-3232, x0
FAX		804-328-3222

Annex 13-D

FAX Request to: 804-371-7877 **Exemption Number _____**
EMAIL Request to: linwood.spindle@dgs.virginia.gov

Department of General Services - Division of Purchases & Supply
Procurement Exemption Request

(1) Requesting Agency: _____ Agency Code: _____

(2) Requestor's Name: _____ Phone #: _____

(3) Date of Request: _____ FAX #: _____

(4) Description of Procurement: _____

Applicable Commodity Code: _____

(5) Proposed Method of Procurement:
[ ] Telephonic Quotation **[ ] Facsimile Solicitation**
[ ] Written Solicitation **[ ] Quick Quote**
[ ] Other: _____

(6) Is There a Recurring Demand for this Commodity? [ ] Yes [ ] No

(7) Will Competition Be Sought In Procuring This Requirement? [ ] Yes [ ] No

(8) If not seeking competition, provide reason: _____

(9) Justification for Request (Use attachments if necessary):

******* DPS Use Only *******

(10) Exemption Request is hereby: [ ] Approved [ ] Denied

If denied, reason for denial: _____

(12) Additional comments or requirements:

(13) Contract Officer Assigned Request: _____

(14) Director (or designee) for Procurement Sign Off:_____Date: _____

(rev. 07/01/05)

CHAPTER 14

ELECTRONIC PROCUREMENT

In this Chapter look for . . .

14. General
14.1 Definitions
14.2 Internet Access
14.3 Agency Responsibility
14.4 e-Mall Shopping
14.5 Small Purchase Competitive Requirements
14.6 Change Orders
14.7 Documentation of Purchase Transactions
14.8 Approvals
14.9 Use of eVA and Exclusions
14.10 Vendor Registration Requirement
14.11 Orders To Vendors Not Registered In eVA and Related Fees
14.12 Self-Certification and Fees For Non-Compliant Purchase Transactions
14.13 eVA Multiple Orders
14.14 Small Purchase Charge Card (SPCC)
14.15 Set-aside Advertisements for eVA and VBO

Annexes
14-A Standard eVA Term and Condition

14. **General**. This chapter establishes policies and provides guidance on electronic procurement in Virginia, hereinafter referred to as eVA. eVA encompasses vendor central registration and source selection, requisitioning, solicitation development, soliciting and receiving formal and informal bids and proposals, bid/proposal tabulation and evaluation, electronic ordering, public posting, electronic receiving, electronic invoicing, electronic data record keeping and various reporting capabilities. Additionally, eVA facilitates item searches through an Electronic Mall (e-Mall), in which Commonwealth entities can shop mandatory sources and mandatory use and optional use term contracts, surplus property and non-contract sources, all displayed as electronic catalogs. **Policies in this chapter shall take precedence in the event of conflict with other sections of this manual.** The *Virginia Public Procurement Act (VPPA)*, other applicable sections of the *Code of Virginia*, as well as other provisions of this manual and *Vendors Manual* will remain in full force and effect. All purchase transactions, regardless of funding source, governed by the *VPPA* shall be processed through eVA to eVA registered vendors except as otherwise provided herein (see 14.11) or excluded in 14.9 b. Any purchases processed outside eVA will continue to be governed by applicable law and by the non-eVA policies and procedures contained in this manual and *Vendors Manual* in effect at the time of the transaction.

14.1 **Definitions**. Refer to the *eVA Implementation Guide's* Glossary of Terms for definitions as they apply to eVA.

14.2 **Internet Access**. Authorized use of eVA requires access to the Internet with equipment possessing the minimum rating of 32 MB RAM (64 – 128 MB recommended) with a 100 – 250 MB hard drive needed for Internet browser. Refer to the *eVA Implementation Guide*, Section II, E, for additional technical requirements. The eVA portal located at www.eva.virginia.gov is the gateway to facilitate a single sign-on to access all services available to the user when processing a purchase requirement, obtaining data analysis and reporting or to reach the help desk. A help desk is also available by calling DGS/DPS at 804-786-3842 or FAX 804-786-5712.

14.3 **Agency Responsibility**. Agencies and institutions should develop written internal policies, procedures and controls

on the use of eVA. This should include re-delegation of purchasing authority, requisition approval process, how to incorporate terms and conditions, interface with finance and accounting, record keeping, encumbrance of funds, receiving (central and/or decentralized) and interface with internal automated systems. Additionally, guidelines should be included for conducting compliance audits/reviews of purchase transactions made by or on behalf of agency employees. Although *BuysenseOrg* functionality will provide that each organization can use its own accounting structure, business rules and workflow, only minimal levels of approval should be included in the process so as to maximize the benefits of eVA. Descriptions on each of the eVA core functions are contained in the *eVA Implementation Guide*.

14.4 **e-Mall Shopping**. Any available mandatory source, mandatory use contract or optional use contract will appear in the response(s) received to an item search in the e-Mall. Unit prices shown in the electronic catalogs are inclusive of shipping charges; however, a minimum order requirement may apply, which can be determined by clicking on the item description to view further information. The extent to which agencies and institutions use eVA will be taken into consideration when evaluating requests for (and maintenance of) higher levels of delegated purchasing authority (see 1.2a). The below procedures shall apply to purchases made via the e-Mall:

a. **Mandatory Sources and Mandatory Use Contacts (see 2.1)**: Agencies and institutions shall place all orders through eVA on mandatory use contracts. Purchases may be made up to any dollar amount unless otherwise limited by the specific mandatory source or contract. Exception to the use of a mandatory source or contract must be approved in advance, in writing, by an official of the mandatory source, or the contract officer in the case of a DGS/DPS contract, utilizing the Procurement Exemption Request form located at Annex 13-D. Approved requests must be attached to the purchase transaction file either electronically or by hard copy.

b. **Optional Use Contracts and Pricing Agreements (see 2.2a)**: Purchases from optional use contracts may be made up to any dollar amount unless otherwise limited by the specific contract. Pricing Agreements allow for purchases from other sources; however, if it is to be made from another source and the total cost exceeds the single quote limit, the requirement must be competed.

c. **Non-mandatory Sources (see 2.2b. & c.)**: Surplus property listed in the e-Mall is available for purchase up to any dollar amount. Sheltered workshops are not listed. Purchases from sheltered workshops are exempt from competitive procurement within the guidelines stipulated in 2.2c, but can only be accessed outside eVA.

d. **Open Market Sources**: In addition to any available mandatory source, mandatory contract or optional use contract, other vendors may appear as choices during the e-Mall shopping for the specific requirement. When a mandatory source or contract is not available to satisfy the requirement or an exemption has been granted to bypass it, any open market vendor may be selected when the total value does not exceed the single quote limit. See paragraph 14.5 for small purchase competitive requirements.

14.5 **Small Purchase Competitive Requirements**. Small purchase solicitations are not required to be publicly advertised for 10 days, but the deadline set for a response should take into consideration the agency's needs and the time needed by potential bidders to review the requirement and to offer a quote.

a. **Single Quotation (up to $5,000)**: An e-Mall catalog (non-contract) price is acceptable as a quote when the value of the purchase is $5,000 or less. The lowest priced item received as a result of an e-Mall catalog search need not be chosen, but such selection should be based on the product that best meets the need and the required delivery date and when the price is considered fair and reasonable. Documentation that the one quote selected is from the eVA e-Mall is required; a notation on the electronic purchase requisition (comments section) is acceptable documentation. Although an e-Mall catalog price response is acceptable, competition may be solicited via Quick Quote whenever the requirement is for multiple quantities and/or when it can be expected that a lower price and/or savings in shipping costs may be realized.

b. Deleted.

c. Deleted.

d. **e-Mall Search Responses (up to $5,000)**: e-Mall catalog (non-contract) responses over $5,000 shall not be accepted as valid quotes.

e. **Quick Quote (over $5,000 to $50,000**): Solicitation of bids or quotes via Quick Quote is mandatory for non-contract requirements between $5,000 and $50,000. Solicit a minimum of four (4) DMBE-certified small business sources, if available. Quick Quote may also be used to solicit a quote(s) for requirements under $5,000. Quick Quote solicitations should be open for a minimum of one (1) day to allow vendors to return pricing by the closing date and time. However, a sufficient length of time should be given to all vendors to respond considering but not limited to solicitation requirements, complexity of the procurement, market trends, etc. Vendors must be registered in eVA in order to respond electronically to Quick Quotes in eVA. Electronic Quick Quote responses and other methods for vendors to respond to Quick Quotes may be used simultaneously. Provide the Standard eVA Term and Condition in Annex 14-A when providing Quick Quote information to an ad hoc vendor. The resulting order must be processed through eVA. Reference the Quick Quote number in the header cross-reference field of the eVA requisition. When an award action is taken or a "no award" decision is made, the agency shall update the Quick Quote to reflect the appropriate status. Quick Quote solicitations and award notices are not required to be posted on the eVA VBO website.

f. Deleted.

g. **Quick Quote (over $50,000)**: Quick Quote shall not be used to solicit competition for requirements over $50,000; however, emergency purchase requirements meeting the criteria of paragraph 9.1 may be solicited via Quick Quote up to any dollar amount.

h. Deleted. Note: A new section 14.14 is added to address the use of the small purchase charge card in eVA.

14.6 **Change Orders**: Change orders, regardless of dollar value, shall be processed whenever requested by a supplier to ensure the supplier's eVA transaction fee is accurate, as may be required by internal policy when the actual invoiced amount differs from the purchase order total, and in accordance with the requirements set forth in Sections 3.5 and 10.12 of the *Agency Procurement and Surplus Property Manual* (*APSPM*). A Change Order Users Guide is available in eVA to assist in the preparation of change orders.

14.7 **Documentation of Purchase Transactions**.

a. **Electronic Files**: Electronic files created in eVA and any attached from other sources are acceptable as documentation to support the why, who, what, when, where and how of purchase transactions and receiving reports. If the order is against a term contract then the contract number shall be included on the order. Paper documents need not be printed and maintained. Reports are available in eVA to provide sufficient detail to support the basis and history of each purchase. Any transaction that cannot be fully documented electronically should contain a cross-reference (what and where) to any other documents, such as large drawings or other files maintained as a hard copy.

b. **Price Reasonableness**: Purchasing officers shall ensure that the price offered is fair and reasonable. Refer to sections 4.10, 8.4, and 10.13.

14.8 **Approvals**. Prior approval of specific procurement transactions, as required within other chapters of this manual, remain in full force and effect. Requests for approvals may be submitted electronically, via FAX or by mail. The following are examples of prior approvals that may be required:

a. Non-Technology Sole Source Requirements Exceeding $50,000: Refer to 8.2.

b. Operational Emergencies Exceeding Delegated Purchasing Authority: Refer to 9.1b.

c. IT Equipment, Software and/or Computer Related Services: Refer to VITA Guidelines.

d. Telecommunications Equipment and/or Services: Refer to VITA Guidelines.

e. Facilities, Equipment and Services Requiring Federal Communications Commission (FCC) Licensing: Refer to VITA Guidelines.

f. Virginia Correctional Enterprises (VCE) and CORPRINT: Refer to 2.1b.

g. Virginia Department for the Blind and Vision Impaired (DBVI): Refer to 2.1c.

h. Virginia Distribution Center (VDC): Refer to 2.1e.

i. DGS/DPS Office of Graphic Communications (OGC): Refer to 2.1f.

14.9 **Use of eVA and Exclusions**:

a. **Use of eVA**.

(1) All purchase transactions, regardless of funding source, governed by the *VPPA* without regard to agency-specific exemptions, shall be processed through eVA to eVA registered vendors except as otherwise provided herein (see 14.11 or 14.9 b). This includes orders imported to eVA from ERPs (enterprise resource planning systems).

(2) Enterprise Resource Planning Orders. Any ERP order provided to vendors, in lieu of or in advance of a corresponding eVA order, shall include the standard eVA order term and condition. See Annex 14-A.

(3) eVA Fees. Agencies and vendors shall pay eVA fees as set forth on the eVA Fee Schedule published on the billing and payment portal**.** The eVA Fee Schedule is defined as a listing of eVA registration, transaction, and other fees (eVA fees) that are assessed to eVA users, including Vendors. The eVA Fee Schedule is published on the eVA website. Each fee set forth on the eVA Fee Schedule is effective dated so eVA users, including Vendors, can determine the appropriate fee by cross referencing a fee's effective date to the date of the activity for which the fee is assessed.

(4) Modification of Existing Contracts. By August 1, 2006, agencies and institutions with existing contracts that will result in new purchase orders issued August 16, 2006, and after, shall modify those contracts to incorporate the new General Term and Condition X and Special Term and Condition 59, if the order transaction fee is affected by the provisions of the new General Term and Condition X and the new eVA Fee Schedule published on the billing and payment portal. When doing so, agencies and institutions shall give Contractors the opportunity to adjust contract prices based on any impact to the Contractor resulting from the new order transaction fee.

b. **Exclusions**. Exclusions, regardless of dollar value, include the procurement types listed below. At the option of the agency or institution, these exempt transactions may be processed through eVA, but the agency or institution placing the order will be required to pay the eVA agency and vendor transaction fees specified in the eVA Fee Schedule published on the billing and payment portal. Agencies and institutions shall use the R02, S02, P02, E02, VR2, VS2, VP2, or VE2 eVA Purchase Order Category, as appropriate, to identify such purchases when processed through eVA. Purchase Order categories are defined on the Add Title screen in the PO Category field on the eVA requisition.

1. Real estate leases

2. Advertisements such as in newspapers, magazines, journals, radio, television, etc.

3. Professional organizational membership dues and training classes sponsored by the professional organization when payment is made directly to the professional organization sponsoring the training class.

4. Conference registrations

5. Petty cash purchases

6. Honoraria

7. Entertainment (speakers, lecturers, musicians, performing artists)

8. Accreditation fees and academic testing services

9. Exhibition rental fees for exhibitions of historical artifacts or original works of art. (The rental fee may include charges other than the rental of the exhibition, such as transportation costs.)

10. Goods or personal services for direct use by the recipients of programs specified in the *Code of Virginia*, § 2.2-4345, if the procurement is made for an individual recipient. Contracts and/or spot purchases for the bulk procurement of goods or services for the use of recipients shall not be exempted.

11. Award of grants by agencies and institutions to public bodies or tax exempt non-profit charitable organizations. This exception does not apply to the expenditure of grant funds by agencies and institutions for the purchase of goods and/or services (see *APSPM* 13.8e).

12. Medical (Health Care) Services when the service is provided by a hospital or an individual licensed and authorized by law to engage in the prevention, diagnosis, or treatment of human illness, injury, or physical disability, mental health, mental retardation, substance abuse, or emotional condition. Contracts and purchase orders between the agency or institution and temporary service providers or independent laboratory testing companies are not exempt from purchasing through eVA.

13. Public Utilities (electric, natural gas, water, sewer)

14. Purchases made via closed-loop systems or automated inventory control systems for items for resale, e.g., ABC, drugs (only POS drugs)

15. Purchases made using the DPS-authorized multi-state drug contract

16. Purchases made using DPS Contract #91026, Express Delivery Services

17. Over the counter charge card purchases that are made at the site of the sale and picked up by the individual card holder (i.e., SPCC, Voyager).

18. Revenue contracts, e.g., scrap, recycling or contracts with $0 payment made by the Commonwealth, e.g., contracted out Bookstore, Food service operations.

19. Government-to-government purchases, other than purchases from mandatory sources

20. Purchases from public auctions (non-electronic)

21. Surplus property

22. Contracts with commercial fisherman for replenishment, research and stock assessment activities

23. (a) Individual travel and lodging

    (b) Group (i.e., two or more individuals) travel up to $50,000 per group travel event

    (c) Group travel-related lodging

24. Financing when goods/services procured from one source are being financed by another (i.e., third party) source. The financing exclusion does not apply to lease purchases.

25. Business and/or financial transactions to which public procurement regulations do not apply. Examples include debt service payments, Medicare and Medicaid payments, and child support payments.

26. Contracts with public and private hospitals, as well as pharmacy chains and independent pharmacies, that are licensed and authorized by law to dispense controlled drugs and other medications based on prescriptions written by medical practitioners licensed to engage in the prevention, diagnosis, or treatment of human illness, injury, or physical disability, mental health, mental retardation, substance abuse, or emotional condition, when the purpose of the contract is to provide on-site mentoring and practical experience to pharmacy students enrolled in state institutions of higher education.

27. Contracts with public and private hospitals, medical practices, and medical clinics that are licensed and authorized by law to engage in the prevention, diagnosis, or treatment of human illness, injury, or physical disability, mental health, mental retardation, substance abuse, or emotional condition, when the purpose of the contract is to provide on-site mentoring and practical experience to medical students enrolled in state institutions of higher education.

28. Individuals providing instructional services in conjunction with a contract between an institution of higher education, including community colleges, and a local business or industry for non-credit workforce development classes to be provided by the institution of higher education.

c. **eVA Required Terms and Conditions**. The eVA Business-to-Government Vendor Registration clause, General Term and Condition X, and the eVA Business-to-Government Contracts and Orders clause, Special Term and Condition 59 shall be used in all solicitations, purchase orders, contracts, and contract renewals. Existing contracts without General Term and Condition X or without special Term and Condition 59 or with an older version of either shall be modified to include the current versions of General Term and Condition X and Special Term and Condition 59.

14.10 **Vendor Registration Requirement**. All vendors who accept purchase orders from Commonwealth agencies and institutions must register in eVA. All solicitations are subject to the General Terms and Conditions, which include General Term X. (eVA Business-to-Government Vendor Registration) requiring vendors to register to do business with the Commonwealth.

14.11 **Orders To Vendors Not Registered In eVA and Related Fees**. There may be times when an agency or institution is compelled to do business with a vendor that refuses to register in eVA (ad hoc vendor) and the specific purchase transaction is not included in the exemption list set forth in *APSPM* Section 14.9.b. In such cases, the agency or institution is required to process the order through eVA in accordance with one of the following processing options and order transaction fees will be assessed as specified in the eVA Fee Schedule:

a. **Vendors Accepting eVA Terms and Conditions**. If the vendor agrees to accept the eVA terms and conditions regarding vendor payment of the eVA transaction fee, the agency or institution shall document the vendor's agreement in an eVA purchase order comment and process the order using the R01, S01, P01, E01, VR1, VS1, VP1 or VE1 Purchase Order Category, as appropriate.

b. **Vendors Refusing to Accept eVA Terms and Conditions**. If the vendor refuses to accept the eVA terms and conditions regarding vendor payment of the eVA transaction fee, the agency or institution shall document the vendor's refusal in an eVA purchase order comment and process the order using the R02, S02, P02, E02, VR2, VS2, VP2 or VE2 Purchase Order Category, as appropriate.

14.12 **Self-Certification and Fees For Non-Compliant Purchase Transactions**. Monthly each agency and institution shall submit a self-certification that the agency has or has not complied with all requirements set forth herein. The self-certification shall be completed via a password protected electronic eVA Dashboard that can be accessed via a link on the eVA website. The self-certification shall be electronically signed by the agency or institution purchasing director, chief financial officer, or designee.

If the agency or institution certifies that it has not complied with the requirements set forth herein, the following shall also be submitted to the DPS eVA Business Manager, Patrick Henry Office Building 6th Floor, Room 6012, 1111 East Broad Street, (P.O. Box 1199), Richmond, VA 23218-1199.

a. a detailed explanation for why the agency or institution failed to comply with the requirements;

b. a corrective action plan for achieving timely compliance;

c. an itemized list of all non-compliant purchase transactions (including purchase order number, date, vendor, amount, commodity code, CARS subobject code, and method of procurement); and

d. a check payable to the Treasurer of Virginia or an IAT directed to the Department of General Services in the amount of 2% of the total amount of all non-compliant purchase transactions.

Self-certifications and any required additional documentation/payment shall be submitted no later than the 15th day following the end of the monthly reporting period (e.g., August 15th, September 15th, October 15th, etc.).

Failure to submit the required monthly self-certification and associated documentation will result in the automatic assessment of a 2% fee based on the agency's or institution's total CARS expenditure less eVA spend for the reporting period.

14.13 **eVA Multiple Orders**. When issuing solicitations that will result in more than ONE eVA purchase order as a result of the award, either by the establishment of a term contract or multiple delivery orders, the agency should include an explanation of how resulting orders from the award will be issued through eVA. Include the approximate number of orders on a weekly, monthly, quarterly or annual basis. Example: 4 purchase orders, quarterly; 12 purchase orders, one per month; 9 purchase orders, one per month during the school term; one purchase order annually. See Appendix B., Section II, special term and condition #59 to include in solicitations for term contracts or multiple delivery orders.

14.14 **Small Purchase Charge Card (SPCC**): Where a SPCC has previously been entered into the eVA system it should be used to affect payment of all purchase transactions up to $5,000 processed through vendors accepting the card. Every effort must be made to ensure that whenever a card is issued or cancelled, when a restriction imposed on a card is changed, etc., that the eVA system is updated as soon as practicable. For information contact DOA at 804-371-4350, fax to 804-786-9201 or email to cca@doa.virginia.gov. Charge card purchases shall be processed through eVA unless the purchase is exempt from processing through eVA in 14.9 b.

14.15 **Set-aside Advertisements for eVA and VBO:** Quick Quotes and other procurements that are to be set-aside for small businesses shall be titled in the "Request Title" field using the following format (in all capital letters): SET-ASIDE FOR SMALL BUSINESSES, followed by the title of the commodity or service being procured (e.g., SET-ASIDE FOR SMALL BUSINESSES - Security Services). Note: Placing a check in the "Set-Aside" checkbox on the Quick Quote header information screen will automatically add properly formatted set-aside text to the beginning of the Quick Quote title. The user checks the box then types the commodity or service in the Quick Quote Title area and eVA will format the Quick Quote accordingly.

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Annex 14-A

Standard eVA Term and Condition

Standard eVA Order Term and Condition: This order is governed in all respects by the laws of the Commonwealth of Virginia, including the Virginia Public Procurement Act, the Commonwealth of Virginia Agency Procurement and Surplus Property Manual, and the Commonwealth of Virginia Vendors Manual copies of which are available at www.eVA.virginia.gov. The stated price(s) include shipping FOB destination unless otherwise stated in the body of the order. In addition, this order is subject to an eVA transaction fee in accordance with the eVA Fee Schedule a copy of which is available at www.eVA.virginia.gov. This fee will be invoiced to your company, approximately 30 days after the order issue date specified above, by the Commonwealth of Virginia, Department of General Services. Any modification to these terms must be agreed to in writing by both parties prior to performance of this order.

APPENDIX A

GLOSSARY AND ACRONYMS

Absolute Preference: An absolute preference is one in which a state will only consider bids from resident contractors residing within that state.

Acquisition Services Division (ASD): The Acquisition Services Division is a division of the Virginia Information Technologies Agency (VITA). ASD is responsible for the establishment of all state contracts for ADP goods and services and all telecommunications equipment and services. In addition, ASD provides unlimited support to VITA's Data Center in its role as a Service Bureau to all agencies, institutions and localities of the Commonwealth of Virginia.

Administrative Lead Time: Administrative lead time is that period of time from initiation of the requirement by the user to issuance of an award.

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

Agency: For the purpose of this manual, agency means any department, authority, board, post, commission, division, institution, or office of the Commonwealth.

Agency Purchase Order (APO): An Agency Purchase Order is a form used by an agency to order goods, services and printing available on a State or term contract, or to procure goods or services from non-contract sources within its delegated purchase authority.

Alternative Dispute Resolution (ADR): any procedure used voluntarily to resolve issues in controversy without the need to resort to litigation. These procedures include, but are not limited to, mediation, fact-finding, and arbitration.

Appeal: Action taken by a bidder, offeror (actual or prospective) or by a contractor to seek a hearing before a disinterested person or panel or in an appropriate circuit court challenging a decision in accordance with Sections 2.2-4364 or 2.2-4365 of the *Virginia Public Procurement Act*.

Automated Data-Processing Equipment (ADPE): Computers and processors, including microcomputers, array processors and floating point processors; memory boards and systems; disk and magnetic tape devices, including disk packs and data modules; CRT display equipment, including graphics terminals, printers and teleprinters; plotters and digitizers; encoders, punches and readers; peripheral controllers, data converters, interface boards and tape certifiers; and data communications equipment, including communications controllers or front-end processors and network analyzers, testers, diagnostic systems, acoustic couplers, disk cartridges and diskettes.

Bartering: The act of exchanging one good or service for another, without the exchange of money.

Benchmark: A standard or point of reference used in measuring or judging quality, value, performance, price, etc.

Best and Final Offer (BAFO): The last offer provided by an offeror in response to a Request for Proposals and all further negotiation ceases. When the provision for receiving best and final offers is included in an RFP, offerors are given the opportunity to submit a best and final offer after negotiations have been held. After the best and final offers are submitted, no further negotiations shall be conducted with any of the offerors and the decision to award is based on rescoring of the best and final offers.

Best Value: The overall combination of quality, price, and various elements of required services that in total are optimal relative to a public body's needs, as predetermined in a solicitation. Best value concepts may be applied when procuring goods and nonprofessional services, but not construction or professional services. The criteria, factors, and basis for the consideration of best value and the process for the consideration of best value shall be as stated in the procurement solicitation (*Code of Virginia*, § 2.2-4301).

Best Value Acquisition (BVA): A process used to acquire goods and nonprofessional services in which best value concepts will be applied. The best value award is based on evaluation criteria as stated in the solicitation with consideration of price of the goods and nonprofessional services that offer the greatest benefit(s) in meeting the needs of the public body.

Bid: A competitively priced offer made by an intended seller, usually in reply to an Invitation for Bids (IFB). A price offer made at a public auction.

Bid Bond: An insurance agreement in which a third party agrees to be liable to pay a certain amount of money in the event a selected bidder fails to accept the contract as bid.

Bidder: One who submits a competitively priced offer in response to an Invitation for Bids (IFB).

Blanket Purchase Agreement (BPA): An arrangement under which a purchaser contracts with a vendor to provide for a purchaser's frequent, repetitive, small-order requirements for an item(s) or a service, on an as-required and over-the-counter basis. Properly prepared, such an arrangement sets a limit on the period of time it is valid and the maximum amount of money which may be spent at one time, or within a specified period, and specifically identifies those persons authorized to order or accept goods. The BPA may also contain other terms and conditions, such as the discount or the specific price list that applies to purchases made under the agreement and what items and services are included (or excluded) under the agreement.

Boiler Plate: General Terms and Conditions.

Broker: A person or agent acting as an independent manufacturer's or distributor's representative dealing in products or goods normally sold through the brokerage process in which there is a previously established relationship with the supplier before the bid is submitted.

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

Charge Card: In the context of this manual, the state-approved Small Purchase Charge Card (SPCC), used for small purchases ($5,000 or less) of frequent, over-the-counter, Maintenance, Repair, and Operating (MRO) items used in the daily operations of any state activity, and for placing orders up to $5,000 against term contracts.

Claim: a written assertion or demand, by one of the parties to a contract, which seeks, as a contractual right, payment of money, adjustment of contract terms, or other relief, for injury, loss, or damage arising under or relating to the contract.

Collusion: A secret agreement or cooperation between two or more parties to accomplish a fraudulent, deceitful, or unlawful purpose.

Collusive Bidding: An unethical and illegal practice in which suppliers act in collusion to fix their bids in a collectively advantageous manner.

Commodity Code: A system of symbols (alpha, numeric or other) used to represent words to describe a commodity, e.g., Class 410 Furniture, Hospital - Specialized, Item 36, Incubators, Infant (410-36); 904 Services, Client, Item 02, Ambulance Service (904-02), to facilitate data sort capabilities of purchased goods/services for the purpose of analysis.

Competitive Bidding: The offer of firm bids by individuals or firms competing for a contract, privilege, or right to supply specified services or goods.

Competitive Negotiation: A method for purchasing goods and services, usually of a complex and technical nature whereby qualified individuals or firms are solicited by means of a Request for Proposals (RFP). Negotiations are conducted with selected offerors and the best proposal, as judged against criteria contained in the Request for Proposals, is accepted and an award issued.

Competitive Sealed Bid: A bid submitted in a sealed envelope to prevent disclosure of its contents before the deadline set for the receipt of all bids. Sealed bidding procedures are required on procurements of $50,000 or more. Competitive sealed bidding shall not be used to contract for professional services.

Confirming Purchase Order: A purchase order issued after the fact by a procuring agency to a vendor for goods or services ordered orally or by some other informal means. The order should be marked "CONFIRMING ORDER. DO NOT DUPLICATE".

Consideration: Something of value given for a promise to make the promise binding. Consideration is one of the essential elements of a contract.

Construction: Construction shall mean building, altering, repairing, improving or demolishing any structure, building or highway, and any draining, dredging, excavation, grading or similar work upon real property (*Code of Virginia,* § 2.2-4301).

Construction Management Contract: A contract in which a party is retained by the owner to coordinate and administer contracts for construction services for the benefit of the owner, and may also include, if provided in the contract, the furnishing of construction services to the owner.

Consulting Services: Advice or assistance of a purely advisory nature provided for a predetermined fee to an agency by an outside individual, firm, or organization under contract to that agency.

Consumer Price Index (CPI): The Consumer Price Index is a measure of the average change in prices over time in a fixed market basket of goods and services. Two CPIs are published: 1) the CPI for All Urban Consumers (CPI-U) which covers about 80% of the total populations and 2) the CPI for Urban Wage Earners and Clerical Workers (CPI-W) which covers 32% of the total population. The CPI is based upon prices of food, clothing, shelter, transportation, medical care, and other goods and services that people buy for day-to-day living.

Contract: When used as a noun in this Manual, contract refers to an agreement enforceable by law, between two or more competent parties, to do or not to do something, not prohibited by law, for a consideration. A contract is any type of agreement or order for the procurement of goods or services. As a verb, contract has its usual legal sense, signifying the making of an agreement for consideration.

Contract Administration: The management of all facets of a contract to assure the Contractor's total performance is in accordance with the contractual commitments and that the obligations of the Contractor under the terms and conditions of the contract are fulfilled.

Contract Management: The management of the organization's contracts and contract-related activities which may include accounting, administration, auditing, grants management, law, negotiation, logistics, price-structure compensation, delegation of purchasing authority, program management, termination and other business activities.

Contract, Cost-Plus-A-Fixed-Fee: A cost-reimbursement type contract that provides for the payment of a fixed fee to the contractor. The fixed fee, once negotiated, does not vary with the actual cost but may be adjusted as a result of any subsequent changes in the scope of work or services to be performed under the contract.

Contract, Cost-Plus-A-Percentage-Of-Cost: A form of contract which provides for a fee or profit at a specified percentage of the contractor's actual cost of accomplishing the work. Except in case of emergency affecting the public health, safety or welfare and for some insurance contracts, no public contract shall be awarded on the basis of cost plus a percentage of cost (*Code of Virginia,* § 2.2-4331).

Contract, Design-Build: A contract between a public body and another party in which the party contracting with the public body agrees to both design and build the structure, roadway or other item specified in the contract.

Contract, Fixed Price: A contract that provides for a firm unit or total price to be established at the time of order placement or contract award. The contractor bears the full risk for profit or loss.

Contract, Fixed Price, Incentive: A fixed price is agreed upon with a target cost/profit, a ceiling price, and a profit formula. Below target, the contractor and state share savings. Above ceiling, the contractor must assume all costs.

Contract, Fixed-Price With Escalation/De-escalation: A fixed price type of contract that provides for the upward and downward revision of the stated contract price upon the occurrence of certain contingencies (such as fluctuations in material costs and labor rates) specifically defined in the contract.

Contract, Requirements Type: A form of contract covering long-term requirements used when the total quantity required cannot be definitely fixed, but can be stated as an estimate or within maximum and minimum limits, with deliveries on demand. Such contracts are usually for one year or more in duration.

Contract, Service: A contract for work to be performed by an independent contractor wherein the service rendered does not consist primarily of the acquisition of equipment or materials, or the rental of equipment, materials and supplies.

Contract, Time and Material: A contract providing for the procurement of supplies or services on the basis of direct labor hours at specified fixed hourly rates (which include direct and indirect labor, overhead, and profit) and material at cost, or at some bid percentage discount from manufacturer's catalog or list prices.

Contract Officer, Purchase Officer, Buyer: A State employee whose primary assignment is purchasing goods or services.

Contractor: An individual or firm that has entered into an agreement to provide goods or services to the Commonwealth.

Cooperative Procurement: A procurement by a public body with one or more other public bodies, for the purpose of combining requirements for the purchase of like goods and/or services in order to increase efficiency and/or reduce administrative expenses.

CORPRINT: Department of Corrections, Industrial Enterprises, Printing Facilities.

Cure Notice: A notice, either oral or in writing, that informs the Contractor that he or she is in default and states what the Contractor has to do to correct the deficiency. If the notice is oral it shall be confirmed in writing.

Debarment: An action taken by the Director of the Division of Purchases and Supply (DPS), or designee (debarring officials), within the scope of their procurement authority, to exclude individuals or firms from contracting with state agencies for particular goods or nonprofessional services for specified periods of time (*Code of Virginia*, § 2.2-4321).

Default: Failure to comply with the terms and conditions of a contract.

Design Specification: A purchase specification setting forth the essential characteristics that an item bid must possess to be considered for award.

Disadvantaged Business Enterprise: A small business concern which is at least 51 percent owned by one or more socially and economically disadvantaged individuals, or, in the case of any corporation, partnership or limited liability company or other entity, at least 51 percent of the equity ownership interest in which is owned by one or more socially and economically disadvantaged individuals and whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

Dispute: disagreement between parties to a contract over performance or other contract term requiring administrative action to resolve. See protest, alternative dispute resolution.

Division of Purchases and Supply (DPS): The Division of Purchases and Supply is a division of the Department of General Services. DGS/DPS is the State's centralized purchasing agency for materials, equipment, supplies, nonprofessional service and printing. DGS/DPS prescribes the rules and regulations for the purchase of materials, supplies, equipment, nonprofessional services, and printing (*Code of Virginia*, § 2.2-1109 et al).

Drug-free Workplace: A site for the performance of work done in connection with a specific contract awarded to a contractor in accordance with the *VPPA*, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of a contract.

Emergency: An occurrence of a serious and urgent nature that demands immediate action.

Ethics: Pertaining to or relative to moral action, conduct, motive or character; as ethical emotion; professionally right or befitting; conforming to professional standards of conduct. The *Virginia Public Procurement Act (VPPA)* covers "Ethics in Public Contracting" (*Code of Virginia*, §§ 2.2-4367 through 2.2-4377).

eVA Fee Schedule: eVA Fee Schedule is defined as a listing of eVA registration, transaction, and other fees (eVA fees) that are assessed to eVA users, including Vendors. The eVA Fee Schedule is published on the eVA website. Each fee set forth on the eVA Fee Schedule is effective dated so eVA users, including Vendors, can determine the appropriate fee by cross referencing a fee's effective date to the date of the activity for which the fee is assessed.

Evaluation of Bids: The process of examining a bid after opening to determine the bidder's responsibility, responsiveness to requirements, and other characteristics of the bid relating to selection for award.

Expedite: The act of contacting a supplier or carrier with the goal of *speeding up* the delivery date (see also Follow-Up).

Fair Market Value: Lowest purchase price paid by the state for like items or services purchased in a similar quantity within the last six months. If this information is not available, then the lowest of three phone quotes verified by price indices or purchases made by other government entities will be used.

Follow-Up: An activity that monitors the status of a purchase to ensure that specified delivery schedules are met.

Force Majeure: An irresistible or extraordinary force, natural event, or effect that cannot be reasonably anticipated or foreseen, prevented, or controlled. An act of God.

General Terms and Conditions: Standard clauses and requirements incorporated into all solicitations (IFB/RFP) and resulting contracts which are derived from laws, or administrative procedures of the government agency. (Also called "Boiler Plate.")

Goods: Material, equipment, supplies, printing, and automated data processing hardware and software (*Code of Virginia,* § 2.2-4301).

Grant (or Grant-in-Aid): For the purposes of this manual, these are fund transfers made by one party to another (e.g., Federal to state or local government) for the procurement of goods and/or services, that may be undertaken for the purpose of a public interest, benefit, or undertaking, as specified under the terms of the agency granting the use of funds.

Hazardous Material: A substance or material which has been determined by the U. S. Secretary of Transportation to be capable of posing an unreasonable risk to health, safety, and property when transported in commerce.

Informality: A minor defect or variation of the bid or proposal from the exact requirements of the Invitation for Bids or the Request for Proposals, which does not affect the price, quality, quantity, or delivery schedule for the goods, services or construction being procured (*Code of Virginia,* § 2.2-4301).

Inspection: Examination and testing of goods and services to determine whether the goods and services furnished conform to contract requirements.

Invitation for Bids (IFB): A document, containing or incorporating by reference the specifications or scope of work and all contractual terms and conditions, that is used to solicit written bids for a specific requirement for goods or nonprofessional services. This type of solicitation is also referred to as an Invitation to Bid.

Late Bid or Proposal: A bid or proposal which is received at the place designated in the Invitation for Bids or Request for Proposals after the deadline established by the solicitation.

Latent Defect: A deficiency or imperfection that impairs worth or utility that cannot be readily detected from visual examination of a product. Examples would be the use of non-specification materials in manufacture, or missing internal parts such as a gasket, gear, or electrical circuit, etc.

Logistics: The process of planning, implementing, and controlling the efficient, effective flow and storage of goods, services, and related information from point of origin to point of consumption for the purpose of conforming to customer requirements.

Life-Cycle Costing: A cost-analysis tool which incorporates not only the purchase price of a piece of equipment, but all operating and related costs over the life of the item, including maintenance, down time, energy costs, etc., as well as salvage value.

Liquidated Damages: A sum stated in a contract to be paid as ascertained damages for failure to perform in accordance with the contract. The damage figure stipulated must be a reasonable estimate of the probable loss to the agency, and not calculated simply to impose a penalty on the contractor.

Minority Individual: "Minority individual" means an individual who is a citizen of the United States or a non-citizen who is in full compliance with United States immigration law and who satisfies one or more of the following definitions:

1. "African American" means a person having origins in any of the original peoples of Africa and who is regarded as such by the community of which this person claims to be a part.

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

3. "Hispanic American" means a person having origins in any of the Spanish speaking peoples of Mexico, South or Central America, or the Caribbean Islands or other Spanish or Portuguese cultures and who is regarded as such by the community of which this person claims to be a part.

4. "Native American" means a person having origins in any of the original peoples of North America and who is regarded as such by the community of which this person claims to be a part or who is recognized by a tribal organization.

Minority-Owned Business: Minority-owned business means a business concern that is at least 51% owned by one or more minority individuals or in the case of a corporation, partnership or limited liability company or other entity, at least 51% of the equity ownership interest in the corporation, partnership, or limited liability company or other entity is owned by one or more minority individuals and both the management and daily business operations are controlled by one or more minority individuals.

Multiple Award: The award of multiple contracts for goods or services, meeting the same specifications, resulting from one solicitation. When a Multiple Award clause is included in an Invitation for Bids/Request for Proposals, awards may be made to more than one bidder/offeror (*Code of Virginia*, § 2.2-4301). This is appropriate in situations where the award of a single contract would be impractical and awards are limited to the least number of suppliers necessary for a workable contract program.

Must, Shall: As used in specifications or requirements of a Request for Proposals (RFP), the terms "must" and "shall" identify requirements whose absence will have a major negative impact on the suitability of the proposed solution. Items labeled as "should" or “may” are highly desirable, although their absence will not have a large impact and would be useful, but are not necessary.

Negotiation: A bargaining process between two or more parties, each with its own viewpoints and objectives, seeking to reach an agreement, or settlement of, a matter of common concern, on terms that are mutually beneficial and satisfactory to both.

Non-Competitive Negotiation: The process of arriving at an agreement through discussion and compromise, when only one source is practicably available.

Nonprofessional Services: Any services not specifically identified as professional services in the definition of professional services (*Code of Virginia*, § 2.2-4301).

Nonprofit Sheltered Workshops and Nonprofit Organizations Serving the Handicapped: A work-oriented rehabilitative facility certified by the Department of Labor (DOL) under Statutory Provision Section 14 (C) Fair Labor Standards Act, with a controlled working environment and individual goals which utilizes work experience and related services for assisting the handicapped person to progress toward normal living and a productive vocational status (*Code of Virginia*, § 2.2-4301). Nonprofit sheltered workshops and nonprofit organizations are also referred to as Employment Services Organizations (ESOs).

Notice of Award: A Notice of Award is written notification stating that a vendor has received an award by the State.

Notice of Intent to Award: The Notice of Intent to Award is a written notice, or bid tabulation sheet publicly displayed, prior to award, that shows the selection of a vendor for the award of a specific contract or purchase order. This decision may be changed prior to the actual award of a contract or purchase order.

Offeror: A person who makes an offer in response to a Request for Proposals.

Order/Ship Time (OST): Order/Ship Time is the time after award required by suppliers to fill an order and ship by designated means (truck, rail, or air) to the delivery point.

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

Payment Bond, For Labor and Material: A bond required of a contractor to assure fulfillment of the contractor's obligation to pay all persons supplying labor or materials in the performance of the work provided for in the contract.

Performance Bond: A contract of guarantee executed in the full sum of the contract amount subsequent to award by a successful bidder to protect the government from loss due to his/her inability to complete the contract in accordance with its terms and conditions.

Performance Specification: A specification setting forth performance requirements that have been determined to be necessary for the item involved to perform and last as required.

Potential Bidder or Offeror: A person who, at the time an agency awards or proposes to award a contract, is engaged in the sale or lease of goods, or the sale of services, insurance or construction of the type to be procured under such contract, and who at such time is eligible and qualified in all respects to perform that contract, and who would have been eligible and qualified to submit a bid or proposal had the contract been procured through competitive sealed bidding or competitive negotiation (*Code of Virginia*, § 2.2-4301).

Pre-bid or Pre-proposal Conference: Meeting held with prospective bidders or offerors prior to submission of bids or proposals, to review, discuss, and clarify technical considerations, specifications, and standards relative to the proposed procurement.

Prequalification: A procedure to prequalify products or vendors and limit consideration of bids or proposals to only those products or vendors which have been prequalified.

Printing: The process or business of producing printed material by means of a printing press, copier or similar means or all copies of a publication produced by such means.

Procurement: The procedures for obtaining goods or services, including all activities from the planning steps and preparation and processing of a requisition, through receipt and acceptance of delivery and processing of a final invoice for payment.

Professional Services: Shall mean work performed by an independent contractor within the scope of the practice of accounting, actuarial services, architecture, land surveying, landscape architecture, dentistry, law, medicine, optometry, pharmacy, or professional engineering. "Professional Services" shall also include services of an economist procured by the State Corporation Commission (*Code of Virginia*, § 2.2-4301).

Proposal: An offer made by one party to another as a basis for negotiations, prior to the creation of a contract.

Proprietary Specification: A specification that restricts the acceptable product(s) or service(s) to that of one or more manufacturer(s) or vendor(s). A common example would be the use of a "brand name" specification that would exclude

consideration of proposed "equals." Although all sole source specifications are proprietary, all proprietary specifications are not sole source. Proprietary items may be available from several distributors through competitive bidding.

Protest: A written complaint about an administrative action or decision brought by a bidder or offeror to the appropriate administrative section with the intention of receiving a remedial result.

Public Bid Opening: The process of opening and reading bids at the time and place specified in the Invitation for Bids and in the presence of anyone who wishes to attend.

Public Body: In the context of this manual, any state-funded agency that is required to follow the provisions of the *Code of Virginia* and the *Virginia Public Procurement Act (VPPA*), in the course of their procurement activities.

Public Telecommunications Services: Public telecommunications are non-commercial educational or cultural radio and television programs and related instructional or informational material that may be transmitted by means of electronic communications (see also "Telecommunications Services").

Purchase Order: A document used by DGS/DPS to execute a purchase transaction with a vendor. It serves as notice to a vendor that an award has been made and that performance can be initiated under the terms and conditions of the contract.

Purchasing Agency: A state agency or institution purchasing goods or services.

Qualified Contractors List (QCL): A list of contractors whose capability to provide a service has been evaluated and approved based on written prequalification procedures.

Qualified Products List (QPL): A list of products that have been tested and approved based on written prequalification procedures.

Regular Dealer: A person or firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles, or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and sold to the public in the usual course of business.

Request for Information (RFI): An informal document issued when an agency is not aware of the products available in the market which may satisfy its requirements. The use of an RFI does not require a purchase requisition, however a RFI may result in the development of a requisition, or the issuance of an IFB or RFP after an agency determines the types of products that are available which will satisfy its requirements. An RFI cannot be made into an agreement.

Request for Proposals (RFP): All documents, whether attached or incorporated by reference, utilized for soliciting proposals; the RFP procedure requires negotiation with offerors (to include prices) as distinguished from competitive bidding when using an Invitation for Bids.

Responsible Bidder or Offeror: A person or firm who has the capability, in all respects, to perform fully the contract requirements and the moral and business integrity and reliability which will assure good faith performance, and who has been prequalified, if required (*Code of Virginia*, § 2.2-4301).

Responsive Bidder: A person or firm who has submitted a bid which conforms in all material respects to the Invitation for Bids (*Code of Virginia*, § 2.2-4301).

Restocking Charge: Charges incurred by a purchasing agency for any material goods that are returned to a vendor or seller and are associated with the normal cost and expense that must be incurred by the vendor for accepting the return of an item to inventory (see section 10.8).

Reverse auctioning: Means a procurement method wherein bidders are invited to bid on specified goods or nonprofessional services through real-time electronic bidding, with the award being made to the lowest responsive and responsible bidder. During the bidding process, bidders' prices are revealed and bidders shall have the opportunity to modify their bid prices for the duration of the time period established for bid opening. The purchase of goods or nonprofessional services, but not construction or professional services, may be made by reverse auctioning.

Sealed Bid: A bid which has been submitted in a sealed envelope to prevent its contents from being revealed or known before the deadline for the submission and opening of all bids.

Services: Services are any activities performed by an independent contractor wherein the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials and supplies (*Code of Virginia*, § 2.2-4301).

Set-asides: Reserving a procurement transaction exclusively for a specific group. The purpose of Small business set-asides is to award certain contracts exclusively to small businesses.

Shall, Must: As used in specifications or requirements of a Request for Proposals (RFP), the terms "must" and "shall" identify requirements whose absence will have a major negative impact on the suitability of the proposed solution. Items labeled as "should" or "may" are highly desirable, although their absence will not have a large impact and would be useful, but are not necessary.

Sheltered Workshops: Deleted. See definition for Nonprofit Sheltered Workshops and Nonprofit Organizations Serving the Handicapped.

Should, May: As used in a Request for Proposals (RFPs), the terms "should" or "may" are highly desirable, although their absence will not have a large impact and would be useful, but are not necessary.

Single Source: A single response to a competitive solicitation wherein competition was available but only one response was received (see paragraph 2.4i).

Small Business: "Small business " means a business, independently owned or operated by one or more persons who are citizens of the United States or non-citizens who are in full compliance with United States immigration law, which, together with affiliates, has 250 or fewer employees, or average annual gross receipts of $10 million or less averaged over the previous three years.

Small Business Subcontracting Plan: A completed form which bidders or offerors provide their: 1) DMBE-certified small business certification status, or 2) small business utilization plan in response to a specific solicitation.

Software: All applications software, whether packaged or requiring development, and all systems software such as assemblers, compilers, CPU performance measurement systems, database management systems, file back-up and recovery, job accounting, operating systems, programming aids and development systems and soft-merge utilities.

Sole Source: A product or service which is practicably available only from one source.

Solicitation: An Invitation for Bids (IFB), a Request for Proposals (RFP), Quick Quote, Faxback Request, telephone calls, or any other document issued by the state to obtain bids or proposals for the purpose of entering into a contract.

Special Terms and Conditions: Special clauses pertaining to a specific procurement which may supplement or in some cases supersede one or more general terms and conditions, e.g., Award Clause, Extension of Contract.

Specification: A description of the technical requirements for a material, product, or service that includes the criteria for determining whether these requirements are met. A specification may describe the performance parameters which a supplier has to meet, or it may provide a complete design disclosure of the work or job to be done. Specifications for service contracts normally take the form of a statement of work.

Sponsorship: Any monetary or non-monetary benefit exceeding nominal value and received by a Commonwealth public body from a non-Commonwealth entity not excluding funding from vendors in support of conferences or other events.

Spot Purchase: A one-time purchase made in the open market. If it is under the small purchase threshold, it will be made in accordance with the applicable small purchase procedures. If it is over the small purchase threshold, it will be made by competitive sealed bidding or by an exception thereto authorized by law.

State ADP Contracts: State ADP contracts are executed by the Virginia Information Technologies Agency (VITA)'s Acquisition Services Division (ASD) on behalf of all agencies, institutions and localities of the Commonwealth of Virginia. With the exception of Telecommunications Services Contracts, unless otherwise stated in an individual contact, state ADP agreements executed by VITA are not mandatory.

Subcontractor: Subcontractor means any entity that has a contract to supply labor or materials to the contractor to whom the contract was awarded or to any subcontractor in the performance of the work provided for in such contract.

Surplus Property: Property which is in excess of the needs of an agency and which is not required for its foreseeable need. The property may be used or new, but possess some usefulness for the purpose for which it was intended or for some other purpose. It includes scrap, which is material that is damaged, defective, or deteriorated to the extent that it has no value except for its basic material content. Surplus Property must be disposed of in accordance with *Code of Virginia*, § 2.2-1124.

SWAM: The acronym SWAM, includes small businesses, women-owned businesses and minority-owned businesses. Refer to individual definitions contained in this Appendix.

Technical Proposal: An unpriced proposal which sets forth in detail that which a vendor proposes to furnish in response to a solicitation.

Technical Specifications: Specifications that establish the material and performance requirements of goods and services.

Telecommunications Equipment: Defined as, but not limited to: channel service units, data compression units, line drivers, bridges, routers, and Asynchronous Transfer Mode switches (ATM), multiplexors and modems. Also, private branch exchanges (PBX), Integrated Services Digital Network (ISDN) terminal equipment, voice mail units, automatic call distribution (ACD), voice processing units and key systems. Video communications products such as: coders, multi-point conferencing units and inverse multiplexors.

Telecommunications Services: These services include, but are not limited to; data communication services, such as point-to-point and multipoint circuits, Internet, Frame Relay SMDS, ATM, and dial up lines, and voice communications services such as Centrex, business/private lines and WATS lines including 800 services, tie and access lines, long distance services, voice mail, pay phones, wireless communications and cellular services (see also "Public Telecommunications Services").

Term Contracting: A technique by which a source of supply is established for a specific period of time. Term contracts are established based on indefinite quantities to be ordered "as needed," although such contracts can specify definite quantities with deliveries extended over the contract period. Also see Contract, Requirements Type.

Termination For Convenience: The termination by a Commonwealth purchasing office, at its discretion, of the performance of work in whole or in part and makes settlement of the contractor's claims in accordance with appropriate policy and procedures.

Termination For Default: Action taken by a purchasing office to order a contractor to cease work under the contract, in whole or in part, because of the contractor's failure to perform in accordance with the contract's terms and conditions.

Unsealed Bid: An unsealed written offer conveyed by U. S. Mail, commercial courier service, facsimile, e-mail, Quick Quote, or other means. The bids are normally opened and recorded as received.

Used Equipment: Equipment which has been previously owned and used and is offered "where is" "as is." It does not include demonstration, factory rebuilt or remanufactured equipment marketed through normal distribution outlets.

Value Analysis: A systematic and objective evaluation of the value of a good or service, focusing on an analysis of function relative to the cost of manufacturing or providing the item or service. Value analysis provides insight into the inherent worth of the final good or service, possibly altering specification and quality requirements that could reduce costs without impairing functional suitability.

Vendor: One who sells goods or services.

***Virginia Public Procurement Act*:** Chapter 43 of Title 2.2, *Code of Virginia*, which enunciates the public policies pertaining to governmental procurement from nongovernmental sources.

Will: As used in an Invitation for Bids or Request for Proposals, the word "will" is normally used to convey an obligation incurred by the agency or owner.

Women-Owned Business: Women-owned business means a business concern that is at least 51% owned by one or more women who are citizens of the United States or non-citizens who are in full compliance with United States immigration law, or in the case of a corporation, partnership or limited liability company or other entity, at least 51% of the equity ownership interest is owned by one or more women who are citizens of the United States or non-citizens who are in full compliance with United States immigration law, and both the management and daily business operations are controlled by one or more women who are citizens of the United States or non-citizens who are in full compliance with the United States immigration law.

Written; writing; writings; in writing: The words "written," "writing," "writings," and "in writing" shall include any representation of words, letters, symbols, numbers, or figures, whether (i) printed or inscribed on a tangible medium or (ii) stored in an electronic or other medium and retrievable in a perceivable form and whether an electronic signature authorized by Chapter 42.1 (§et seq.) of Title 59.1 is or is not affixed. (*Code of Virginia*, § 1-13.32)

ABBREVIATIONS & ACRONYMS

ITEM	DESCRIPTION
ADPE	Automatic Data Processing Equipment
AG	Attorney General
APO	Agency Purchase Order
APSPM	Agency Procurement and Surplus Property Manual
BPA	Blanket Purchase Agreement
CAM	Compliance Assurance Manual (DOA)
CAPA	Capital Area Purchasing Association
CAPP	Commonwealth Accounting Policies and Procedures
CARS	Commonwealth Accounting & Reporting System
CFR	Code of Federal Regulations
CO	Change Order
COTS	Council on Technology Services
COIA	Conflict Of Interest Act
CORPRINT	Corrections Print Shop
CPI	Consumer Price Index
C.P.M.	Certified Purchasing Manager
CPM	Critical Path Modeling (or Method)
CPPB	Certified Professional Public Buyer
CPPO	Certified Public Purchasing Officer
C/S	Chief of Staff
DBVI	Department for the Blind and Vision Impaired
DEQ	Department of Environmental Quality
DGS	Department of General Services
DIT	Department of Information Technology
DIT/ASD	Department of Information Technology/Acquisition Services Division
DIT/ITD	Department of Information Technology/Integrated Telecommunications Division
DMBE	Department of Minority Business Enterprise
DOA	Department Of Accounts
DPB	Department of Planning and Budget
DPS	Division of Purchases and Supply
DTP	Department of Technology Planning
EPA	Environmental Protection Agency
FAACS	Fixed Asset Accounting & Control System
FCC	Federal Communications Commission
F.O.B.	Free On Board
FOIA	Freedom Of Information Act
FTE	Full Time Equivalent (Employees)
GSA	General Services Administration
HVAC	Heating, Ventilation, and Air Conditioning
IFB	Invitation For Bids

ISM	Institute for Supply Management (formerly NAPM)
IT	Information Technology
MBE	Minority Business Enterprise
MRO	Maintenance, Repair, Operating (supplies)
NASPO	National Association of State Purchasing Officials
NIGP	National Institute of Governmental Purchasing
OGC	Office of Graphic Communications
PIM	Procurement Information Memorandum
PPI	Producer Price Index
PROBUD	Programmatic Budgeting System
QCL	Qualified Contractor List
QPL	Qualified Product List
RAST	Run At the Same Time
RDD	Required Delivery Date
RFI	Request for Information
RFP	Request For Proposals
SOW	Scope-of-Work
SPA	Surplus Property Administrator
SPCC	Small Purchase Charge Card
SSP	State Surplus Property
SWAM	Small, Woman-owned, and Minority-owned Businesses
T&C	Terms and Conditions
T&M	Time and Materials
TRS	Treasury Department
VAGP	Virginia Association of Governmental Purchasing
VBO	Virginia Business Opportunities
VCE	Virginia Correctional Enterprises
VCO	Virginia Contracting Officer
VDC	Virginia Distribution Center
VIB	Virginia Industries for the Blind
VITA	Virginia Information Technologies Agency
VPPA	Virginia Public Procurement Act

APPENDIX B

TERMS & CONDITIONS

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APPENDIX B

SECTION I

REQUIRED GENERAL TERMS AND CONDITIONS
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These General Terms and Conditions are required for use in written solicitations issued by state agencies for procurements that are subject to this manual unless changed, deleted or revised by the legal advisor to your agency. You should edit the wording to fit the type of solicitation (IFB or RFP) by either deleting or lining out the inappropriate words in all parenthesis. For service contracts clauses, Q, R, and S are normally not applicable and may be omitted. For goods contracts, omit clause T.

A. **VENDORS MANUAL:** This solicitation is subject to the provisions of the Commonwealth of Virginia *Vendors Manual* and any changes or revisions thereto, which are hereby incorporated into this contract in their entirety. The procedure for filing contractual claims is in section 7.19 of the *Vendors Manual*. A copy of the manual is normally available for review at the purchasing office and is accessible on the Internet at www.eva.virginia.gov under "Vendors Manual" on the vendors tab.

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B. **APPLICABLE LAWS AND COURTS:** This solicitation and any resulting contract shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth. The agency and the contractor are encouraged to resolve any issues in controversy arising from the award of the contract or any contractual dispute using Alternative Dispute Resolution (ADR) procedures (*Code of Virginia*, § 2.2-4366). ADR procedures are described in Chapter 9 of the *Vendors Manual.* The contractor shall comply with all applicable federal, state and local laws, rules and regulations.

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

to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (*Code of Virginia*, § 2.2-4343.1E).

In every contract over $10,000 the provisions in 1. and 2. below apply:

1. During the performance of this contract, the contractor agrees as follows:

   a. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

   b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.

   c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.

2. The contractor will include the provisions of 1. above in every subcontract or purchase order over $10,000, so that the provisions will be binding upon each subcontractor or vendor.

D. **ETHICS IN PUBLIC CONTRACTING:** By submitting their (bids/proposals), (bidders/offerors) certify that their (bids/proposals) are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other (bidder/offeror), supplier, manufacturer or subcontractor in connection with their (bid/proposal), and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

E. **IMMIGRATION REFORM AND CONTROL ACT OF 1986:** By entering into a written contract with the Commonwealth of Virginia, the Contractor certifies that the Contractor does not, and shall not during the performance of the contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

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

G. **ANTITRUST:** By entering into a contract, the contractor conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Commonwealth of Virginia under said contract.

H. **MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS FOR IFBs AND RFPs (Insert wording below appropriate to the solicitation type as indicated):**

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

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

I. **CLARIFICATION OF TERMS:** If any prospective (bidder/offeror) has questions about the specifications or other solicitation documents, the prospective (bidder/offeror) should contact the buyer whose name appears on the face of the solicitation no later than five working days before the due date. Any revisions to the solicitation will be made only by addendum issued by the buyer.

J. **PAYMENT:**

1. To Prime Contractor:

a. Invoices for items ordered, delivered and accepted shall be submitted by the contractor directly to the payment address shown on the purchase order/contract. All invoices shall show the state contract number and/or purchase order number; social security number (for individual contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations).

b. Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.

c. All goods or services provided under this contract or purchase order, that are to be paid for with public funds, shall be billed by the contractor at the contract price, regardless of which public agency is being billed.

d. The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or the date of offset when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act.

e. **Unreasonable Charges**. Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges which appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, the Commonwealth shall promptly notify the contractor, in writing, as to those charges which it considers unreasonable and the basis for the determination. A contractor may not institute legal action unless a settlement cannot be reached within thirty (30) days of notification. The provisions of this section do not relieve an agency of its prompt payment obligations with respect to those charges which are not in dispute (*Code of Virginia*, § 2.2-4363).

2. To Subcontractors:

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

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

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

b. The contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all amounts owed by the contractor that remain unpaid seven (7) days following receipt of payment from the Commonwealth, except for amounts withheld as stated in (2) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier contractor performing under the primary contract. A contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Commonwealth.

3. Each prime contractor who wins an award in which provision of a SWAM procurement plan is a condition to the award, shall deliver to the contracting agency or institution, on or before request for final payment, evidence and certification of compliance (subject only to insubstantial shortfalls and to shortfalls arising from subcontractor default) with the SWAM procurement plan. Final payment under the contract in question may be withheld until such certification is delivered and, if necessary, confirmed by the agency or institution, or other appropriate penalties may be assessed in lieu of withholding such payment.

4. The Commonwealth of Virginia encourages contractors and subcontractors to accept electronic and credit card payments.

K. **PRECEDENCE OF TERMS:** The following General Terms and Conditions *VENDORS MANUAL*, APPLICABLE LAWS AND COURTS, ANTI-DISCRIMINATION, ETHICS IN PUBLIC CONTRACTING, IMMIGRATION REFORM AND CONTROL ACT OF 1986, DEBARMENT STATUS, ANTITRUST, MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS, CLARIFICATION OF TERMS, PAYMENT shall apply in all instances. In the event there is a conflict between any of the other General Terms and Conditions and any Special Terms and Conditions in this solicitation, the Special Terms and Conditions shall apply.

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

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

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

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

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

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

   a. By mutual agreement between the parties in writing; or

   b. By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the contractor accounts for the number of units of work performed, subject to the Purchasing Agency's right to audit the contractor's records and/or to determine the correct number of units independently; or

   c. By ordering the contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The contractor shall present the Purchasing Agency with all vouchers and records of expenses incurred and savings realized. The Purchasing Agency shall have the right to audit the records of the contractor as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the Purchasing Agency within thirty (30) days from the date of receipt of the written order from the Purchasing Agency. If the parties fail to agree on an amount of adjustment, the question of an

increase or decrease in the contract price or time for performance shall be resolved in accordance with the procedures for resolving disputes provided by the Disputes Clause of this contract or, if there is none, in accordance with the disputes provisions of the Commonwealth of Virginia *Vendors Manual*. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this contract shall excuse the contractor from promptly complying with the changes ordered by the Purchasing Agency or with the performance of the contract generally.

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

Q. **TAXES:** Sales to the Commonwealth of Virginia are normally exempt from State sales tax. State sales and use tax certificates of exemption, Form ST-12, will be issued upon request. Deliveries against this contract shall usually be free of Federal excise and transportation taxes. The Commonwealth's excise tax exemption registration number is 54-73-0076K.
(NOT NORMALLY REQUIRED FOR SERVICE CONTRACTS)

R. **USE OF BRAND NAMES:** Unless otherwise provided in this solicitation, the name of a certain brand, make or manufacturer does not restrict (bidders/offerors) to the specific brand, make or manufacturer named, but conveys the general style, type, character, and quality of the article desired. Any article which the public body, in its sole discretion, determines to be the equivalent of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. The (bidder/offeror) is responsible to clearly and specifically identify the product being offered and to provide sufficient descriptive literature, catalog cuts and technical detail to enable the Commonwealth to determine if the product offered meets the requirements of the solicitation. This is required even if offering the exact brand, make or manufacturer specified. Normally in competitive sealed bidding only the information furnished with the bid will be considered in the evaluation. Failure to furnish adequate data for evaluation purposes may result in declaring a bid nonresponsive. Unless the (bidder/offeror) clearly indicates in its (bid/proposal) that the product offered is an equivalent product, such (bid/proposal) will be considered to offer the brand name product referenced in the solicitation.
(NOT NORMALLY REQUIRED FOR SERVICE CONTRACTS)

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

T. **INSURANCE:** By signing and submitting a bid or proposal under this solicitation, the bidder or offeror certifies that if awarded the contract, it will have the following insurance coverage at the time the contract is awarded. For construction contracts, if any subcontractors are involved, the subcontractor will have workers' compensation insurance in accordance with §§ 2.2-4332 and 65.2-800 et seq. of the *Code of Virginia*. The bidder or offeror further certifies that the contractor and any subcontractors will maintain these insurance coverage during the entire term of the contract and that all insurance coverage will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

MINIMUM INSURANCE COVERAGES AND LIMITS REQUIRED FOR MOST CONTRACTS:

1. Workers' Compensation - Statutory requirements and benefits. Coverage is compulsory for employers of three or more employees, to include the employer. Contractors who fail to notify the Commonwealth of increases in the number of employees that change their workers' compensation requirements under the *Code of Virginia* during the course of the contract shall be in noncompliance with the contract.

2. Employer's Liability - $100,000.

3. Commercial General Liability - $1,000,000 per occurrence. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, products and completed operations coverage. The Commonwealth of Virginia must be named as an additional insured and so endorsed on the policy.

(**Note to Agency/Institution**: When the requirement is for parking facilities and garages for motor vehicle maintenance contracts, the forgoing sentence should be changed to read: These coverage should include Garage Owner's Liability. Contracts with movers or truck transporters should also require motor carrier's liability. When in the judgment of a procurement officer, these limits and coverage are not warranted for the goods and services being procured, the Division of Risk Management should be contacted.

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

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

Profession/Service	**Limits**
Accounting	$1,000,000 per occurrence, $3,000,000 aggregate
Architecture	$2,000,000 per occurrence, $6,000,000 aggregate
Asbestos Design, Inspection or Abatement Contractors	$1,000,000 per occurrence, $3,000,000 aggregate
Health Care Practitioner (to include Dentists, Licensed Dental Hygienists, Optometrists, Registered or Licensed Practical Nurses, Pharmacists, Physicians, Podiatrists, Chiropractors, Physical Therapists, Physical Therapist Assistants, Clinical Psychologists, Clinical Social Workers, Professional Counselors, Hospitals, or Health Maintenance Organizations.)	$1,925,000 per occurrence, $3,000,000 aggregate
(Limits increase each July 1 through fiscal year 2008, as follows: July 1, 2008 - $2,000,000. This complies with §8.01-581.15 of the *Code of Virginia*.	
Insurance/Risk Management	$1,000,000 per occurrence, $3,000,000 aggregate
Landscape/Architecture	$1,000,000 per occurrence, $1,000,000 aggregate
Legal	$1,000,000 per occurrence, $5,000,000 aggregate
Professional Engineer	$2,000,000 per occurrence, $6,000,000 aggregate
Surveying	$1,000,000 per occurrence, $1,000,000 aggregate

*** When Used: FOR CONSTRUCTION, SERVICE CONTRACTS AND GOODS CONTRACTS WHEN INSTALLATION IS REQUIRED - Required in all solicitations where a contractor will perform work or services in or on state facilities. The limits are minimums and may be increased. The Department of Treasury, Division of Risk Management (804-786-3152) should be contacted when other types of coverage may be required or when in doubt as to the need for other limits. When soliciting one of the Professions/Services listed above include the Professional Liability/Errors and Omissions coverage and limits as shown. When not soliciting one of these Professions/Services, omit the required coverages section from the General Terms and Conditions boilerplate.**

U. **ANNOUNCEMENT OF AWARD:** Upon the award or the announcement of the decision to award a contract over $50,000, as a result of this solicitation, the purchasing agency will publicly post such notice on the DGS/DPS eVA web site (www.eva.virginia.gov) for a minimum of 10 days.

*** When Used:** Include in all solicitations over $50,000.

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

For the purposes of this section, "*drug-free workplace*" means a site for the performance of work done in connection with a specific contract awarded to a contractor, the employees of whom are prohibited from engaging in the unlawful

manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

*** When Used: This clause shall be included in every contract over $10,000. If procuring by unsealed solicitation, the Commonwealth's General Terms and Conditions may be incorporated by reference.**

W. **NONDISCRIMINATION OF CONTRACTORS**: A bidder, offeror, or contractor shall not be discriminated against in the solicitation or award of this contract because of race, religion, color, sex, national origin, age, disability, faith-based organizational status, any other basis prohibited by state law relating to discrimination in employment or because the bidder or offeror employs ex-offenders unless the state agency, department or institution has made a written determination that employing ex-offenders on the specific contract is not in its best interest. If the award of this contract is made to a faith-based organization and an individual, who applies for or receives goods, services, or disbursements provided pursuant to this contract objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the public body shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursements from an alternative provider.

*** When Used: This clause shall be included in all solicitations using an Invitation for Bids or Request for Proposal (*Code of Virginia*, § 2.2-4343.1H).**

X. **eVA BUSINESS-TO-GOVERNMENT VENDOR REGISTRATION:** The eVA Internet electronic procurement solution, website portal www.eVA.virginia.gov, streamlines and automates government purchasing activities in the Commonwealth. The eVA portal is the gateway for vendors to conduct business with state agencies and public bodies. All vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet e-procurement solution either through the eVA Basic Vendor Registration Service or eVA Premium Vendor Registration Service. All bidders or offerors must register in eVA; failure to register will result in the bid/proposal being rejected.

a. eVA Basic Vendor Registration Service: $25 Annual Registration Fee plus the appropriate order Transaction Fee specified below. eVA Basic Vendor Registration Service includes electronic order receipt, vendor catalog posting, on-line registration, electronic bidding, and the ability to research historical procurement data available in the eVA purchase transaction data warehouse.

b. eVA Premium Vendor Registration Service: $25 Annual Registration Fee plus the appropriate order Transaction Fee specified below. eVA Premium Vendor Registration Service includes all benefits of the eVA Basic Vendor Registration Service plus automatic email or fax notification of solicitations and amendments.

c. For orders issued prior to August 16, 2006, the Vendor Transaction Fee is 1%, capped at a maximum of $500 per order.

d. For orders issued August 16, 2006 and after, the Vendor Transaction Fee is:

(i) DMBE-certified Small Businesses: 1%, capped at $500 per order.
(ii) Businesses that are not DMBE-certified Small Businesses: 1%, capped at $1,500 per order.

The eVA transaction fee will be invoiced approximately 30 days after the corresponding purchase order is issued and payable 30 days after the invoice date. Any adjustments (increases/decreases) will be handled through purchase order changes.

*** When Used: Include in all solicitations, contracts, and contract renewals. In addition, this General Term and Conditions must be incorporated or incorporated by reference in all purchase orders issued by state agencies and institutions except for the procurement types which are excluded in section 14.9 or as otherwise provided in 14.10a.**

Y. **AVAILABILITY OF FUNDS:** It is understood and agreed between the parties herein that the agency shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this agreement.

Z. **SET-ASIDES**. This solicitation is set-aside for DMBE-certified small business participation only when designated "SET-ASIDE FOR SMALL BUSINESSES" in the solicitation. DMBE-certified small businesses are those businesses that hold current small business certification from the Virginia Department of Minority Business

Enterprise. This shall not exclude DMBE-certified women-owned and minority-owned businesses when they have received the DMBE small business certification. For purposes of award, bidders/offerors shall be deemed small businesses if and only if they are certified as such by DMBE on the due date for receipt of bids/proposals.

AA. **BID PRICE CURRENCY:** Unless stated otherwise in the solicitation, bidders/offerors shall state bid/offer prices in US dollars.

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BB. **AUTHORIZATION TO CONDUCT BUSINESS IN THE COMMONWEALTH:** A contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the *Code of Virginia* or as otherwise required by law. Any business entity described above that enters into a contract with a public body pursuant to the *Virginia Public Procurement Act* shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the contract. A public body may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.

SECTION II

SPECIAL TERMS AND CONDITIONS
GOODS AND NONPROFESSIONAL SERVICES

The following is an index of Special Terms and Conditions clauses that are to be used at the buyer's discretion in IFBs and RFPs as the individual procurement may dictate. These clauses cover a broad spectrum of goods, printing, and services and are followed by a brief explanation (indicated by an asterisk *) of when each should be used. Other special terms and conditions may be developed and included in the solicitation when appropriate.

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1. **ADVERTISING** In the event a contract is awarded for supplies, equipment, or services resulting from this bid/proposal, no indication of such sales or services to the (name of institution) will be used in product literature or advertising. The contractor shall not state in any of its advertising or product literature that (name of agency/institution) has purchased or uses any of its products or services, and the contractor shall not include (name of agency/institution) in any client list in advertising and promotional materials..

   *** When Used: This provision is for use in solicitations for goods or services when the Commonwealth wants to ensure that the use of the goods or services by the state is not used in advertising or product literature including client lists.**

2. **ASBESTOS:** Whenever and wherever during the course of performing any work under this contract, the contractor discovers the presence of asbestos or suspects that asbestos is present, he shall stop the work immediately, secure the area, notify the building owner and await positive identification of the suspect material. During the downtime in such a case, the contractor shall not disturb any surrounding surfaces but shall protect the area with suitable dust covers. In the event the contractor is delayed due to the discovery of asbestos or suspected asbestos, then a mutually agreed extension of time to perform the work shall be allowed the contractor but without additional compensation due to the time extension.

   *** When Used: For use in service contracts or furnish and install goods contracts when it is possible that the contractor may encounter asbestos during performance of the contract.**

3. **AS BUILT DRAWINGS:** The contractor shall provide the Commonwealth a clean set of reproducible "as built" drawings and wiring diagrams, marked to record all changes made during installation or construction. The contractor shall also provide the Commonwealth with maintenance manuals, parts lists and a copy of all warranties for all equipment. All "as built" drawings and wiring diagrams, maintenance manuals, parts lists and warranties shall be delivered to the Commonwealth upon completion of the work and prior to final payment.

   *** When Used: For furnish and install and construction and renovation projects; i.e., fire alarm systems, heating and air conditioning systems, refrigeration rooms, building modifications, major equipment installations, etc.**

4. **AUDIT:** The contractor shall retain all books, records, and other documents relative to this contract for five (5) years after final payment, or until audited by the Commonwealth of Virginia, whichever is sooner. The agency, its authorized agents, and/or state auditors shall have full access to and the right to examine any of said materials during said period.

   *** When Used: Must be included in all term contracts for goods or services and all prime vendor contracts requiring a Small Business Subcontracting Plan for contracts over $100,000.**

5. **ADDITIONAL USERS:** This procurement is being conducted on behalf of state agencies, institutions and other public bodies who may be added or deleted at anytime during the period of the contract. The addition or deletion of authorized users not specifically named in the solicitation shall be made only by written contract modification issued by this agency or institution and upon mutual agreement of the contractor. Such modification shall name the specific

agency added or deleted and the effective date. The contractor shall not honor an order citing the resulting contract unless the ordering entity has been added by written contract modification.

***When Used: If the value of the contract, including any renewal periods is within the delegated authority of the lead agency and other agencies and institutions may benefit, the lead agency may issue a solicitation and include this clause on behalf of other public bodies. To obtain maximum pricing advantage, every effort should be made to identify participating agencies and their expected usage in the solicitation.**

6. This section intentionally left blank.

7. **AWARD OF CONTRACT:** All solicitations must specify the method of award. Use the appropriate Award clause below in J. or K. if the total award including all possible renewal periods is expected to exceed $50,000 and the purchasing agency desires the option to award to a reasonably priced or reasonably ranked DMBE-certified small business bidder or offeror that is other than the lowest priced bidder or highest ranking offeror. The wording on award to other than the lowest priced bidder or highest ranking offeror may be customized from the selection below to fit the circumstances of the purchasing agency. Select appropriate clause for the type of procurement:

   A. **AWARD:** An award will be made to the lowest responsive and responsible bidder. Evaluation will be based on net prices. Unit prices, extensions and grand total must be shown. In case of arithmetic errors, the unit price will govern. If cash discount for prompt payment is offered, it must be clearly shown in the space provided. Discounts for prompt payment will not be considered in making awards. The State reserves the right to reject any and all bids in whole or in part, to waive any informality, and to delete items prior to making an award.

   *** When Used: This award clause can be used in invitation for bids for goods or services.**

   B. **AWARD:** The Commonwealth will make the award(s) on _____ basis to the lowest responsive and responsible bidder. The purchasing office reserves the right to conduct any test it may deem advisable and to make all evaluations. The Commonwealth also reserves the right to reject any or all bids, in whole or in part, to waive informalities and to delete items prior to making the award, whenever it is deemed in the sole opinion of the procuring public body to be in its best interest.

   *** When Used: For goods or nonprofessional services by filling in the blank, i.e., line item, total sum, lot, etc. This clause shall not be used in a Request for Proposals.**

   C. **AWARD:** The right is reserved to make a separate award of each item, a group of items or all items, and to make an award either in whole or in part, whichever is deemed in the best interest of the Commonwealth. The award or awards will be made to the lowest responsive, responsible bidder or bidders as applicable.

   *** When Used: For use when multiple line items are involved, provided that multiple awards may result in a savings to the Commonwealth.**

   D. **AWARD TO MULTIPLE BIDDERS:**

      1. The Commonwealth will make awards on a _____ basis to the lowest responsive and responsible bidders, provided that the next lowest bidders are within __% of the lowest bidder and provided that different brands are offered. Due consideration will be given to price, quality as judged by tests and previous experience, and of the ability of the bidder to render required services. The Commonwealth reserves the right to conduct any tests it may deem advisable and to make all evaluations. The Commonwealth also reserves the right to reject any or all bids, in whole or in part, to waive informalities and to delete items prior to making the award, whenever it is deemed in the sole opinion of the procuring public body to be in its best interest.

      *** When Used: For goods term contracts only when multiple awards will be made based on different brands being offered. Specify how the award will be made, i.e., line item, total sum, lot, etc. plus the number of awards and the percentage figure. This clause shall not be used in a Request for Proposals.**

      2. **AWARD TO MULTIPLE BIDDERS:** The Commonwealth reserves the right to make multiple awards as a result of this solicitation. The award(s) will be made to the lowest responsive and responsible bidder(s) meeting the requirements of the solicitation. The Commonwealth reserves the right to conduct any tests it may deem advisable and to make all evaluations. The Commonwealth also reserves the right to reject any or

all bids, in whole or in part, to waive informalities and to delete items prior to making the award, whenever it is deemed in the sole opinion of the procuring public body to be in its best interest.

*** When Used: For goods or nonprofessional services when multiple awards may be made in order to meet the requirements of the purchasing agency. This clause shall not be used for construction or professional services.**

E. **AWARD:** 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 evaluation factors included in the Request for Proposals, including price, if so stated in the Request for Proposals. Negotiations shall be conducted with 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 agency shall select the offeror which, in its opinion, has made the best proposal, and shall award the contract to that offeror. The Commonwealth may cancel this Request for Proposals or reject proposals at any time prior to an award, and is not required to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous (*Code of Virginia*, § 2.2-4359D). Should the Commonwealth 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. The award document will be a contract incorporating by reference all the requirements, terms and conditions of the solicitation and the contractor's proposal as negotiated.

*** When Used: For goods and nonprofessional services when competitive negotiation will be used. This clause shall not be used in an Invitation for Bids or a professional services Request for Proposals.**

F. **AWARD TO MULTIPLE OFFERORS:** 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 evaluation factors included in the Request for Proposals, including price, if so stated in the Request for Proposals. Negotiations shall be conducted with 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 agency shall select the offeror which, in its opinion, has made the best proposal, and shall award the contract to that offeror. The Commonwealth reserves the right to make multiple awards as a result of this solicitation. The Commonwealth may cancel this Request for Proposals or reject proposals at any time prior to an award, and is not required to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous (*Code of Virginia*, § 2.2-4359D). Should the Commonwealth 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. The award document will be a contract incorporating by reference all the requirements, terms and conditions of the solicitation and the contractor's proposal as negotiated.

*** When Used: For goods and nonprofessional services when competitive negotiation will be used and multiple awards are desired to meet the requirements of the agency/institution. This clause shall not be used in an Invitation for Bids or a professional services Request for Proposals.**

G. **AWARD:** The Commonwealth 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. Such 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. At the discussion stage the public body may discuss non-binding estimates of total project costs, including, but not limited to, life-cycle costing, and, where appropriate, non-binding estimates of price for services. Proprietary information from competing offerors shall not be disclosed to the public or to competitors. At the conclusion of the informal interviews, on the basis of evaluation factors published in the Request for Proposals and all information developed in the selection process to this point, the purchasing agency 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 purchasing agency 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. The Commonwealth reserves the right to make multiple awards as a result of this solicitation. Should the Commonwealth 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.

*** When Used: Professional services only. <u>This clause shall not be used in an Invitation for Bids</u> or to procure non-professional services.**

H. **<u>UNSEALED BEST VALUE AWARD(S):</u>** Selection shall be made of the offeror(s) deemed to be fully qualified and best suited among those submitting proposals on the basis of the evaluation factors included in this solicitation, including price, if so stated. Negotiations shall be conducted with the offeror(s) so selected. Cost and price factors shall be considered in relation to the evaluation factors stated in the solicitation, but need not be the sole determining factor. The Commonwealth will make the award(s) on a best value basis to the Offeror(s) which, in its opinion, represents the most advantageous and best offer. The Commonwealth may cancel this solicitation or reject proposals at any time prior to an award, and is not required to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous (*Code of Virginia*, § 2.2-4359 D).

*** When Used: For goods and nonprofessional services in an Unsealed Best Value Acquisition solicitation, and a single award or multiple awards are desired to meet the requirements of the agency/institution. Note: A single award shall not exceed $50,000 and if making multiple awards, the total sum of all awards shall not exceed $50,000.**

I. **<u>BEST VALUE AWARD(S)</u>**: Selection shall be made of two or more offeror(s) deemed to be fully qualified and best suited among those submitting best value proposals on the basis of the evaluation factors included in this solicitation, including price, if so stated. Negotiations shall be conducted with the Offeror(s) whose proposal(s) represent the most advantageous and best offer. Awards may be made to a reasonably ranked DMBE-certified small business offeror that is other than the highest ranking offeror. Awards will be made on a best value basis to the Offeror(s) which, in its opinion, represents the best overall combination of quality, price, and various elements of required goods/services, as stated in this solicitation, that in total are optimal relative to the agency's needs. The Commonwealth may cancel this solicitation or reject proposals at any time prior to an award, and is not required to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous (Code of Virginia, § 2.2-4359 D). The award document will be a contract incorporating by reference all the requirements, terms and conditions of the solicitation and the contractor's offer as negotiated.

*** When Used: For goods and nonprofessional services when competitive negotiation will be used in a sealed Best Value Acquisition solicitation, and a single award or multiple awards are desired to meet the requirements of the agency/institution. This clause may be used for multiple awards. This clause may be used for procurements over $50,000 unless the requirement is set-aside exclusively for small business participation. If set-aside, delete the third sentence.**

J. **<u>AWARD TO OTHER THAN THE LOWEST PRICED BIDDER(S):</u>** An award(s) will be made to the lowest responsive and responsible bidder(s) however; the award may be made to a reasonably priced DMBE-certified small business bidder(s) that is other than the lowest priced bidder(s). Evaluation will be based on net prices. Unit prices, extensions and grand total must be shown. In case of arithmetic errors, the unit price will govern. If cash discount for prompt payment is offered, it must be clearly shown in the space provided. Discounts for prompt payment will not be considered in making awards. The right is reserved to make a separate award of each item, a group of items or all items, and to make an award either in whole or in part, whichever is deemed in the best interest of the Commonwealth. The State reserves the right to reject any and all bids in whole or in part, to waive any informality, and to delete items prior to making an award.

*** When Used: This award clause may be used in Invitation for Bids for goods or services for competitive bidding where the award is expected to exceed $50,000 to allow for award to a reasonably priced DMBE-certified small business bidder, other than the lowest priced responsive and responsible bidder or bidders, in the case of multiple awards. This clause may be used for procurements over $50,000 unless the requirement is set-aside exclusively for small business participation.**

K. **<u>AWARD TO OTHER THAN THE HIGHEST RANKING OFFEROR(S):</u>** 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 evaluation factors included in the Request for Proposals, including price, if so stated in the Request for Proposals.

Negotiations shall be conducted with 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 agency shall select the offeror(s) which, in its opinion, has made the best proposal(s) and shall award the contract to that offeror; however, the contract may be awarded to a reasonably ranked DMBE-certified small business offeror(s), that is other than the highest ranking offeror(s). The Commonwealth may cancel this Request for Proposals or reject proposals at any time prior to an award, and is not required to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous (*Code of Virginia*, § 2.2-4359D). Should the Commonwealth 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. The award document will be a contract incorporating by reference all the requirements, terms and conditions of the solicitation and the contractor's proposal as negotiated.

*** When Used: For goods and nonprofessional services when competitive negotiation will be used. <u>This clause shall not be used in an Invitation for Bids or a professional services Request for Proposals</u>. This clause may be used for procurements over $50,000 unless the requirement is set-aside exclusively for small business participation.**

8. **<u>BEST AND FINAL OFFER (BAFO)</u>:** At the conclusion of negotiations, the offeror(s) may be asked to submit in writing, a Best And Final Offer (BAFO). After the BAFO is submitted, no further negotiations shall be conducted with the offeror(s). The offeror's proposal will be rescored to combine and include the information contained in the BAFO. The decision to award will be based on the final evaluation including the BAFO.

   *** When Used: Used only in Request for Proposals. This clause should not be used as a matter of routine. If it is anticipated that because of the nature of the requirement, the negotiations could linger, this provision should be used to show clearly when negotiations would end or to cut off negotiations at a particular point called for by the contract officer. See 7.4 for further guidance.**

9. **<u>BID ACCEPTANCE PERIOD</u>:** Any bid in response to this solicitation shall be valid for ( ) days. At the end of the ( ) days the bid may be withdrawn at the written request of the bidder. If the bid is not withdrawn at that time it remains in effect until an award is made or the solicitation is canceled.

   *** When Used: The *Vendors Manual,* 6.2 states that bids must be valid for the number of days stated.**

10. **<u>BID BOND OR GUARANTEE</u>:** Each bid shall be accompanied by a bid bond or guarantee of five percent (5%) of the amount of the bid, which shall be a certified check, cash escrow or a bid bond payable to the Treasurer of the Commonwealth of Virginia. The sureties of all bonds shall be of such surety company or companies as are approved by the State and are authorized to transact business in the Commonwealth of Virginia. Such bid bond or check shall be submitted with the understanding that it shall guarantee that the bidder will not withdraw such bid during the period of _____ days following the opening of bids; that if such bid is accepted, the bidder will accept and perform under the terms of the Invitation for Bids and purchase order or contract. The bid guarantee will be returned upon award of contract.

    *** When Used: Must be used in all solicitations for construction type contracts over $100,000. Insert the same number of days in the space provided as entered in the Bid Acceptance Period Clause. This clause may also be used for construction type services under $100,000, as well as for goods or services of any dollar amount. Do not use in RFPs.**

11. **<u>BID PRICES</u>:** Bid shall be in the form of a firm unit price for each item during the contract period.

    *** When Used: In annual goods contracts without a price escalation/de-escalation clause. A different version of this clause, specifically worded to fit the situation, should be used in solicitations for various types of services, and in solicitations for the lease or rental of equipment.**

12. **<u>BLANKET FIDELITY BOND</u>:** Contractor shall maintain a blanket fidelity bond obtained from an insurance company licensed to conduct fidelity business in the home state of the contractor and which has earned an A.M. Best Company, Inc. rating of "A" or better, as reflected in their most current publication, covering all personnel under contract to the Commonwealth of Virginia, with a penalty amount of not less than $_____, naming the Commonwealth of Virginia as co-obligee. Certificate of such protection must be presented to the purchasing agency prior to the start of the service showing name of surety, limit and type of coverage, term of coverage, co-obligee provision and name and address of

licensed Virginia insurance agent. The contractor agrees to maintain such bond until one year after the completion of the contract.

*** When Used: Debt collection type services. The amount to be inserted in the blank space should be based on the total value of accounts expected to be turned over to the contractor at any one time for collection and not the entire amount of the agency's outstanding accounts.**

13. **CANCELLATION OF CONTRACT:** The purchasing agency reserves the right to cancel and terminate any resulting contract, in part or in whole, without penalty, upon 60 days written notice to the contractor. In the event the initial contract period is for more than 12 months, the resulting contract may be terminated by either party, without penalty, after the initial 12 months of the contract period upon 60 days written notice to the other party. Any contract cancellation notice shall not relieve the contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation.

    *** When Used: Include in all term contracts for goods or services. This clause is not appropriate for use in spot purchases.**

14. **CERTIFICATION OF MEAT PRODUCTS:** By my signature on this solicitation, I hereby certify and warrant that all products offered for delivery meet or exceed the requirements of the Federal Institutional Meat Purchase Specifications (IMPS), Virginia Department of Agriculture Regulations, Federal Food, Drug and Cosmetic Act, and the Federal Wholesome Meat Act. All products awarded and delivered against this solicitation shall be subject to inspection at destination for specification compliance.

    *** When Used: All solicitations for meat products.**

15. **CERTIFIED TEST REPORT:** Each bidder shall provide a copy of a certified test report with their bid. The certified test report shall be from a recognized independent testing laboratory or manufacturer's quality control laboratory showing all test results and full compliance with the appropriate specifications indicated herein. However, the Commonwealth reserves the right to perform any tests or inspections when and as deemed necessary to verify the certified test report.

    *** When Used: For solicitation of goods where a certified test report may be the only method of determining an item offered would meet specifications.**

16. **CONTRACTOR/SUBCONTRACTOR LICENSE REQUIREMENT:** By my signature on this solicitation, I certify that this firm/individual and subcontractor is properly licensed for providing the goods/services specified.

    Contractor Name:_____ Subcontractor Name:_____

    License # _____ Type _____

    *** When Used: Include in all solicitations for specific types of services for which State statutes or regulatory agencies require contractors to be properly registered, licensed or hold a permit prior to performing such work. See 3.4.**

17. **CONTRACTOR REGISTRATION:** If a contract for construction, removal, repair or improvement of a building or other real property is for one hundred and twenty thousand dollars ($120,000) or more, or if the total value of all such contracts undertaken by bidder/offeror within any 12-month period is seven hundred and fifty thousand dollars ($750,000) or more, the bidder/offeror is required under Title 54.1-1100, *Code of Virginia* (1950), as amended, to be licensed by the State Board of Contractors a "CLASS A CONTRACTOR." If such a contract is for seventy-five hundred dollars ($7,500) or more but less than one hundred and twenty thousand dollars ($120,000), or if the total value of all such contracts undertaken by bidder/offeror within any 12-month period is between one hundred and fifty thousand dollars ($150,000) and seven hundred and fifty thousand dollars ($750,000) or more, the bidder is required to be licensed as a "CLASS B CONTRACTOR." If such a contract is for one-thousand dollars ($1,000) or more but less than seventy-five hundred dollars ($7,500), or if the contractor does less than $150,000 in business in a 12-month period, the bidder is required to be licensed as a "CLASS C CONTRACTOR." The board shall require a master tradesmen license as a condition of licensure for electrical, plumbing and heating, ventilation and air conditioning contractors. The bidder/offeror shall place on the outside of the envelope containing the bid/proposal and shall place in the bid/proposal over his signature whichever of the following notations is appropriate, inserting his contractor license number:

Licensed Class A Virginia Contractor No. _____Specialty _____
Licensed Class B Virginia Contractor No. _____ Specialty _____
Licensed Class C Virginia Contractor No. _____Specialty _____

If the bidder/offeror shall fail to provide this information on his bid/proposal or on the envelope containing the bid/proposal and shall fail to promptly provide said contractor license number to the Commonwealth in writing when requested to do so before or after the opening of bids/proposals, he shall be deemed to be in violation of § 54.1-1115 of the *Code of Virginia* (1950), as amended, and his bid/proposal will not be considered.

If a bidder/offeror shall fail to obtain the required license prior to submission of his bid/proposal, the bid/proposal shall not be considered.

*** When Used: Required to be used in all solicitations by the *Code of Virginia* for all construction, removal, repair or improvements to facilities to be performed by a contractor and its subcontractors. This includes almost all specialty trades, i.e., glue down carpet, painting, fencing, roofing, mechanical, plumbing, electrical, carpentry, etc. When in doubt as to whether or not this clause should be included in the solicitation, contact the Department of Professional and Occupational Regulation, State Board for Contractors, at 804-367-2785.**

18. **CONTRACTOR'S TITLE TO MATERIALS:** No materials or supplies for the work shall be purchased by the contractor or by any subcontractor subject to any chattel mortgage or under a conditional sales or other agreement by which an interest is retained by the seller. The contractor warrants that he has clear title to all materials and supplies for which he invoices for payment.

    *** When Used: For use in solicitations for construction and for furnish and install equipment.**

19. **DELIVERY:** State your earliest firm delivery or performance date: _____ 20___. This date may be a factor in making the award.

    *** When Used: When delivery time is critical for either goods or services.**

20. **DELIVERY AND STORAGE:** It shall be the responsibility of the contractor to make all arrangements for delivery, unloading, receiving and storing materials in the building during installation. The owner will not assume any responsibility for receiving these shipments. Contractor shall check with the owner and make necessary arrangements for security and storage space in the building during installation.

    *** When Used: For furnish and install solicitations, if applicable.**

21. **DELIVERY NOTIFICATION:** The Agency shall be notified _____ hours prior to delivery of any items so that personnel may be available to allow access to the building and verify items received. Notification shall be made to :

    _____ _____.
    Name Phone

    *** When Used: Use in solicitations for goods if the receiving facility is not staffed at all times during normal working hours.**

22. A. **PROMPT PAYMENT DISCOUNTS:** Agency will pay within ____ days after acceptance. A prompt payment discount offered for prompt payment of ( ) calendar days or longer will be calculated in determining net low bid.

    *** When Used: When the agency knows payments can be made within the time frame specified.**

    B. **SPECIAL EDUCATIONAL OR PROMOTIONAL DISCOUNTS:** The contractor shall extend any special educational or promotional sale prices or discounts immediately to the Commonwealth during the term of the contract. Such notice shall also advise the duration of the specific sale or discount price.

    *** When Used: This clause should be considered for use when soliciting bids for products where it is known that vendors or manufacturers have promotional sales opportunities.**

23. **EXTRA CHARGES NOT ALLOWED:** The bid price shall be for complete installation ready for the Commonwealth's use, and shall include all applicable freight and installation charges; extra charges will not be allowed.

*** When Used: For furnish and install solicitations. Also may be used for inside delivery by changing the wording.**

24. **FINAL INSPECTION:** At the conclusion of the work, the contractor shall demonstrate to the authorized owners representative that the work is fully operational and in compliance with contract specifications and codes. Any deficiencies shall be promptly and permanently corrected by the contractor at the contractor's sole expense prior to final acceptance of the work.

    *** When Used: For furnish and install solicitations.**

25. **FLAME RETARDANT CERTIFICATE:** Each bidder/offeror shall submit a certification in writing with their bid/proposal that all materials used in fabricating draperies or curtains are inherently flame retardant or have been treated to meet NFPA Standard 701 (latest version), large or small scale test.

    *** When Used: Must be used in solicitations for draperies or curtains that will be installed in office spaces and dormitories, but not state-owned housing.**

26. **IDENTIFICATION OF BID/PROPOSAL ENVELOPE:** If a special envelope is not furnished, or if return in the special envelope is not possible, the signed bid/proposal should be returned in a separate envelope or package, sealed and identified as follows:

    From:_____ _____ _____
    Name of Bidder/Offeror Due Date Time

    _____ _____
    Street or Box Number IFB No./RFP No.

    _____ _____
    City, State, Zip Code IFB/RFP Title

    Name of Contract/Purchase Officer or Buyer_____

    The envelope should be addressed as directed on Page 1 of the solicitation.

    If a bid/proposal not contained in the special envelope is mailed, the bidder or offeror takes the risk that the envelope, even if marked as described above, may be inadvertently opened and the information compromised which may cause the bid or proposal to be disqualified. Bids/proposals may be hand delivered to the designated location in the office issuing the solicitation. No other correspondence or other bids/proposals should be placed in the envelope.

    *** When Used: For use in solicitations for which the purchasing agency has not furnished a special bid/proposal return envelope or the envelope furnished is not adequate. If the solicitation is a combined two-step IFB, the bidders should be instructed to identify the outside of both the technical proposal and the pricing envelopes to show the bidder's name, company name and address, and bid reference number.**

27. **INDEMNIFICATION:** Contractor agrees to indemnify, defend and hold harmless the Commonwealth of Virginia, its officers, agents, and employees from any claims, damages and actions of any kind or nature, whether at law or in equity, arising from or caused by the use of any materials, goods, or equipment of any kind or nature furnished by the contractor/any services of any kind or nature furnished by the contractor, provided that such liability is not attributable to the sole negligence of the using agency or to failure of the using agency to use the materials, goods, or equipment in the manner already and permanently described by the contractor on the materials, goods or equipment delivered.

    *** When Used: For all contracts involving substantial risk of third party injuries/claims. Authorization to use this clause must be granted by the Department of Treasury, Division of Risk Management or be directed by your Assistant Attorney General.**

28. **INSPECTION OF JOB SITE:** My signature on this solicitation constitutes certification that I have inspected the job site and am aware of the conditions under which the work must be accomplished. Claims, as a result of failure to inspect the job site, will not be considered by the Commonwealth.

*** When Used: Should be used in furnish and install, services and non-capital outlay construction projects.**

29. **INSTALLATION:** All items must be assembled and set in place, ready for use. All crating and other debris must be removed from the premises.

    *** When Used: For inside delivery of goods which require unpacking and assembly.**

30. **INSURANCE, MONEY AND SECURITIES:** Contractor shall maintain a Broad Form Money and Securities Insurance Policy obtained from an insurance company licensed to conduct crime insurance business in the home state of the contractor and which has earned an A.M. Best Company, Inc. rating of A or better, as reflected in their most current publication, covering all money and property entrusted to the contractor by the Commonwealth of Virginia, with limits of coverage of not less than $_____ for Loss Inside the Premises Coverage and not less than $_____ for Loss Outside the Premises Coverage, naming the Commonwealth of Virginia as additional named insured with respect to this contract. Certificate of such protection must be presented to the purchasing agency prior to the start of the service showing name of insurance company, limits and type of coverage, term of coverage, additional insured provision and name and address of licensed insurance agent. The contractor agrees to maintain such policy until the completion of the contract and all money and property of the Commonwealth is remitted to the Commonwealth.

    *** When Used: Required for contracts covering the collection, handling, safekeeping, and/or transporting state monies or securities. The amounts to be entered by the agency should be equal to the estimated maximum amount of monies or securities that would be in the contractor's possession at any one time.**

31. **LABELING OF HAZARDOUS SUBSTANCES:** If the items or products requested by this solicitation are "Hazardous Substances" as defined by § 1261 of Title 15 of the United States Code (U.S.C.) or "Pesticides" as defined in § 136 of Title 7 of the United States Code, then the bidder/offeror, by submitting his bid/proposal, certifies and warrants that the items or products to be delivered under this contract shall be properly labeled as required by the foregoing sections and that by delivering the items or products the bidder/offeror does not violate any of the prohibitions of Title 15 U.S.C. § 1263 or Title 7 U.S.C. § 136.

    *** When Used: Must be included in all solicitations for the purchase of chemicals or compounds which may contain toxic or hazardous substances, i.e., cleaning, janitorial supplies, pesticides, chemicals of all types, etc. (see clause #35).**

32. **LIMITATION OF LIABILITY:**

    A. To the maximum extent permitted by applicable law, the contractor will not be liable under this contract for an indirect, incidental, special or consequential damages, or damages from loss of profits, revenue, data or use of the supplies, equipment and/or services delivered under this contract. This limitation of liability will not apply, however, to liability arising from: (a) personal injury or death; (b) defect or deficiency caused by willful misconduct or negligence on the part of the contractor; or (c) circumstances where the contract expressly provides a right to damages, indemnification or reimbursement.

    *** When Used: *This clause should be used on an exception basis* and only when it is anticipated that liability may be an issue and the risk and liability to the Commonwealth is negligible. In such cases, the above clause should be included in written solicitations and contracts, as well as procurements made on a sole source or emergency basis. Examples are: office supplies and equipment, paper products, printing, furniture, audio/visual equipment, consultant services, media services, equipment maintenance, etc. Prior review by risk management and/or legal counsel is recommended before including in a solicitation or contract. Note: The clause may be modified, as applicable, depending on the intended use of the goods and/or services.**

    B. **LIMITATION OF LIABILITY:** To the maximum extent permitted by applicable law, the contractor's liability under this contract for loss or damages to government property caused by use of any defective or deficient supplies, products, equipment and/or services delivered under this contract shall not exceed the greater of $_____ or _____ times the amount of money paid to the contractor under this contract during the twelve month period preceding the event or circumstance giving rise to such liability. The contractor will not be liable under this contract for any indirect, incidental, special or consequential damages, or damages from loss of profits, revenue, data or use of the supplies, equipment and/or services delivered under this contract. The above limitation of liability is per incident. The limitation and exclusion of damages in the foregoing sentences will not

apply, however, to liability arising from: (a) personal injury or death; (b) defect or deficiency caused by willful misconduct or negligence on the part of the contractor; or (c) circumstances where the contract expressly provides a right to damages, indemnification or reimbursement.

*** When Used: *This clause should be used on an exception basis* and only when it is anticipated that liability will be an issue and the risk to the Commonwealth may be extensive. In such cases, the above clause should be included in written solicitations and contracts, as well as procurements made on a sole source or emergency basis. Examples are: software; hardware; two-way communication devices; telephone equipment; medical, dental and laboratory equipment and supplies; elevator maintenance and inspection services; food service; medical service, etc. Caution: The potential risk must be calculated in dollars and indicated in the first blank. Delete the remaining part of the sentence. If the risk value cannot be determined within a reasonable amount and the contract is for indefinite quantity (e.g., annual contract), estimate the approximate annual value and fill in the dollar amount. Enter a multiplication factor in the second blank, such as two (2) or some other reasonable number. Prior review by risk management and/or legal counsel is recommended before including in a solicitation or contract. The clause may be modified, as applicable, depending on the intended use of the goods and/or services.**

33. **LIQUIDATED DAMAGES: (Note: Review the guidance contained in the General Comments and Procedures below before deciding to include one of the following clauses in a solicitation.**

A. **LIQUIDATED DAMAGES, GOODS AND NONPROFESSIONAL SERVICES:** Delivery is required not later than _____. It is understood and agreed by the bidder/offeror that time is of the essence in the delivery of supplies, services, materials, or equipment of the character and quality specified in the bid/proposal document. In the event these specified supplies, services, materials, or equipment are not delivered by the date specified there will be deducted, not as a penalty but as liquidated damages, the sum of $_____ per day for each and every calendar day of delay beyond the time specified; except that if the delivery be delayed by any act, negligence, or default on the part of the Commonwealth, public enemy, war, embargo, fire, or explosion not caused by the negligence or intentional act of the contractor or his supplier(s), or by riot, sabotage, or labor trouble that results from a cause or causes entirely beyond the control or fault of the contractor or his supplier(s), a reasonable extension of time as the procuring public body deems appropriate may be granted. Upon receipt of a written request and justification for any extension from the contractor, the purchasing office may extend the time for performance of the contract or delivery of goods herein specified, at the purchasing office's sole discretion, for good cause shown.

*** When Used: For critical delivery of goods or services. The required delivery date and the dollar amount must be filled in by the agency.**

B. **LIQUIDATED DAMAGES, FURNISH AND INSTALL:** Work shall begin _____ calendar days after receipt of purchase order or contract and all work shall be completed in _____ calendar days. It is hereby understood and agreed by the bidder that time is of the essence in the delivery of supplies, services, materials, or equipment of the character and quality specified in the bid document. In the event these specified supplies, services, materials, or equipment are not delivered by the date specified, there will be deducted, not as a penalty but as liquidated damages, the sum of $_____ per day for each and every calendar day of delay beyond the time specified; except that if the delivery be delayed by any act, negligence, or default on the part of the Commonwealth, public enemy, war, embargo, fire, or explosion not caused by the negligence or intentional act of the contractor or his supplier(s), or by riot, sabotage, or labor trouble that results from a cause or causes entirely beyond the control or fault of the contractor or his supplier(s), a reasonable extension of time as the procuring public body deems appropriate may be granted. Upon receipt of a written request and justification for an extension from the contractor, the purchasing office may extend the time for performance of the contract or delivery of goods herein specified at the purchasing office's sole discretion for good cause shown.

*** When Used: For furnish and install contracts covering modifications, repair and other non-capital outlay construction-type contracts. The dollar amount must be filled in by the agency. The two blanks for the number of calendar days may be filled in by the agency prior to issuing the solicitation or the bidder/offeror may be required to fill in the number of days with the bid/proposal. The dollar amount must be reasonable.**

NOTE: GENERAL COMMENTS:

These clauses are not to be used as a penalty, but as a means to assess damages when both (1) the time of delivery or performance is such an important factor in the award of the contract that the Commonwealth may reasonably

expect to suffer damage if the delivery or performance is delinquent, and (2) the extent or amount of such damage would be difficult or impossible to ascertain or prove. In deciding whether to include a liquidated damages clause in a contract, the purchase officer should consider the probable effect on such matters as pricing, competition, and the costs and difficulties of contract administration.

When a liquidated damages clause is to be used in a contract, the applicable clause and appropriate rate(s) of liquidated damages shall be included in the solicitation. The rate of liquidated damages used must be reasonable and considered on a case-by-case basis since liquidated damages fixed without any reference to probable actual damages may be held to be a penalty, and therefore unenforceable.

When a liquidated damages clause is used in a construction, modification, or repair contract, the rate(s) of liquidated damages to be assessed against the contractor should be for each day of delay and the rate(s) should, as a minimum, cover the estimated cost of inspection and superintendence for each day of delay in completion. Whenever the Commonwealth will suffer other specific losses due to the failure of the contractor to complete the work on time, the rate(s) should also include an amount for these items. Examples of specific losses are:

(1) The cost of substitute facilities;
(2) The rental of buildings and/or equipment.

ASSESSMENT PROCEDURES:
If a liquidated damages clause is included in a contract and the contractor is late or behind schedule and the delay is not an excusable one, the purchase officer should (1) issue a Notice of Contract Deficiency or "Cure Letter" to the contractor (see Chapter 10, Contract Administration); and (2) in addition, if there is a performance bond, send a copy of the cure letter to the bonding company. If the contractor does not comply with the cure letter, notify the bonding company that they are responsible to complete the contract and at the same time, terminate the contract for default (see Chapter 10, Contract Administration).

If there is no performance bond with the contract, (1) send a cure letter to the contractor. If the contractor does not correct the problem, issue a termination for default letter and re-bid the requirement. Assess liquidated damages against the contractor from the date the project was to be completed, as stated in the liquidated damages clause, to the date of the termination of default letter. In addition, any excess costs encountered in the re-purchase action may also be held against the defaulted contractor.

34. **MAINTENANCE MANUALS:** The contractor shall provide with each piece of equipment an operations and maintenance manual with wiring diagrams, parts list, and a copy of all warranties.

*** When Used: For solicitations to purchase or furnish and install major equipment or systems.**

35. **MATERIAL SAFETY DATA SHEETS:** Material Safety Data Sheets and descriptive literature shall be provided with the bid/proposal for each chemical and/or compound offered. Failure on the part of the bidder/offeror to submit such data sheets may be cause for declaring the bid/proposal as nonresponsive.

*** When Used: Must be used for the purchase of all chemicals or compounds which may contain toxic or hazardous substances, i.e., cleaning, janitorial supplies, chemicals of all types (See clause #31).**

36. **SMALL BUSINESS SUBCONTRACTING AND EVIDENCE OF COMPLIANCE:**
    A. It is the goal of the Commonwealth that 40% of its purchases be made from small businesses. This includes discretionary spending in prime contracts and subcontracts. All potential bidders/offerors are required to submit a Small Business Subcontracting Plan. Unless the bidder/offeror is registered as a DMBE-certified small business and where it is practicable for any portion of the awarded contract to be subcontracted to other suppliers, the contractor is encouraged to offer such subcontracting opportunities to DMBE-certified small businesses. This shall not exclude DMBE-certified women-owned and minority-owned businesses when they have received DMBE small business certification. No bidder/offeror or subcontractor shall be considered a Small Business, a Women-Owned Business or a Minority-Owned Business unless certified as such by the Department of Minority Business Enterprise (DMBE) by the due date for receipt of bids or proposals. If small business subcontractors are used, the prime contractor agrees to report the use of small business subcontractors by providing the purchasing office at a minimum the following information: name of small business with the DMBE certification number, phone number, total dollar amount subcontracted, category type (small, women-owned, or minority-owned), and type of product/service provided.

B. Each prime contractor who wins an award in which provision of a small business subcontracting plan is a condition of the award, shall deliver to the contracting agency or institution on a _____ (insert monthly, quarterly, or other frequency) _____ basis, evidence of compliance (subject only to insubstantial shortfalls and to shortfalls arising from subcontractor default) with the small business subcontracting plan. When such business has been subcontracted to these firms and upon completion of the contract, the contractor agrees to furnish the purchasing office at a minimum the following information: name of firm with the DMBE certification number, phone number, total dollar amount subcontracted, category type (small, women-owned, or minority-owned), and type of product or service provided. Payment(s) may be withheld until compliance with the plan is received and confirmed by the agency or institution. The agency or institution reserves the right to pursue other appropriate remedies to include, but not be limited to, termination for default.

C. Each prime contractor who wins an award valued over $200,000 shall deliver to the contracting agency or institution on a _____ (insert monthly, quarterly, or other frequency) _____ basis, information on use of subcontractors that are not DMBE-certified small businesses. When such business has been subcontracted to these firms and upon completion of the contract, the contractor agrees to furnish the purchasing office at a minimum the following information: name of firm, phone number, total dollar amount subcontracted, and type of product or service provided.

*** When Used:** Use in solicitations for goods, nonprofessional services, or non capital outlay construction when a small business subcontracting plan is a condition of the award. Required in solicitations valued over $100,000 that are not set-aside for small business unless a written determination**,** signed by the chief purchasing officer and supported by factual evidence explaining in sufficient detail why no subcontracting opportunities exist is made. Fill in the blank with period of time or occurrence when evidence of compliance is due, e.g., request for final payment, monthly, quarterly, annually, end of contract period.

37. **NAME OF MANUFACTURER AND SHIPPING POINT:** Each bidder/offeror shall supply in the space below the name and address of the manufacturer of each item offered and the shipping point.

ITEM NUMBER(S): _____

MANUFACTURER: _____

ADDRESS: _____

_____

SHIPPING POINT: _____

*** When Used: For spot purchases or annual contracts for goods if the agency desires this information.**

38. **NEGOTIATION WITH THE LOWEST BIDDER:** Unless all bids are cancelled or rejected, the Commonwealth reserves the right granted by § 2.2-4318 of the *Code of Virginia* to negotiate with the lowest responsive, responsible bidder to obtain a contract price within the funds available to the agency whenever such low bid exceeds the agency's available funds. For the purpose of determining when such negotiations may take place, the term "available funds" shall mean those funds which were budgeted by the agency for this contract prior to the issuance of the written Invitation for Bids. Negotiations with the low bidder may include both modifications of the bid price and the Scope of Work/Specifications to be performed. The agency shall initiate such negotiations by written notice to the lowest responsive, responsible bidder that its bid exceeds the available funds and that the agency wishes to negotiate a lower contract price. The times, places, and manner of negotiating shall be agreed to by the agency and the lowest responsive, responsible bidder.

*** When Used: This clause may be used in those circumstances where, due to unknown cost factors, there may be a need to negotiate to remain within available fund limitation. For use only in an Invitation for Bids, for goods or services. This clause shall not be used as a matter of routine (see 6.7).**

39. **ORDERING OPTION:** The (name of agency), may during the first sixty (60) days after this contract is awarded, with the concurrence of the contractor, place additional orders under the contract at the original unit price through the issuance of separate purchase orders. The aggregate of such additional orders shall not exceed 100% of the quantity originally stated in the contract.

*** When Used: This can be used when purchasing goods on a spot basis and the contracting officer anticipates that there might be an additional requirement for the same goods within the next sixty (60) days. When it is used in a solicitation, a statement on the face of the invitation should direct the bidder's attention to this clause. It is not to be used for term type contracts.**

40. **PERFORMANCE AND PAYMENT BONDS:** The successful bidder shall deliver to the purchasing office executed Commonwealth of Virginia Standard Performance and Labor and Material Payment Bonds, each in the sum of the contract amount, with the Commonwealth of Virginia as obligee. The surety shall be a surety company or companies approved by the State Corporation Commission to transact business in the Commonwealth of Virginia. No payment shall be due and payable to the contractor, even if the contract has been performed in whole or in part, until the bonds have been delivered to and approved by the purchasing office. Standard bond forms will be provided by the purchasing office prior to or at the time of award.

    *** When Used: Must be used in all solicitations for construction which exceed $100,000, but may be for construction, goods and services for less than $100,000.** (Forms may be downloaded from the DGS/Division of Engineering & Buildings web site, http://deb.dgs.state.va.us/BCOM/).

41. **PREBID/PREPROPOSAL CONFERENCE - MANDATORY/OPTIONAL:** (Note: Select one of the following two clauses if a mandatory or optional prebid or preproposal conference is desired and include it in the solicitation.)

    A. **MANDATORY PREBID/PREPROPOSAL CONFERENCE:** A mandatory prebid/preproposal conference will be at ____(time and date)_____ at the _____(place)_____. The purpose of this conference is to allow potential bidders/offerors an opportunity to present questions and obtain clarification relative to any facet of this solicitation.

    Due to the importance of all bidders/offerors having a clear understanding of the specifications/scope of work and requirements of this solicitation, attendance at this conference will be a prerequisite for submitting a bid/proposal. Bids/Proposals will only be accepted from those bidders/offerors who are represented at this prebid/preproposal conference. Attendance at the conference will be evidenced by the representative's signature on the attendance roster. No one will be admitted after ____(time)___.

    Bring a copy of the solicitation with you. Any changes resulting from this conference will be issued in a written addendum to the solicitation.

    *** When Used: For use in complex procurements when clarification of the contents of the solicitation to potential bidders/offerors will greatly enhance understanding of what is sought to be procured. CAUTION: Use of this clause may limit competition because only those that attend may submit a bid/proposal. Use wording appropriate to the type of solicitation, i.e., prebid, bid, bidder in an IFB and preproposal, proposal, offeror in an RFP.**

    B. **OPTIONAL PREBID/PREPROPOSAL CONFERENCE:** An optional prebid/preproposal conference will be held at ___(time) and (date)_____ at the _____(place)_____. The purpose of this conference is to allow potential bidders/offerors an opportunity to present questions and obtain clarification relative to any facet of this solicitation.

    While attendance at this conference will not be a prerequisite to submitting a bid/proposal, bidders/offerors who intend to submit a bid/proposal are encouraged to attend. Bring a copy of the solicitation with you. Any changes resulting from this conference will be issued in a written addendum to the solicitation.

    *** When Used: For use in less complex procurements when vendor input is desired. Bidders/Offerors that do not attend may still submit a bid/proposal. Use wording appropriate to the type of solicitation.**

42. **PREVENTIVE MAINTENANCE:** The contractor shall provide necessary preventive maintenance, required testing and inspection, calibration and/or other work necessary to maintain the equipment in complete operational condition during the warranty period.

    *** When Used: For equipment purchases only in conjunction with a warranty clause which requires preventive maintenance during the warranty period.**

43. **PRICE ESCALATION/DE-ESCALATION:** Price adjustments may be permitted for changes in the contractor's cost of materials not to exceed the increase in the following index/indices: _____. No price increases will be authorized for ___ calendar days after the effective date of the contract. Price escalation may be permitted only at the end of this period and each ___ days thereafter and only where verified to the satisfaction of the purchasing office. However, "across the board" price decreases are subject to implementation at any time and shall be immediately conveyed to the Commonwealth.

Contractor shall give not less than 30 days advance notice of any price increase to the purchasing office. Any approved price changes will be effective only at the beginning of the calendar month following the end of the full 30 day notification period. The contractor shall document the amount and proposed effective date of any general change in the price of materials. Documentation shall be supplied with the contractor's request for increase which will: (1) verify that the requested price increase is general in scope and not applicable just to the Commonwealth of Virginia; and (2) verify the amount or percentage of increase which is being passed on to the contractor by the contractor's suppliers.

The purchasing office will notify the using agencies and contractor in writing of the effective date of any increase which it approves. However, the contractor shall fill all purchase orders received prior to the effective date of the price adjustment at the old contract prices. The contractor is further advised that decreases which affect the cost of materials are required to be communicated immediately to the purchasing office.

*** When Used: For annual goods contracts where, because of rapidly changing market conditions, a firm fixed price cannot be secured for one (1) year or more. Enter the appropriate number of days in the blank space, such as 30, 60, 90 or 180 days, depending on the commodity and how frequently costs change. Examples of indices to be used are the Producer Price Index (PPI) and the Consumer Price Index (CPI).**

44. **PRIME CONTRACTOR RESPONSIBILITIES:** The contractor shall be responsible for completely supervising and directing the work under this contract and all subcontractors that he may utilize, using his best skill and attention. Subcontractors who perform work under this contract shall be responsible to the prime contractor. The contractor agrees that he is as fully responsible for the acts and omissions of his subcontractors and of persons employed by them as he is for the acts and omissions of his own employees.

*** When Used: For use in solicitations to furnish and install goods or provide services when subcontracting will be permitted.**

45. **PRINTING:** (Note: Select any or all of the following clauses, as may be appropriate, and include in solicitations for printing.)

A. **OVERRUNS/UNDERRUNS:** Bids for printing will be rejected if the quoted overrun cost equals or exceeds the base lot price quoted for the equivalent incremental unit quantity. On bids for multiple part forms, envelopes, and signage, the additional overrun quoted shall not exceed the base lot price quoted for the equivalent incremental quantity. The agency may at its discretion accept an underrun, provided credit is allowed the agency at the full base price per unit for the quantity of the underrun.

*** When Used: Must be included in all printing solicitations.**

B. **ACCEPTABLE BRANDS:** Only papers designated as "mill brand" in the latest edition of the Competitive Grade Finder (published by Grade Finders, Inc.) will be used to determine the acceptable brands for the purpose of this bid invitation. Private brand papers and business equipment brand papers will not be considered equivalent to mill brand papers.

Papers which have been accepted by Grade Finders, Inc., for publication in subsequent editions of any of its paper buyer guides will be considered. For products not listed in the current Competitive Grade Finder, a copy of Grade Finders' letter of acceptability should be included with your returned bid. Failure to provide this requested information as specified may be cause for your bid to be rejected.

*** When Used: Whenever a specific paper is specified along with the phrase "or equivalent."**

C. **OWNERSHIP OF PRINTING MATERIALS:** All artwork, camera-ready copy, negative, dies, photos, and similar materials used to produce a printing job shall become the property of the Commonwealth. Any furnished materials shall remain the property of the Commonwealth. All such items and materials shall be delivered to the

ordering agency in usable condition after completion of the work, and prior to submission of the invoice for payment.

*** When Used: Must be included in all printing solicitations.**

D. **PRINTING PICK-UPS/DELIVERIES:** Contractor shall be responsible for all pick-ups and deliveries of all materials.

*** When Used: Include in all printing solicitations when the contractor will be required to pick up artwork, negatives, etc. for the job and deliver the finished product to the agency.**

E. **QUALITY COLOR PRINTING:** Contractor shall analyze each four-color subject and make separations individually. Contractor shall allow for color correction, dot etching, etc., in order to achieve top-quality production from each separation made.

*** When Used: Include in all printing solicitations involving four-color process of more than one picture.**

46. **PRINTING DEFINITIONS:** (Note: Include one of the appropriate definitions in the solicitation whenever any of the following terms are used to describe the quality of the printing requirement.)

A. **CLASS 1 - CRITICAL QUALITY PRINTING:** This class shall be used for four-color process printing where critical color matches are necessary or where engraved and/or embossed invitations are required. Typical examples: matching artist's original paintings or sculptures, or product colors so that they represent true colors or materials used in creating the original are accurately represented, and reproduction of medical slides where true color may be critical. This is a step above "pleasing colors." Finishing and bindery operations shall be of this same critical quality.

B. **CLASS 2 - EXCELLENT QUALITY PRINTING:** This class shall be used when good clean, crisp reproduction is required. One color or multiple color jobs may be classified as "Class 1." Four-color process subjects shall have pleasing color matches with good skin tones; some color correction may be necessary. PMS color matches may be required. Very fine lines and drawings may be required. Normally half-tones or screen tints will require 133, 150, or 200 line screens. There is to be large reverse areas, and/or large solid areas where good even ink coverage is necessary. Because of the overall design, very accurate registration is required. Camera-ready copy is generally furnished. Metallic inks may be used. Finishing and bindery operations shall be of the same excellent quality.

C. **CLASS 3 – GOOD QUALITY PRINTING:** This class shall be used for the majority of black and white or one color jobs where no critical registration is required or when no colors overprint. Multiple color jobs may be classified as "Class 2." Original copy is uniform and may have medium lines and drawings, medium-sized halftones and screens, medium-sized reverses and solid areas. Normally halftones and screen tints would be produced with 120 or 133 line screens. Metallic inks and process work are not generally included in the class. Normally metal plates and negatives are required. No cut lines or spots are acceptable. Finishing and bindery operations shall be of the same good quality.

D. **CLASS 4 - MEDIUM QUALITY PRINTING:** This class denotes the least expensive kind of printing and shall be used for short-run, reproduction duplicator-type work where electrostatic or other direct plate methods are acceptable. Original copy is usually type written and may have coarse lines, drawings, and small reverses or solid areas. Evenness of ink coverage is not required. Coarse screen halftones or coarse screens may be used. No colors overprint each other and no metallic inks are used. Finishing and bindery operations would normally be simple stapling or punching.

47. **PRODUCT INFORMATION:** The bidder/offeror shall clearly and specifically identify the product being offered and enclose complete and detailed descriptive literature, catalog cuts and specifications with the bid/proposal to enable the Commonwealth to determine if the product offered meets the requirements of the solicitation. Failure to do so may cause the bid/proposal to be considered nonresponsive.

*** When Used: For solicitations to furnish and install or deliver goods when detailed specifications are required to properly evaluate items offered.**

48. **QUANTITIES:** Quantities set forth in this solicitation are estimates only, and the contractor shall supply at bid prices actual quantities as ordered, regardless of whether such total quantities are more or less than those shown.

*** When Used: For term contract solicitations only.**

49. **RECYCLED PAPER:** The agency (or institution name) in determining the award of any contract for paper and paper products, shall procure using competitive bidding and shall award to the lowest responsive and responsible bidder bidding recycled paper and paper products of a quality suitable for the purpose intended, and in accordance with current EPA procurement guidelines for paper and paper products, so long as the bid price is not more than ten percent (10%) greater than the bid price of the lowest responsive and responsible bidder offering a product that does not contain recycled materials.

    Bidder agrees to furnish upon request, a minimum of fifty (50) sheets of paper stock offered. Paper stock to be used for testing on agency (or institution name) equipment (may specify equipment that paper will be tested on) to ensure compatibility. If requested, samples must be delivered within five (5) days.

    *** When Used: Use in solicitations for paper and paper products.**

50. **REFERENCES:** Bidders shall provide a list of at least 3 references where similar goods and/or services have been provided. Each reference shall include the name of the organization, the complete mailing address, the name of the contact person and telephone number.

	ORGANIZATION	ADDRESS	CONTACT PERSON	TELEPHONE
1.	_____	_____	_____	_____
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____

    *** When Used: For furnish and install solicitations where contractor must have knowledge of proper installation or for the procurement of complex goods or services.**

51. **RENEWAL OF CONTRACT:** (NOTE: A term contract may not be renewed unless a renewal clause is included in the solicitation. Select one of the following clauses if an option to renew the contract beyond the original period of the contract is desired. Select either "one year" or complete the blank, indicating the number of "successive one year periods" the contract may be renewed.)

    A. **RENEWAL OF CONTRACT:** This contract may be renewed by the Commonwealth upon written agreement of both parties for (one year)/(____ successive one year periods), under the terms of the current contract, and at a reasonable time (approximately 90 days) prior to the expiration.

    *** When Used: Include in solicitations for term contracts for goods and services, if desired, to permit renewal of the contract for a specific period of time, i.e., one year, two successive one-year periods, etc., at the same price(s), terms and conditions as in the original contract. Renegotiation of the price(s), terms and conditions is not permitted. If market prices are not expected to remain stable for goods, the Price Escalation/De-escalation clause (No. 43) should be considered for use with this provision.**

    B. **RENEWAL OF CONTRACT:** This contract may be renewed by the Commonwealth for (one year)/(____ successive one year periods) under the terms and conditions of the original contract except as stated in 1. and 2. below. Price increases may be negotiated only at the time of renewal. Written notice of the Commonwealth's intention to renew shall be given approximately 90 days prior to the expiration date of each contract period.

    1. If the Commonwealth elects to exercise the option to renew the contract for an additional one-year period, the contract price(s) for the additional one year shall not exceed the contract price(s) of the original contract increased/decreased by more than the percentage increase/decrease of the _____ category of the CPI-W section of the Consumer Price Index of the United States Bureau of Labor Statistics for the latest twelve months for which statistics are available.

    2. If during any subsequent renewal periods, the Commonwealth elects to exercise the option to renew the contract, the contract price(s) for the subsequent renewal period shall not exceed the contract price(s) of the previous renewal period increased/decreased by more than the percentage increase/decrease of the

_____ category of the CPI-W section of the Consumer Price Index of the United States Bureau of Labor Statistics for the latest twelve months for which statistics are available.

- **When Used: For service contracts, use of this clause permits renewal of a contract with an increase/decrease in the labor rate portion only of the original contract. This clause should only be used when renewal of the contract may be desirable and price adjustments may be necessary. Select the most appropriate category that would apply to the contract and fill in the blank. If only a one-year renewal is desired, delete paragraph 2. of the clause. For recent Consumer Price Index statistics, contact the Bureau of Labor Statistics at their website http://stats.bls.gov/news.release/cpi.toc.htm or by telephone at 202-691-7000. A link to the Bureau of Labor Statistics is on the DGS/DPS website at** www.dgs.state.va.us/dps**. Click on the "references" tab along the top of the screen and a link to their web site is listed under "Bureau of Labor Statistics."**

52. **SECURITY LICENSE:** In accordance with § 9.1-139 of the *Code of Virginia* (1950), the bidder/offeror shall be licensed by the Department of Criminal Justice Services for solicitations which include the following work: installation, service, maintenance, or design of security equipment; security officer service; and/or private investigator service. Licenses must be obtained prior to submitting a bid/offer. The bidder/offeror shall place their license number in the space provided below:

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Private Security Services Business License Number:_____

For assistance, bidders/offerors may contact the Department of Criminal Justice Services at 804-786-4700.

*** When used: In all solicitations for the installation, service, maintenance, or design of security equipment, security officer service, central station alarm condition monitoring service, and/or private investigator service require the contractor to have a Private Security Services Business License issued by the Department of Criminal Justice Services under § 9.1-139 of the *Code of Virginia.***

53. **SUBCONTRACTS:** No portion of the work shall be subcontracted without prior written consent of the purchasing agency. In the event that the contractor desires to subcontract some part of the work specified herein, the contractor shall furnish the purchasing agency the names, qualifications and experience of their proposed subcontractors. The contractor shall, however, remain fully liable and responsible for the work to be done by its subcontractor(s) and shall assure compliance with all requirements of the contract.

*** When Used: In solicitations to furnish and install or specialty services when subcontracting will be permitted only upon prior approval of the purchasing agency. Use also when a contractor's or a subcontractor's license is required to perform the specialty service.**

54. **USE OF RECYCLED MATERIALS:** Notwithstanding the prohibition against used, damaged or obsolete items, vendors are encouraged to use secondary or recycled materials in the manufacture of products to the maximum extent practicable without jeopardizing the performance or intended end use of the product unless such use is precluded due to health and welfare or safety requirements or product specifications contained herein. Please provide the following information in this regard:

1. Do any of the goods offered contain recycled materials? _____Yes _____No.

2. If so, please qualify the recycled material content. _____.

*** When Used: Include in solicitations for goods that have a high probability for the use of recycled materials.**

55. **WARRANTY:** All materials and equipment shall be fully guaranteed against defects in material and workmanship for a period of _____ following date of delivery. Should any defect be noted by the owner, the Purchasing Office will notify the contractor of such defect or non-conformance. Notification will state either (1) that the contractor shall replace or correct, or (2) the owner does not require replacement or correction, but an equitable adjustment to the contract price will be negotiated. If the contractor is required to correct or replace, it shall be at no cost to the Commonwealth and shall be subject to all provisions of this clause to the same extent as materials initially delivered. If the contractor fails or refuses to replace or correct the deficiency, the office issuing the purchase order may have the materials corrected or replaced with similar items and charge the contractor the costs occasioned thereby or obtain an equitable adjustment in the contract price.

*** When Used: Include in solicitations to furnish and install or deliver goods when the procuring agency wants to specify the length of time the warranty is to run; i.e., equipment 1 year, compressor 5 years, piano 10 years, etc.**

56. **WARRANTY (COMMERCIAL):** The contractor agrees that the goods or services furnished under any award resulting from this solicitation shall be covered by the most favorable commercial warranties the contractor gives any customer for such goods or services and that the rights and remedies provided therein are in addition to and do not limit hose available to the Commonwealth by any other clause of this solicitation. A copy of this warranty should be furnished with the bid/proposal.

*** When Used: Include in solicitations for goods, furnish and install or services when commercial warranty provisions for a particular item or service are acceptable.**

57. **WORK SITE DAMAGES:** Any damage to existing utilities, equipment or finished surfaces resulting from the performance of this contract shall be repaired to the Commonwealth's satisfaction at the contractor's expense.

*** When Used: Include in solicitations to furnish and install equipment. May also be used in solicitations for services such as moving, maintenance, removal of equipment, non-capital outlay construction projects, etc.**

58. **WORK ESTIMATES (TIME AND MATERIAL CONTRACTS):** Under this time and material contract, the contractor shall furnish the agency with a non-binding written estimate of the total costs to complete the work required. The estimate must include the labor category(ies), the contractor's hourly rates specified in the contract, and the total material cost. Material costs shall be billed at contractor's actual invoice costs (contractor shall furnish copies of all invoices for materials) or discount off the list price, whichever is specified in the contract. If the agency determines that the estimated price is not fair and reasonable, the agency has the right to ask the contractor to reevaluate the estimate. If the revised estimate is determined to be not fair and reasonable, the agency reserves the right to obtain additional quotes from other vendors. A work order will be issued to the contractor, as the authority to proceed with the work, which will incorporate the contractor's estimate and the terms and conditions of the contract. The contractor and his/her personnel shall log in with the designated contract administrator each day before and after work to confirm labor hours.

*** When Used: This clause may be used for all time and material contracts where the contractor furnishes estimates prior to starting work for particular projects. Agencies should take the necessary steps to ensure that it is protected from those cases where a contractor submits a low estimate and the invoice is much higher. Use of this clause will provide that protection as long as the contractor is held to the terms of this clause.**

59. **eVA BUSINESS-TO-GOVERNMENT CONTRACTS AND ORDERS:** The solicitation/contract will result in (_____) purchase order(s) with the eVA transaction fee specified below assessed for each order.

a. For orders issued prior to August 16, 2006, the Vendor Transaction Fee is 1%, capped at a maximum of $500 per order.

b. For orders issued August 16, 2006 and after, the Vendor Transaction Fee is:

(i) DMBE-certified Small Businesses: 1%, Capped at $500 per order.
(ii) Businesses that are not DMBE-certified Small Businesses: 1%, Capped at $1,500 per order.

The eVA transaction fee will be assessed approximately 30 days after each purchase order is issued. Any adjustments (increases/decreases) will be handled through eVA change orders.

Internet electronic procurement solution, website portal www.eva.virginia.gov , streamlines and automates government purchasing activities in the Commonwealth. The portal is the gateway for vendors to conduct business with state agencies and public bodies.

Vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet e-procurement solution and agree to comply with the following:

If this solicitation is for a term contract, failure to provide an electronic catalog (price list) or index page catalog for items awarded will be just cause for the Commonwealth to reject your bid/offer or terminate this contract for default. The format of this electronic catalog shall conform to the eVA Catalog Interchange Format (CIF) Specification that can

be accessed and downloaded from www.eVA.virginia.gov. Contractors should email Catalog or Index Page information to eVA-catalog-manager@dgs.virginia.gov.

***When Used: Include in all solicitations, contracts and contract renewals. If the quantity of orders that will be issued is known, insert the expected number of orders in the blank provided (e.g., one, twelve, monthly, etc.). If the exact quantity is unknown, change the first sentence to read, "It is anticipated that the contract will result in multiple purchase orders (i.e., one for each delivery requirement) with the eVA transaction fee specified below assessed for each order."**

60. **NONPROFIT SHELTERED WORKSHOPS AND NONPROFIT ORGANIZATIONS:**

A. Where it is practicable for any portion of the awarded contract to be subcontracted, the contractor is encouraged to offer such business to nonprofit sheltered workshops and nonprofit organizations serving the handicapped. A list of nonprofit sheltered workshops and nonprofit organizations of Virginia serving the handicapped can be found at www.vadrs.org.

B. Each prime contractor who is awarded a contract where using a non profit sheltered workshop or nonprofit organization serving the handicapped is a condition of the award, shall deliver to the agency or institution, on or before request for final payment, evidence and certification of compliance. When a portion of the contract has been subcontracted to these organizations and upon completion of the contract, the contractor agrees to furnish the purchasing office, at a minimum, the following information: name of nonprofit sheltered workshop or nonprofit organization serving the handicapped, telephone number, total dollar amount subcontracted, and type of product/service provided. Final payment under the contract may be withheld until such certification is delivered or other appropriate remedies may be assessed in lieu of withholding such payment.

*** When Used: Use paragraph A. if the solicitation involves the packaging or assemblage of goods where the individual item weighs less than 50 pounds and can be performed by a nonprofit sheltered workshop or nonprofit organization serving the handicapped. Use paragraph B. in solicitations for goods, and nonprofessional services, that involves the packaging or assemblage of goods where the individual items weighs less than 50 pounds when a use of a nonprofit sheltered workshop or nonprofit organization serving the handicapped is a condition of the award (see 2.2 c.).**

61. **CONFIDENTIALITY OF PERSONALLY IDENTIFIABLE INFORMATION:** The contractor assures that information and data obtained as to personal facts and circumstances related to patients or clients will be collected and held confidential, during and following the term of this agreement, and will not be divulged without the individual's and the agency's written consent and only in accordance with federal law or the Code of Virginia. Contractors who utilize, access, or store personally identifiable information as part of the performance of a contract are required to safeguard this information and immediately notify the agency of any breach or suspected breach in the security of such information. Contractors shall allow the agency to both participate in the investigation of incidents and exercise control over decisions regarding external reporting. Contractors and their employees working on this project may be required to sign a confidentiality statement.

***When Used: Include in contracts when contractors utilize, access, or store personally identifiable information in the performance of the contract.**

62) **CONTINUITY OF SERVICES:**

a) The Contractor recognizes that the services under this contract are vital to the Agency and must be continued without interruption and that, upon contract expiration, a successor, either the Agency or another contractor, may continue them. The Contractor agrees:

(i) To exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor;
(ii) To make all Agency owned facilities, equipment, and data available to any successor at an appropriate time prior to the expiration of the contract to facilitate transition to successor; and
(iii) That the Agency Contracting Officer shall have final authority to resolve disputes related to the transition of the contract from the Contractor to its successor.

b) The Contractor shall, upon written notice from the Contract Officer, furnish phase-in/phase-out services for up to ninety (90) days after this contract expires and shall negotiate in good faith a plan with the successor to execute the phase-in/phase-out services. This plan shall be subject to the Contract Officer's approval.

c) The Contractor shall be reimbursed for all reasonable, pre-approved phase-in/phase-out costs (i.e., costs incurred within the agreed period after contract expiration that result from phase-in, phase-out operations) and a fee (profit) not to exceed a pro rata portion of the fee (profit) under this contract. All phase-in/phase-out work fees must be approved by the Contract Officer in writing prior to commencement of said work.

***When Used: Include in term contracts for ongoing services when an orderly and efficient transition from the contractor to its successor will be critical to continuity of operations for the vital services required.**

63) **PRODUCT AVAILABILITY/SUBSTITUTION:** Substitution of a product, brand or manufacturer after the award of contract is expressly prohibited unless approved in writing by the Contact Officer. The Agency may, at its discretion, require the contractor to provide a substitute item of equivalent or better quality subject to the approval of the Contract Officer, for a price no greater than the contract price, if the product for which the contract was awarded becomes unavailable to the contractor.

***When Used: Include in term contracts for commercial off the shelf goods when product availability is subject to change over time.**

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64) **STATE CORPORATION COMMISSION IDENTIFICATION NUMBER:** Pursuant to Code of Virginia, §2.2-4311.2 subsection B, a bidder or offeror organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 is required to include in its bid or proposal the identification number issued to it by the State Corporation Commission (SCC). Any bidder or offeror that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 or as otherwise required by law is required to include in its bid or proposal a statement describing why the bidder or offeror is not required to be so authorized.

*** When used: In all Competitive Sealed Bidding or Competitive Negotiation solicitations (IFBs and RFPs).**

SECTION III

ADDITIONAL TERMS AND CONDITIONS FOR NON-CAPITAL OUTLAY CONSTRUCTION PROJECTS

State agencies and Institutions use the following Additional Terms and Conditions in all solicitations for non-capital outlay projects that involve building, altering, repairing, improving or demolishing any structure, building or paving project (other than highways), and any draining, dredging, excavation, grading or similar work upon real property which do not require the use of capital outlay procedures. These Additional Terms and Conditions shall be included in the IFB in addition to those listed in Appendix B, Section I. The *Virginia Public Procurement Act (VPPA)* requires the use of competitive sealed bidding for construction projects unless the use of competitive negotiation can be justified under the provisions of § 2.2-4303D of the *Code of Virginia*.

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1. **DEFINITIONS:** Whenever used in this solicitation or in the contract documents, the following terms have the meanings indicated, which are applicable to both the singular and plural and the male and female gender thereof:

   (a) **Agency**: The term, agency, unless otherwise indicated, shall mean the owner.

   (b) **Commonwealth**: The term "Commonwealth" shall mean the owner which is the Commonwealth of Virginia through the governing Body, the Board, the Building Committee or other agent with authority to execute the contract for the institution or agency involved. The Commonwealth's agent is the official with the authority to sign the contract on behalf of the Commonwealth.

   (c) **Construction**: As used in these documents shall include new construction, reconstruction, renovation, restoration, major repair, demolition and all similar work upon buildings and ancillary facilities owned or to be acquired by the Commonwealth and any draining, dredging, excavation, grading, or similar work upon real property.

   (d) **Contractor**: The person, firm or corporation with whom the owner has entered into a contractual agreement and includes the plural number and the feminine gender when such are named in the contract as the contractor.

(e) **Defective**: An adjective which when modifying the word work, refers to work that is unsatisfactory, faulty, or deficient, or does not conform to the contract documents, or does not meet the requirements of any inspections, standard, test, or approval referred to in the contract documents, or has been damaged prior to final payment.

(f) **Emergency**: Any unforeseen combination of circumstances or a resulting state that poses imminent danger to health, life, or property.

(g) **Final Acceptance**: The agency's acceptance of the project from the contractor upon confirmation from the project inspector and the contractor that the project is totally complete in accordance with the contract requirements and that all defects have been eliminated. Final acceptance is confirmed by the making of final payment of the contract amount including any change orders or adjustment thereto.

(h) **Notice**: All written notices, demands, instructions, claims, approvals, and disapprovals required to obtain compliance with the contract requirements. Any written notice by either party to the contract shall be sufficiently given if delivered to or at the last known business address of the person, firm or corporation constituting the party to the contract, or to his, their or its authorized agent, representative or officer, or when enclosed in a postage prepaid envelope addressed to such last known business address and deposited in a United States mailbox.

(i) **Notice to Proceed**: A written notice given by the owner to the contractor fixing the date on which the contract time will commence for the contractor to begin the prosecution of the work in accordance with the requirements of the contract documents.

(j) **Owner**: The Commonwealth of Virginia, i.e., an agency, institution, or department, with whom the contractor has entered into a contract and for whom the work or services is to be provided.

(k) **Project Inspector**: One or more individuals employed by the owner to inspect the work and/or to act as clerk of the works to the extent required by the owner. The owner shall notify the contractor in writing of the appointment of such project inspector(s).

(l) **Provide**: Shall mean furnish and install ready for its intended use.

(m) **Submittal**: All drawings, diagrams, illustrations, schedules, and other data required by the contract documents which are specifically prepared by or for the contractor to illustrate some portion of the work and all illustrations, brochures, standard schedules, performance charts, instructions, diagrams, and other information prepared by a supplier and submitted by the contractor to illustrate material or equipment for some portion of the work.

(n) **Subcontractor**: An individual, partnership or corporation having a direct contract with contractor or with any other subcontractor for the performance of the work. It includes one who provides on-site labor but does not include one who only furnishes or supplies materials for the project.

(o) **Substantial Completion**: The work which is sufficiently complete, in accordance with the contract documents, so that the project can be utilized by the owner for the purposes for which it is intended.

(p) **Supplier**: A manufacturer, fabricator, distributor, materialman, or vendor who provides material for the project but does not provide on-site labor.

(q) **Underground Facilities**: All pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities which are or have been installed underground to furnish any of the following services or materials: electricity, gases, steam, liquid petroleum products, telephone, or other communications, cable television, sewage and drainage removal, traffic, or other control systems or water.

(r) **Work**: The entire completed construction or the various separately identifiable parts thereof required to be furnished under the contract documents. Work is the result of performing services, furnishing labor, and furnishing and incorporating materials and equipment into the construction, all as required by the contract documents.

2. **CONTRACT DOCUMENTS:**

(a) The contract entered into by the parties shall consist of the Invitation for Bids, the bid submitted by the contractor; General Terms and Conditions, these Additional Terms and Conditions; the Special Terms and Conditions; the drawings, if any; the specifications; and all modifications and addenda to the foregoing documents, all of which shall be referred to collectively as the contract documents.

(b) All time limits stated in the contract documents, including but not limited to the time for completion of the work, are of the essence of the contract.

(c) Anything called for by one of the contract documents and not called for by the others shall be of like effect as if required or called for by all, except that a provision clearly designed to negate or alter a provision contained in one or more of the other contract documents shall have the intended effect.

3. **LAWS AND REGULATIONS:**

(a) The contractor shall comply with all laws, ordinances, rules, regulations, and lawful orders of any public authority bearing on the performance of the work and shall give all notices required thereby.

(b) This contract and all other contracts and subcontracts are subject to the provisions of Articles 3 and 5, Chapter 4, Title 40.1, *Code of Virginia*, relating to labor unions and the "right to work." The contractor and its subcontractors, whether residents or nonresidents of the Commonwealth, who perform any work related to the project shall comply with all of the said provisions.

(c) The provisions of all rules and regulations governing safety as adopted by the Safety Codes Commission of the Commonwealth of Virginia and as issued by the Department of Labor and Industry under Title 40.1 of the *Code of Virginia* shall apply to all work under this contract. Inspectors from the Department of Labor and Industry shall be granted access to the work for inspection without first obtaining a search warrant from the court.

(d) Building Permit: Because this is a project of the Commonwealth of Virginia, codes or zoning ordinances of local political subdivisions do not apply. Building permits where required will be obtained and paid for by the owner. This does not include any local license fees, business fees or similar assessments which may be imposed by the appropriate political subdivision.

(e) The contractor, if not licensed as an asbestos abatement contractor or a RFS contractor in accordance with § 54.1-514, *Code of Virginia*, shall have all asbestos related work performed by subcontractors who are duly licensed as asbestos contractors or RFS contractors as appropriate for the work required.

4. **PREPARATION AND SUBMISSION OF BIDS:** Bids must give the full business address of the bidder and be signed by him/her with his/her usual signature. Bids by partnerships must furnish the full name of all partners and must be signed in the partnership name by one of the members of the partnership or any authorized representative, followed by the designation of the person signing. Bids by corporations must be signed with the legal name of the corporation followed by the name of the State in which it is incorporated and by the signature and designation of the president, secretary, or other person authorized to bind it in the matter. The name of each person signing shall also be typed or printed below the signature. A bid by a person who affixes to the signature the word "President," "Secretary," "Agent" or other designation without disclosing the principal, may be held to be the bid of the individual signing. When requested by the Commonwealth, satisfactory evidence of the authority of the officer signing in behalf of the corporation shall be furnished.

5. **WITHDRAWAL OR MODIFICATION OF BIDS:** Bids may be withdrawn or modified by written notice received from bidders prior to the deadline fixed for bid receipt. The withdrawal or modification may be made by the person signing the bid or by an individual(s) who is authorized by him/her on the face of the bid. Written modifications may be made on the bid form itself, on the envelope in which the bid is enclosed, or on a separate document. Written modifications, whether the original is delivered, or transmitted by facsimile, must be signed by the person making the modification or withdrawal.

6. **RECEIPT AND OPENING OF BIDS:**

(a) It is the responsibility of the bidder to assure that his/her bid is delivered to the place designated for receipt of bids and prior to the time set for receipt of bids. Bids received after the time designated for receipt of bids will not be considered.

(b) Bids will be opened at the time and place stated in the advertisement, and their contents made public for the information of bidders and others interested who may be present either in person or by representative. The officer or agent of the owner, whose duty it is to open them, will decide when the specified time has arrived. No responsibility will be attached to any officer or agent for the premature opening of a bid not properly addressed and identified.

(c) The provisions of § 2.2-4342 of the *Code of Virginia*, as amended, shall be applicable to the inspection of bids received.

7. **ERRORS IN BIDS:** Errors in bids will be handled in accordance with section 5.13 of the *Vendors Manual*.

8. **SUBCONTRACTS:**

(a) The contractor shall as soon as practicable after the signing of the contract, notify the owner in writing of the names of subcontractors proposed for the principal parts of the work. The contractor shall not employ any subcontractor that the owner may, within a reasonable time, object to as unsuitable. The owner will not direct the contractor to contract with any particular subcontractor unless provided in the specifications or bid form.

(b) The owner shall, on request, furnish to any subcontractor, if practicable, the amounts of payments made to the contractor, the Schedule of Values and Requests for Payment submitted by the contractor, and any other documentation submitted by the contractor which would tend to show what amounts are due and payable by the contractor to the subcontractor.

(c) The contractor agrees that he is as fully responsible to the owner for the acts and omissions of his subcontractors, suppliers, and invitee upon the site of the project and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by him.

9. **SEPARATE CONTRACTS:**

(a) The owner reserves the right to let other contracts in connection with the project, the work under which may proceed simultaneously with the execution of this contract. The contractor shall afford other separate contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work. The contractor shall cooperate with them and shall take all reasonable action to coordinate his work with theirs. If the owner has listed other separate contracts in the Invitation for Bids which it expects to proceed simultaneously with the work of the contractor, and has included the estimated timing of such other contracts in the Invitation for Bids, the contractor shall integrate the schedule of those separate contracts into his scheduling. The contractor shall make every reasonable effort to assist the owner in maintaining the schedule for all separate contracts. If the work performed by the separate contractor is defective or performed so as to prevent this contractor from carrying out his work according to the drawings and specifications of this contract, this contractor shall immediately notify the owner upon discovering such conditions.

(b) If a dispute arises between the contractor and separate contractors as to their responsibility for cleaning up as required by Sections 18(c) and 18(d) of these Additional Terms and Conditions, the owner may clean up and charge the cost thereof to the respective contractors in proportion to their responsibility. If a contractor disputes the owner's apportionment of clean-up costs, it shall be that contractor's burden to demonstrate and prove the correct apportionment.

10. **TAXES:** The contractor shall, without additional expense to the owner, pay all applicable federal, state, and local taxes, fees, and assessments except the taxes, fees, and assessments on the real property comprising the site of the project. If the State Building Official elects to have the local building official inspect the work as provided by § 36-98.1 of the *Code of Virginia*, the owner will pay the resulting fees to the local building official.

11. **PATENTS:** The contractor shall obtain all licenses necessary to use any invention, article, appliance, process, or technique of whatever kind and shall pay all royalties and license fees. The contractor shall hold and save the owner, its officers, agents, and employees, harmless from any loss or liability for or on account of the infringement of any patent rights in connection with any invention, process, technique, article or appliance manufactured or used in the performance of the contract, including its use by the owner, unless such invention, process, technique, article, or appliance is specifically named in the specifications or drawings as acceptable for use in carrying out the work. If, before using any invention, process, technique, article, or appliance specifically named in the specifications or drawings as acceptable for use in carrying out the work, the contractor has or acquires information that the same is covered by letters of patent making it necessary to secure the permission of the patentee, or other, for the use of the same, he shall promptly advise the owner. The owner may direct that some other invention, process, technique, article, or appliance be used. Should the contractor have reason to believe that the invention, process, technique, article, or appliance so specified is an infringement of a patent, and fail to inform the owner, he shall be responsible for any loss due to the infringement.

12. **INSPECTION:**

a. All material and workmanship shall be subject to inspection, examination, and test by the owner and its project inspector at any and all times during construction. The project inspector shall have authority to reject defective material and workmanship and require its correction. Rejected workmanship shall be satisfactorily corrected and rejected material shall be satisfactorily replaced with proper material without charge therefore, and the contractor shall promptly segregate and remove the rejected material from the premises. If the contractor fails to proceed at once with replacement of rejected material and/or the correction of defective workmanship, the owner may, by contract or otherwise, replace such material and/or correct such workmanship and charge the cost to the contractor, or may terminate the right of the contractor to proceed, the contractor and surety being liable for any damages.

b. Job-site inspections, tests conducted on site or tests of materials gathered on site, which the contract requires to be performed by independent testing entities, shall be contracted and paid for by the owner. Examples of such tests are the testing of cast in-place concrete, foundation materials, soil compaction, pile installations, caisson bearings, and steel framing connections. Although conducted by independent testing entities, the owner will not contract and pay for tests or certifications of materials, manufactured products, or assemblies which the contract, codes, standards, etc. require to be tested and/or certified for compliance with industry standards such as Underwriters Laboratories, Factory Mutual, or ASTM. If there are any fees to be paid for such tests and certifications, they will be paid by the contractor. The contractor shall also pay for all inspections, tests, and certifications which the contract specifically requires him to perform or pay, together with any inspections and tests which he chooses to perform for his own quality control purposes. The contractor shall promptly furnish, without additional charge, all reasonable facilities, labor, and materials necessary and convenient for making such tests. Except as provided in (c) below, whenever such examination and testing finds defective materials, equipment, or workmanship, the contractor shall reimburse the owner for the cost of re-examination and retesting.

c. Should it be considered necessary or advisable by the owner at any time before final acceptance of the entire work to make an examination of any part of the work already completed, by removing or tearing out portions of the work, the contractor shall on request promptly furnish all necessary facilities, labor and material to expose the work to be tested to the extent required. If such work is found to be defective in any respect, due to the fault of the contractor or his subcontractors, he shall defray all the expenses of uncovering the work, of examination and testing, and of satisfactory reconstruction. If, however, such work is found to meet the requirements of the contract, the actual cost of the contractor's labor and material necessarily involved in uncovering the work, the cost of examination and testing, and contractor's cost of material and labor necessary for replacement shall be paid to the contractor and he shall, in addition, if completion of the work has been delayed thereby, be granted a suitable extension of time.

d. The project inspector will recommend to the owner that the work be suspended when in his judgment the drawings and specifications are not being followed. Any such suspension shall be continued only until the matter in question is resolved to the satisfaction of the owner. The cost of any such work stoppage shall be borne by the contractor unless it is later determined that no fault existed in the contractor's work.

e. The project inspector has no authority to and shall not:

(1) Authorize deviations from the contract documents;

(2) Enter into the area of responsibility of the contractor's superintendent;

(3) Issue directions relative to any aspect of construction means, methods, techniques, sequences or procedures, or in regard to safety precautions and programs in connection with the work;

(4) Authorize or suggest that the owner occupy the project, in whole or in part;

(5) Issue a certificate for payment.

13. **SUPERINTENDENCE BY CONTRACTOR:**

a. The contractor shall have a competent foreman or superintendent, satisfactory to the owner, on the job site at all times during the progress of the work. The contractor shall be responsible for all construction means, methods, techniques, sequences, and procedures for coordinating all portions of the work under the contract except where otherwise specified in the contract documents, and for all safety and worker health programs and practices. The contractor shall notify the owner, in writing, of any proposed change in superintendent including the reason therefore prior to making such change.

b. The contractor shall, at all times, enforce strict discipline and good order among the workers on the project, and shall not employ on the work any unfit person, anyone not skilled in the work assigned to him, or anyone who will not work in harmony with those employed by the contractor, the subcontractors, the owner or the owner's separate contractors and their subcontractors.

c. The owner may, in writing, require the contractor to remove from the work any employee the owner deems to be incompetent, careless, not working in harmony with others on the site, or otherwise objectionable.

14. **ACCESS TO WORK:** The owner, the owner's inspectors and other testing personnel, and inspectors from the Department of Labor and Industry shall have access to the work at all times. The contractor shall provide proper facilities for access and inspection.

15. **AVAILABILITY OF MATERIALS:** If material specified in the contract documents is not available on the present market, alternate materials may be proposed by the contractor for approval of the owner.

16. **CONTRACTOR'S TITLE TO MATERIALS:** No materials or supplies for the work shall be purchased by the contractor or by any subcontractor subject to any security interest, installment or sales contract or any other agreement or lien by which an interest is retained by the seller or is given to a secured party. The contractor warrants that he has clear title to all materials and supplies which he uses in the work or for which he accepts payment in whole or in part.

17. **WARRANTY OF MATERIALS AND WORKMANSHIP:**

a. The contractor warrants that, unless otherwise specified, all materials and equipment incorporated in the work under the contract shall be new, in first class condition, and in accordance with the contract documents. The contractor further warrants that all workmanship shall be of the highest quality and in accordance with contract documents and shall be performed by persons qualified at their respective trades.

b. Work not conforming to these warranties shall be considered defective.

c. This warranty of materials and workmanship is separate and independent from and in addition to any of the contractor's other guarantees or obligations in this contract.

18. **USE OF PREMISES AND REMOVAL OF DEBRIS:**

a. The contractor shall:

(1) Perform his contract in such a manner as not to interrupt or interfere with the operation of any existing activity on the premises or with the work of any contractor;

(2) Store his apparatus, materials, supplies, and equipment in such orderly fashion at the site of the work as will not unduly interfere with the progress of his work or the work of any other contractor; and

(3) Place upon the work or any part thereof only such loads as are consistent with the safety of that portion of the work.

b. The contractor expressly undertakes, either directly or through his subcontractor(s), to effect all cutting, filling, or patching of his work required to make the same conform to the drawings and specifications, and, except with the consent of the owner, not to cut or otherwise alter the work of any other contractor. The contractor shall not damage or endanger any portion of the work or premises, including existing improvements, unless called for by the contract.

c. The contractor expressly undertakes, either directly or through his subcontractor(s), to clean up frequently all refuse, rubbish, scrap materials, and debris caused by his operations, to the end that at all times the site of the work shall present a neat, orderly, and workmanlike appearance. No such refuse, rubbish, scrap material, and debris shall be left within the completed work nor buried on the building site, but shall be removed from the site and properly disposed of in a licensed landfill or otherwise as required by law.

d. The contractor expressly undertakes, either directly or through his subcontractor(s), before final payment, to remove all surplus material, false work, temporary structures, including foundations thereof, plants of any description and debris of every nature resulting from his operations and to put the site in a neat, orderly condition; to thoroughly clean and leave reasonably dust free all finished surfaces including all equipment, piping, etc., on the interior of all buildings included in the contract; and to thoroughly clean all glass installed under the contract including the removal of all paint and mortar splatters and other defacements. If a contractor fails to clean up at the completion of the work, the owner may do so and charge for costs thereof to the contractor.

e. During and at completion of the work, the contractor shall prevent site soil erosion, the runoff of silt and/or debris carrying water from the site, and the blowing of debris off the site in accordance with the applicable requirements and standards of the *Virginia Erosion and Sediment Control Handbook*, latest edition, and of the contract documents.

f. The contractor shall not operate or disturb the setting of any valves, switches or electrical equipment on the service lines to the building except by proper previous arrangement with the owner. The contractor shall give ample advance notice of the need for cut-offs which will be scheduled at the convenience of the owner.

19. **PROTECTION OF PERSONS AND PROPERTY:**

a. The contractor expressly undertakes, both directly and through its subcontractor(s), to take every precaution at all times for the protection of persons and property which may come on the building site or be affected by the contractor's operation in connection with the work.

b. The contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the work.

c. The provisions of all rules and regulations governing safety as adopted by the Safety Codes Commission of the Commonwealth of Virginia, issued by the Department of Labor and Industry under Title 40.1 of the *Code of Virginia* shall apply to all work under this contract.

d. The contractor shall continuously maintain adequate protection of all his work from damage and shall protect the owner's property from injury or loss arising in connection with this contract. He shall make good any such damage, injury, or loss, except such as may be directly due to errors in the contract documents or caused by agents or employees of the owner. He shall adequately protect adjacent property to prevent any damage to it or loss of use and enjoyment by its owners. He shall provide and maintain all passageways, guard fences, lights, and other facilities for protection required by public authority, local conditions, any of the contract documents or erected for the fulfillment of his obligations for the protection of persons and property.

e. In an emergency affecting the safety or life of persons or of the work, or of the adjoining property, the contractor, without special instruction or authorization from the owner, shall act, at his discretion, to prevent such threatened loss or injury. Also, should he, to prevent threatened loss or injury, be instructed or authorized to act by the owner, he shall so act immediately, without appeal. Any additional compensation or extension of time claimed by

the contractor on account of any emergency work shall be determined as provided by paragraph O, of the General Terms and Conditions.

20. **CONTRACTOR'S RIGHT TO STOP WORK OR TERMINATE THE CONTRACT:** If the work should be stopped under any order of any court or other public authority for a period of ninety (90) days through no fault of the contractor or of anyone employed by him, or if the owner should fail to pay to the contractor within thirty (30) days when no dispute exists as to the sum, then the contractor may, upon ten (10) calendar days written notice to the owner, stop work or terminate the contract and recover from the owner payment for the cost of the work actually performed, together with overhead and profit thereon, but profit shall be recovered only to the extent that the contractor can demonstrate that he would have had profit on the entire contract if he had completed the work. The contractor may not receive profit or any other type of compensation for parts of the work not performed. The contractor may recover the cost of physically closing down the job site, but no other costs of termination. The owner may offset any claims it may have against the contractor against the amounts due to the contractor. In no event shall termination of the contract by the contractor terminate the obligations of the contractor's surety on its payment and performance bonds.

21. **OWNER'S RIGHT TO TERMINATE THE CONTRACT FOR CAUSE:**

a. If the contractor should be adjudged as bankrupt, or if he should make a general assignment for the benefit of his creditors, or if a receiver should be appointed on account of his insolvency, the owner may terminate the contract. If the contractor should persistently or repeatedly refuse or should fail, except in cases for which extension of time is provided, to supply enough properly skilled workmen or proper materials, or if he should fail to make prompt payment to subcontractors or suppliers of material or labor, or persistently disregards laws, ordinances, or the written instructions of the owner, or otherwise be guilty of a substantial violation of any provision of the contract, then the owner may terminate the contract.

b. Prior to termination of the contract, the owner shall give the contractor and his surety ten (10) calendar days written notice, during which the contractor and/or his surety may rectify the cause of the termination. If rectified to the satisfaction of the owner within said ten (10) days, the owner may rescind his notice of termination. If it does not, the termination for cause shall become effective at the end of the ten-day (10) notice period. In the alternative, the owner may postpone the effective date of the termination notice, at his sole discretion, if he should receive reassurances from the contractor and/or its surety that the causes of termination will be remedied in a time and manner which the owner finds acceptable. If at any time more than ten (10) days after the notice of termination, the owner determines that contractor and/or its surety has not or is not likely to rectify the causes of termination in an acceptable manner or within the time allowed, then the owner may immediately terminate the contract for cause by giving written notice to the contractor and its surety. In no event shall termination for cause terminate the obligations of the contractor's surety on its payment and performance bonds.

c. Notice of terminations, whether initial or given after a period of postponement, may be served upon the contractor and the surety by mail or any other means at their last known places of business in Virginia or elsewhere, by delivery to any officer or management/supervisory employee of either wherever they may be found, or, if no such officer, employee or place of business is known or can be found by reasonable inquiry within three (3) days, by posting the notice at the job site. Failure to accept or pick up registered or certified mail addressed to the last known address shall be deemed to be delivery.

d. Upon termination of the contract, the owner shall take possession of the premises and of all materials, tools, and appliances thereon and finish the work by whatever method he may deem expedient. In such case the contractor shall not be entitled to receive any further payment. If the expense of finishing the work, including compensation for additional managerial and administrative services shall exceed the unpaid balance of the contract price, the contractor shall pay the difference to the owner, together with any other expenses of terminating the contract and having it completed by others.

e. If it should be judicially determined that the owner improperly terminated this contract for cause, then the termination shall be deemed to be a termination for the convenience of the owner.

f. Termination of the contract under this section is without prejudice to any other right or remedy of the owner.

22. **TERMINATION BY OWNER FOR CONVENIENCE:**

a. Owner may terminate this contract at any time without cause, in whole or in part, upon giving the contractor notice of such termination. Upon such termination, the contractor shall immediately cease work and remove from the project site all of its labor forces and such of its materials as owner elects not to purchase or to assume in the manner hereinafter provided. Upon such termination, the contractor shall take such steps as owner may require to assign to the owner the contractor's interest in all subcontracts and purchase orders designated by owner. After all such steps have been taken to owner's satisfaction, the contractor shall receive as full compensation for termination and assignment the following:

(1) All amounts then otherwise due under the terms of this contract,

(2) Amounts due for work performed subsequent to the latest Request for Payment through the date of termination,

(3) Reasonable compensation for the actual cost of demobilization incurred by the contractor as a direct result of such termination. The contractor shall not be entitled to any compensation for lost profits or for any other type of contractual compensation or damage other than those provided by the preceding sentence. Upon payment of the forgoing, owner shall have no further obligations to the contractor of any nature.

b. In no event shall termination for the convenience of the owner terminate the obligations of the contractor's surety on its payment and performance bonds.

23. **GUARANTEE OF WORK:**

a. Except as otherwise specified, all work shall be guaranteed by the contractor against defects resulting from the use of inferior materials, equipment, or workmanship for one (1) year from the date of final acceptance of the entire project by the owner in writing. Equipment and facilities, which have seasonal limitations on their operation, shall be guaranteed for one (1) full year from the date of seasonally appropriate tests and acceptance, in writing, by the owner.

b. If, within the guarantee period, defects are noticed by the owner which require repairs or changes in connection with the guaranteed work, those repairs or changes being in the opinion of the owner rendered necessary as the result of the use of materials, equipment or workmanship, which are defective, or inferior or not in accordance with the terms of the contract, then the contractor shall, promptly upon receipt of notice from the owner, such notice being given not more than two weeks after the guarantee period expires, and without expense to the owner:

(1) Place in satisfactory condition in every particular all of such guaranteed work and correct all defects therein;

(2) Make good all damage to the structure, site, equipment, or contents thereof, which is the result of the use of materials, equipment, or workmanship which are inferior, defective, or not in accordance with the terms of the contracts; and

(3) Make good any work, materials, equipment, contents of structures, and/or disturbance of the site in fulfilling any such guarantee.

c. In any case, where in fulfilling the requirements of the contract or any guarantee embraced in or required thereby, the contractor disturbs any work guaranteed under contract, he shall restore such work to a condition satisfactory to the owner and guarantee such restored work to the same extent as it was guaranteed under such other contract.

d. If the contractor, after notice, fails to proceed promptly to comply with the terms of the guarantee, the owner may have the defects corrected and the contractor and his surety shall be liable for all expense incurred.

e. All special guarantees applicable to definite parts of the work that may be stipulated in the specifications or other papers forming a part of the contract shall be subject to the term of this section during the first year of the life of such special guarantee.

f. Nothing contained in this section shall be construed to establish a period of limitation with respect to any other obligation which the contractor might have under the contract documents, including liability for defective work under Section 17 of these additional terms and conditions. This paragraph relates only to the specific obligation of

the contractor contained in this section to correct the work and does not limit the time within which his obligation to comply with the contract documents may be sought to be enforced, nor of the time within which proceedings may be commenced to establish the contractor's liability with respect to his other obligations under this contract.

g. In the event the work of the contractor is to be modified by another contractor, either before or after the final inspection, the first contractor shall remain responsible in all respects under the guarantee of work and under any other warranties provided in the contract or by law. However, the contractor shall not be responsible for any defects in material or workmanship introduced by the contractor modifying its work. Both the first contractor and the contractor making the modifications shall each be responsible solely for the work done by each. The contractor modifying the earlier work shall be responsible for any damage to or defect introduced into the work which he is modifying. If any contractor shall claim that another contractor has introduced defects of materials and/or workmanship into the work of the first, it shall be the burden of the contractor making the claim to clearly demonstrate the nature and extent of such introduced defects and the responsibility of the other contractor. Any contractor modifying the work of another shall have the same burden if he asserts defects to have been caused by the contractor whose work he is modifying.

24. **ASBESTOS:**

a. This subsection applies to projects involving existing buildings where asbestos abatement is not a part of the work. If the contractor discovers or inadvertently disturbs any material that may contain asbestos that has not been previously identified, that was overlooked during the removal, or which was deemed not to be friable or which was encapsulated, the contractor shall stop work in the area containing the asbestos, secure the area, and notify the owner immediately by telephone or in person with written notice as soon as possible. The owner will have the suspect material sampled.

If the sample is positive and must be disturbed in the course of the work, the owner will have the material repaired or removed and will pay for the bulk sample analysis.

If the material disturbed is not within the contractor's authorized work and/or work area or under this contract, the contractor will pay for all associated sampling and abatement costs.

b. If asbestos abatement is included as a part of the work, the contractor shall assure that the asbestos abatement work is accomplished by those duly licensed in accordance with the specific requirements of the contract documents.

c. If asbestos abatement is included as part of the work, the licensed asbestos subcontractor shall, in the insurance required, name the Commonwealth of Virginia and the contractor as additional insured.

25. **TRAINING, OPERATION, AND MAINTENANCE OF EQUIPMENT:**

a. The contractor, in conjunction with his subcontractors and suppliers, shall provide the owner's operations and maintenance personnel with instruction and training in the proper operation and maintenance of the equipment and related controls provided or altered in the work.

b. The contractor shall provide the owner with a minimum of two (2) copies of operating, maintenance and parts manuals for all equipment provided in the project. Further specific requirements may be indicated in the specifications.

NOTE TO STATE AGENCIES AND INSTITUTIONS: Select from Appendix B, Section II, appropriate Special Terms and Conditions to be included in the solicitation. The following Special Terms and Conditions shall be used as applicable:

1. Inspection of the Job Site
2. Bid Bond or Guaranty (optional - required for contracts over $100,000)
3. Performance and Payment Bonds (optional - required for contracts over $100,000)
4. Liquidated Damages (optional)
5. Contractor Registration
6. Bid Acceptance Period

7. Award
8. Identification of Bid/Proposal Envelope
9. Drawings
10. Work Site Damage

Refer to Chapter 6, “Competitive Sealed Bidding,” or Chapter 7, “Competitive Negotiation,” for proper sequence of contents.

SECTION IV

SPECIAL TERMS AND CONDITIONS
INFORMATION TECHNOLOGY GOODS AND SERVICES

The following is a list of Special Terms and Conditions that may be used at the buyer's discretion in Information Technology IFBs and RFPs as appropriate. The Commonwealth's General Terms & Conditions, any other special terms and conditions as listed in previous sections of this appendix, and any specific terms developed by the buyer should also be included as needed.

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1. **CERTIFICATION TESTING PERIOD - SYSTEMS:** The system specified in the contract shall be considered ready for testing upon receipt of documentation from the contractor that a successful system audit or diagnostic test was performed at the site demonstrating that the system meets the minimum design/performance capabilities stipulated in the purchase agreement. The ____day testing period shall commence on the next calendar day following receipt of this documentation. Upon request, the procuring agency will provide written confirmation of its acceptance following successful completion of the certification period. Such acceptance shall not be conclusive of complete conformance in all respects to the contract specifications and other requirements, or the nonexistence of potential latent defects.

   When Used: In solicitations for computer systems requiring the installation of multiple components and configuration prior to system operation. NOTE: Specific certification criteria should be stated either in the specification or as a part of this provision.

   CERTIFICATION TESTING PERIOD - HARDWARE: Equipment ordered herein shall be subject to inspection and a 30-day testing period by the procuring agency. Contractor equipment which is found to not meet the

specifications or other requirements of the purchase agreement may be rejected and returned to the vendor at no cost (including return transportation) by the procuring agency. Unless otherwise notified or mutually agreed, acceptance shall become effective at the end of the 30-day testing period. Such acceptance shall not be conclusive of complete conformance in all respects to the contract specifications and other requirements, or the nonexistence of potential latent defects.

When Used: In solicitations for computer hardware requiring the integration of multiple components for utilization. Specific certification/performance criteria should be stated either in the specification or as a part of this provision.

2. **CONFIDENTIALITY (Commonwealth):** The Commonwealth agrees that neither it nor its employees, representatives, or agents shall knowingly divulge any proprietary information with respect to the operation of the software, the technology embodied therein, or any other trade secret or proprietary information related thereto, except as specifically authorized by the contractor in writing or as required by the Freedom of Information Act or similar law. It shall be the contractor's responsibility to fully comply with § 2.2-4342F of the *Code of Virginia*. All trade secrets or proprietary information must be identified in writing or other tangible form and conspicuously labeled as "proprietary" either prior to or at the time of submission to the Commonwealth.

   CONFIDENTIALITY (Contractor): The contractor assures that information and data obtained as to personal facts and circumstances related to patients or clients will be collected and held confidential, during and following the term of this agreement, and will not be divulged without the individual's and the agency's written consent. Any information to be disclosed, except to the agency, must be in summary, statistical, or other form which does not identify particular individuals. Contractors and their employees working on this project will be required to sign the Confidentiality statement in this solicitation.

   When Used: Solicitations for commercially developed software that has been patented, copyrighted, otherwise protected by law, or when it is anticipated the vendor may claim that the software contains trade secrets or proprietary information.

3. **DEFINITION - EQUIPMENT:** As used herein, the terms equipment, product, or system shall include hardware and software (when applicable) and any materials or supporting documentation. Such documentation may include but is not limited to: users' guides, operations manuals with part lists, copies of all applicable warranties, and any other pertinent information necessary for the proper operation and maintenance of the equipment being acquired.

   When Used: In solicitations for hardware and software to assure that the Commonwealth receives all supporting materials needed for utilization and maintenance of the purchased equipment.

   DEFINITION - SOFTWARE: As used herein, the terms software, product, or software products shall include all related materials and documentation whether in machine readable or printed form.

   When Used: In solicitations for software to assure that the Commonwealth receives all materials, including source code (when appropriate), supporting documentation, and user's information related to utilization of the software being acquired.

4. **DEMONSTRATIONS:** By submitting a bid or proposal, the bidder or offeror certifies that the specified equipment is in productive use and capable of demonstration in the proposed configuration. The Commonwealth reserves the right to require bidders or offerors to demonstrate the functionality of proposed equipment to its satisfaction prior to making an award decision. Such demonstration is intended to show that a vendor's products will perform in a completely satisfactory manner and that they will meet or exceed the performance specifications contained in the solicitation. Failure by a vendor to promptly comply with a request for demonstration could result in their bid being rejected. Failure to reject shall not relieve the vendor of its obligation to fully comply with all requirements of the contract.

   When Used: Equipment purchases in which the agency has a concern that proposed equipment may not be currently available or capable of performing as promised.

5. **EQUIPMENT ENVIRONMENT:** Environmental specifications for any equipment to be delivered under the resulting contract shall be furnished in writing along with the vendor's bid or proposal, should any such requirements be applicable. These specifications must be in sufficient detail to permit all installed equipment to function efficiently

from an environmental perspective. Unless otherwise stated in the solicitation, it will be the procuring agency's responsibility to prepare the site at its own expense to meet the environmental specifications provided.

When Used: For equipment purchases when it is anticipated that the equipment must function in a controlled environment, i.e., a regulated temperature or humidity range, or the absence of electromagnetic interference.

6. **EXCESSIVE DOWNTIME:** Equipment or software furnished under the contract shall be capable of continuous operation. Should the equipment or software become inoperable for a period of more than 24 hours, the contractor agrees to pro-rate maintenance charges to account for each full day of inoperability. The period of in operability shall commence upon initial notification. In the event the equipment or software remains inoperable for more than __ consecutive calendar days, the contractor shall promptly replace the equipment or software at no charge upon request of the procuring agency. Such replacement shall be with new, unused product(s) of comparable quality, and must be installed and operational within __days following the request for replacement.

   When Used: In solicitations for hardware or software to be used on a continuous basis to support essential activities, and the contractor is responsible for providing full service maintenance.

7. **LATEST SOFTWARE VERSION:** Any software product(s) provided under the contract shall be the latest version available to the general public as of the due date of this solicitation.

   When Used: For purchases where other than the latest available version of a software package is not acceptable.

8. **LIMITATION OF USE:** The Commonwealth's right to use computer software developed entirely at private expense may be limited by the contractor as stipulated in this contract. Notwithstanding any provision to the contrary however, the Commonwealth shall have at a minimum: unlimited use of the software on the equipment for which it is purchased; use of the software on a secondary system for backup purposes should the primary system become unavailable, malfunction, or is otherwise rendered inoperable; use of the software at another Commonwealth site should the system be entirely transferred to that location; the right to make a backup copy for safekeeping; the right to modify or combine the software with other programs or materials at the Commonwealth's risk; and the right to reproduce any and all documentation provided such reproduction is for the sole use of the Commonwealth. These rights are perpetual and irrevocable; in the event of any actual or alleged breach by the Commonwealth, the contractor's sole remedy shall be to pursue a monetary claim in accordance with § 2.2-4363 of the *Code of Virginia*.

   When Used: In solicitations which will result in the acquisition of commercially developed software, when the agency intends to use such software to support critical activities or functions.

9. **MAINTENANCE:** Upon expiration of the specified warranty period and at the Commonwealth's option, the contractor shall provide up to _____ additional one-year periods of on-site maintenance (including labor, parts, and travel) at the prices set forth in the pricing schedule. Maintenance shall not include external electrical work, providing supplies, and adding or removing accessories not provided for in the contract. Maintenance shall also not include repairs of damage resulting from: acts of God, transportation between state locations, negligence by state personnel, or other causes not related to ordinary use in the production environment in which installed. Each successive year of maintenance may be ordered by the Commonwealth in writing at least ___ days prior to expiration of the existing maintenance period.

   When Used: In solicitations for computer hardware and software, when maintenance services beyond the basic warranty period are desired, and such extended maintenance service is included in the solicitation's pricing schedule. This clause should be used in conjunction with one of the "service period" clauses. NOTE: The specific maintenance requirements or duties must be stated either in the specifications or as a separate condition of the contract.

10. **NEW EQUIPMENT:** Unless otherwise expressly stated in this solicitation, any equipment furnished under the contract shall be new, unused equipment.

    When Used: For purchases where used, reconditioned, or remanufactured equipment and components are not acceptable.

11. **OPERATIONAL COMPONENTS:** Unless otherwise requested in the solicitation, stated equipment prices shall include all cables, connectors, interfaces, documentation for all components, and any other items necessary for full

systems operation at the user site. This does not include consumable supplies such as paper, tapes, disks, etc., unless such supplies are expressly identified in the pricing schedule.

When Used: For system purchases requiring incidental hardware for the interconnection of system components.

12. **OWNERSHIP OF INTELLECTUAL PROPERTY:** All copyright and patent rights to all papers, reports, forms, materials, creations, or inventions created or developed in the performance of this contract shall become the sole property of the Commonwealth. On request, the contractor shall promptly provide an acknowledgment or assignment in a tangible form satisfactory to the Commonwealth to evidence the Commonwealth's sole ownership of specifically identified intellectual property created or developed in the performance of the contract.

    When Used: For purchases of software or applications development services which result in deliverables that were developed to specifically meet the state's performance requirements, or when state employees will participate in the creation or invention of any copyright or patentable material.

13. **PRODUCT SUBSTITUTION:** During the term of any contract resulting from this solicitation, the vendor is not authorized to substitute any item for that product and/or software identified in the solicitation without the prior written consent of the contracting officer whose name appears on the front of this solicitation, or their designee.

    When Used: Purchases where the vendor will be responsible for maintenance after the sale, and the agency desires to protect against item substitutions.

14. **QUALIFIED REPAIR PERSONNEL:** All warranty or maintenance services to be performed on the items specified in this solicitation as well as any associated hardware or software shall be performed by qualified technicians properly authorized by the manufacturer to perform such services. The Commonwealth reserves the right to require proof of certification prior to award and at any time during the term of the contract.

    When Used: In solicitations for hardware or software when the performance of warranty/maintenance must be performed by qualified personnel so as not to invalidate any warranty or support provided by the product manufacturer.

15. **RELOCATION OF EQUIPMENT:** Should it become necessary to move equipment covered by the contract to another location, the Commonwealth reserves the right to do so at its own expense. If contractor supervision is required, the Commonwealth will provide prior written notice of the move at least thirty (30) days in advance, in which case the contractor shall provide the required services and be reasonably compensated by the Commonwealth. Both the compensation to be paid and any adjustment to the maintenance terms resulting from the move shall be as mutually agreed between the parties. Regular maintenance charges shall be suspended on the day the equipment is dismantled and resume once the equipment is again certified ready for operational use.

    When Used: In solicitations for the acquisition of major computer components or systems for which the contractor is normally the sole provider of maintenance services.

16. **RENEWAL OF MAINTENANCE:** Maintenance of the hardware or software specified in the resultant contract may be renewed by the mutual written agreement of both parties for an additional ____ one-year period(s), under the terms and conditions of the original contract except as noted herein. Price changes may be negotiated at time of renewal; however, in no case shall the maintenance costs for a succeeding one-year period exceed the prior year's contract price(s), increased or decreased by more than the percentage increase or decrease in the _____ category of the CPI-W section of the US Bureau of Labor Statistics Consumer Price Index, for the latest twelve months for which statistics are available.

    When Used: In solicitations for hardware or software where extended maintenance beyond the warranty period is not included in the pricing schedule, but the agency wishes to retain the option to acquire such maintenance services with a pre-established cap on the future cost of such services.

17. **REPAIR PARTS:** In the event that the performance of maintenance services under the contract results in a need to replace defective parts, such items may only be replaced by new parts. In no instance shall the contractor be permitted to replace defective items with refurbished, remanufactured, or surplus items without prior written authorization of the Commonwealth.

When Used: In solicitations for computer hardware that require maintenance after the sale, and the agency wishes to have defective parts replaced only by new parts.

18. **SERVICE PERIOD (EXTENDED):** Due to the criticality of the applications for which the equipment and/or software is purchased, the contractor shall provide 24 hours a day, 7 days a week, maintenance support, including state holidays. On-site response time shall be within ___ hours following initial notification. All necessary repairs or corrections shall be completed within ___ hours of the initial notification.

    When Used: In solicitations for hardware or software when it is essential that the equipment remain in continuous operation due to the criticality of the process or function for which it was obtained.

19. **SERVICE PERIOD (ROUTINE):** Contractor shall provide 24 hour toll-free phone support with a ___ hour return call response time. On-site maintenance services shall carry a ___ hour response time following initial notification and be available during the normal working hours of 8 A.M. to 5 P.M. Monday through Friday, excluding state holidays. All necessary repairs or corrections shall be completed within ___ hours of the initial notification.

    When Used: In solicitations for hardware or software which require regular maintenance support but which are not of such a critical nature as to require expeditious response times or after hours support.

20. **SERVICE REPORTS:** Upon completion of any maintenance call, the contractor shall provide the agency with a signed service report that includes, at a minimum: a general statement as to the problem, action taken, any materials or parts furnished or used, and the number of hours required to complete the repairs.

    When Used: In solicitations requiring maintenance services when the agency intends to maintain detailed service records. This clause should always be included in any solicitation where maintenance is to be performed on a time and materials basis.

21. **SOFTWARE UPGRADES:** The Commonwealth shall be entitled to any and all upgraded versions of the software covered in the contract that becomes available from the contractor. The maximum charge for upgrade shall not exceed the total difference between the cost of the Commonwealth's current version and the price the contractor sells or licenses the upgraded software under similar circumstances.

    When Used: In solicitations for the purchase of computer software when the agency desires the opportunity to acquire future upgrades as they become available, and the availability of upgrades is not a condition stated elsewhere in the contract.

22. **SOFTWARE DISPOSITION:** Unless otherwise instructed by the contractor, the Commonwealth shall render unusable all copies of software acquired under the contract within thirty (30) days of termination of its license, except that the Commonwealth does reserve the right to retain one copy of the software for archival purposes when appropriate.

    When Used: In solicitations for software when it is anticipated that the software license will only be maintained for a limited period of time.

23. **SOURCE CODE:** In the event the contractor ceases to maintain experienced staff and the resources needed to provide required software maintenance, the Commonwealth shall be entitled to have, use, and duplicate for its own use, a copy of the source code and associated documentation for the software products covered by the contract. Until such time as a complete copy of such material is provided, the Commonwealth shall have exclusive right to possess all physical embodiments of such contractor owned materials. The rights of the Commonwealth in this respect shall survive for a period of twenty (20) years after the expiration or termination of the contract. All lease and royalty fees necessary to support this right are included in the initial license fee as contained in the pricing schedule.

    When Used: In solicitations for the purchase of computer software when it is necessary to assure either the availability of program support or the opportunity to provide internal program support.

24. **TERM OF SOFTWARE LICENSE:** Unless otherwise stated in the solicitation, the software license(s) identified in the pricing schedule shall be purchased on a perpetual basis and shall continue in perpetuity. However the Commonwealth reserves the right to terminate the license at any time, although the mere expiration or termination of

this contract shall not be construed as an intent to terminate the license. All acquired license(s) shall be for use at any computing facilities, on any equipment, by any number of users, and for any purposes for which it is procured. The Commonwealth further reserves the right to transfer all rights under the license to another state agency to which some or all of its functions are transferred.

When Used: In all software procurements when the agency intends to acquire unlimited rights to use computer software for an indefinite amount of time.

25. **THIRD PARTY ACQUISITION OF SOFTWARE:** The contractor shall notify the procuring agency in writing should the intellectual property, associated business, or all of its assets be acquired by a third party. The contractor further agrees that the contract's terms and conditions, including any and all license rights and related services, shall not be affected by the acquisition. Prior to completion of the acquisition, the contractor shall obtain, for the Commonwealth's benefit and deliver thereto, the assignee's agreement to fully honor the terms of the contract.

    When Used: In solicitations for commercial software when it is necessary to maintain continuity of support even in the event of sale or transfer of rights to another party.

26. **TITLE TO SOFTWARE:** By submitting a bid or proposal, the bidder or offeror represents and warrants that it is the sole owner of the software or, if not the owner, that it has received all legally required authorizations from the owner to license the software, has the full power to grant the rights required by this solicitation, and that neither the software nor its use in accordance with the contract will violate or infringe upon any patent, copyright, trade secret, or any other property rights of another person or organization.

    When Used: All solicitations for the procurement of computer software for the purpose of assuring the agency only acquires software from an entity legally authorized to market it.

27. **WARRANTY AGAINST SHUTDOWN DEVICES:** The contractor warrants that the equipment and software provided under the contract shall not contain any lock, counter, CPU reference, virus, worm, or other device capable of halting operations or erasing or altering data or programs. Contractor further warrants that neither it, nor its agents, employees, or subcontractors shall insert any shutdown device following delivery of the equipment and software.

    When Used: In solicitations for hardware or software when the agency wishes to protect both its purchase and existing information resources from possible damage or destruction due to computer viruses or other shutdown devices.

28. **WARRANTY OF SOFTWARE:** The contractor warrants the operation of all software products for a period of ___months from the date of acceptance. During the warranty period, the contractor shall provide ____ hour toll free phone support and all patches, fixes, revisions, updates, upgrades, and minor releases to both the software and its supporting documentation. In addition, the contractor shall provide a two hour return call response time and complete all necessary patches/fixes within _____ hours of initial notification.

    When Used: In software purchases where the software will be used to support critical agency activities that cannot endure extended periods of downtime. NOTE: The warranty requirements or duties are not cited and need to either be added to this clause or included in the specification.

29. **YEAR 2000 COMPLIANT (AND ENABLEMENT) WARRANTY:** The contractor warrants that all software, firmware and hardware product(s) delivered to the Commonwealth of Virginia under any agreement, and which is used in accordance with the product documentation provided by the contractor, shall be 4-digit Year 2000 compliant (or approved enabled). All products shall accurately process all date-change data from start to finish, including, but not limited to, twentieth, twenty-first centuries and leap year calculations.

    Any product provided under this Agreement discovered not to be compliant after acceptance shall be corrected by the contractor at no additional cost to the Commonwealth. Failure to correct the deficiency shall subject the contractor to default action.

    INCLUDE THE FOLLOWING PARAGRAPH WHEN THE REQUIREMENT IS FOR A SYSTEM AND/OR CUSTOMIZED SOFTWARE WHICH WILL BE USED IN COMBINATION WITH AGENCY OWNED PRODUCT(S) OR SOURCE(S) OF DATA AND WHICH ARE IDENTIFIED IN THE SOLICITATION:

The contractor shall not be responsible for correcting any product(s) (e.g., hardware, software, firmware) which were not provided under this agreement or for correcting any previously owned Commonwealth products that are used in combination with the contractor's product(s); however, if this solicitation identifies any product or sources of data to be used in combination with the product(s) delivered under the resulting agreement, the contractor shall be responsible for providing all necessary interface(s) or other appropriate means for assuring that date data output from such other product(s) or source(s) is automatically corrected before being processed by the product(s) or system provided under this agreement.

When Used: In all solicitations for software and computer and microprocessor based products, including, but not limited to, control systems, security systems, fire alarm systems, telecommunications systems, etc. CAUTION: Should the above paragraph be included, ensure that the agency owned product(s) or source(s) of data are identified in the solicitation. Space must be provided in the pricing schedule for the bidder/offeror to itemize any additional product and/or cost to meet this requirement.

30. **NONVISUAL ACCESS TO TECHNOLOGY**: All information technology which, pursuant to this agreement, is purchased or upgraded by or for the use of any State agency or institution or political subdivision of the Commonwealth (the "Technology") shall comply with the following nonvisual access standards from the date of purchase or upgrade until the expiration of this agreement:

(i) effective, interactive control and use of the Technology shall be readily achievable by nonvisual means;

(ii) the Technology equipped for nonvisual access shall be compatible with information technology used by other individuals with whom any blind or visually impaired user of the technology interacts;

(iii) Nonvisual Access Technology shall be integrated into any networks used to share communications among employees, program participants or the public; and

(iv) the Technology for nonvisual access shall have the capability of providing equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired.

Compliance with the foregoing nonvisual access standards shall not be required if the head of the using agency, institution or political subdivision determines that (i) the Technology is not available with nonvisual access because the essential elements of the Technology are visual and (ii) nonvisual equivalence is not available.

Installation of hardware, software or peripheral devices used for nonvisual access is not required when the Technology is being used exclusively by individuals who are not blind or visually impaired, but applications programs and underlying operating systems (including the format of the data) used for the manipulation and presentation of information shall permit the installation and effective use of nonvisual access software and peripheral devices.

If requested, the Contractor must provide a detailed explanation of how compliance with the foregoing nonvisual access standards is achieved and a validation of concept demonstration.

The requirements of this Paragraph shall be construed to achieve full compliance with the Information Technology Access Act, §§ 2.2-3500 through 2.2-3504 of the *Code of Virginia*.

When Used: In all contracts for the procurement of electronic information processing hardware and software, including telecommunications. The head of the using agency may, with respect to nonvisual access software or peripheral devices, approve the exclusion of this clause only to the extent that the cost of such software or devices for the using agency would increase the total cost of the procurement by more than five percent. All exclusions of this clause from any contract must be reported to the Secretary of Technology no later than 30 days after the close of the fiscal year in which the contract was awarded.

APPENDIX C

PROCUREMENT INFORMATION MEMORANDUM (PIM)
RECORD OF CHANGES

PIM NUMBER	TOPIC	DATE FILED	INITIALS
98-001	26 topics, corrections and additional changes	7/1/99	
98-002	Electronic commerce	8/2/99	
98-003	Technology Access clause	1/13/00	
98-004	Prohibited Participation. Air/Rail Travel/SPCC	3/30/00	
98-005	Limitation of Liability clause #59	5/8/00	
98-006	Increased general delegation and small purchase limit to $50,000	7/1/00	
98-007	Unsolicited Proposals	12/20/00	
98-008	Chapter 14 introduced. VDOT fuel, Faith-based term	7/1/01	
98-009	eVA General and Special Terms and Conditions	10/9/01	
98-010	Replaced Chapter 14, revised General Term X & Special Term #59	2/14/02	
98-011	Posting, Advertising VBO. Bonds changed to BCOM manual	7/1/02	
98-012	DIT/DTP Sole Source changes	7/23/02	
98-013	SWAM thresholds to 6 sources $5K-$15K, 8 sources $15K-$50K, 9 sources over $50K. SS approval by agency head. All references to DIT and DTP throughout APSPM are no longer valid effective 7/1/03. Follow VITA Guidelines for technology purchases.	7/1/03	
98-014	Changed SS delegation to allow agency head or designee. Allows additional bids for same procurement. Describes exempt (R02) categories. Clarifies grant and medical services exemptions.	11/12/03	
98-015	Clarifies medical services exemptions and adds financing exemption.	11/21/03	
98-016	Introduces Best Value Acquisition, Alternative Dispute Resolution. Requires QQ for bids or quotes over $5K-$30K and processing all procurement transactions through eVA.	7/16/04	
98-017	SWAM sections revised to implement the memorandum on SWAM procurement dated July 30, 2004, from the Governor's Chief of Staff. Thresholds changed – $0-$5,000; $5,000-$50,000 & Over $50,000. Single quote from 1 W/M; may award to other than lowest bidder or highest ranked offeror; QQ and Advertising to $50,000.	8/4/04	
98-018	Authorizes the use of small business set-asides. If an award is made to other than the lowest bidder or best offeror under a remedial plan, the award may be made to the next lowest responsive and responsible minority or women-owned bidder or	10/8/04	

	next best minority or women-owned offeror.		
98-019	The section on Sheltered Workshops is replaced with Nonprofit Sheltered Workshops and Nonprofit Organizations; provides a link and new definition. Requirement to notify vendors of a cancelled solicitation in eVA is removed. The section on Preferences is revised to require reciprocal preferences; provides a definition of absolute preference and a link to a listing of state preference laws. Removes reference to a "remedial plan" in order to award to other than the lowest responsive and responsible bidder or highest ranking offeror. Annex 7-B is revised to provide an example of SWAM Utilization as an evaluation criteria. Annex 7-G is added, Plans for Utilization of SWAM Businesses. Information on use of the SPCC is deleted under Chapter 5 and moved to 10.11 under Payment and Invoice Processing. A new section 14.14 is added on the use of the SPCC in eVA.	7/1/05	
98-020	Regulations to implement the eVA Business, modification of existing contracts with new Gen term X., deleted requirement for TPA, Availability of Funds clause is moved to General Ts & Cs, documentation of single quote in eMall is required, and 2006 legislative changes including allowing multiple awards for professional services.	7/1/06	
98-021	Implements EO 33. Small purchases are set-aside for DMBE-certified small businesses. May award to other than the lowest bidder or highest offeror over $50,000 if appropriate Special Term is used in the solicitation. A minimum of 20% of RFP evaluation points are awarded based on offerors' Small Business Subcontracting Plan; revised Annex 7-G. The use of cooperative contracts is not authorized when there are Commonwealth of Virginia, DMBE-certified small businesses available to provide the goods or furnish the services at fair and reasonable prices. Set-Asides clause is moved to General Ts& Cs.	10/2/06	
98-022	Provides further guidance, changes and clarification of policy related to implementation of EO33. Bid, performance, and payment bonds for non-construction procurements are included. Chapter on Surplus is revised in its entirety.	7/3/07	
98-023	Expands guidance on the responsibility of agencies to comply with the Code of Virginia. Contracts signed by individuals without the authority to do so and/or contracts in violation of the VPPA or regulations promulgated by DGS/DPS are considered void. Clarifies guidance on professional services and construction procurements.	12/7/07	
98-024	Adds section to give guidance on safeguarding personally identifiable information and removes such information from forms. Changes brand name or "equal" to brand name or "equivalent" throughout manual. Replaces COMPLAINT TO STATE VENDOR form with PROCUREMENT COMPLAINT FORM. Makes corrections and additions to several other topics to reflect changes in policies and/or law.	7/1/08	
98-025	Adds Section 1.2(f) to conform the *APSPM* to comply with the Chief of Staff Memo of October 8, 2008. All of DPS's previous and future grants of direct purchasing authority shall be construed to allow direct purchasing only if the purchase is made through DPS's statewide electronic procurement system (eVA), beginning at the point of requisitioning, unless DPS gives or has given express written authorization for the purchase to be made through a non-eVA process or technology application.	6/30/09	
98-026	Implements EO 82. Makes corrections and additions to several other topics to reflect changes in policies and/or law.	7/9/09	
98-027	Adds guidance regarding vendor authorization to conduct business in the Commonwealth. Revises various Green preferences. Replaces Chapter 12, State and Federal Surplus Property with updated, user-friendly version. Makes corrections and additions to several other topics to reflect changes in policies and/or law.	7/8/09	

Suggested Changes

Your assistance is sought in identifying areas where changes may be needed. Whether concept changes or one word changes to the *APSPM*, DGS/DPS welcomes suggestions for clarification, corrections, or policy and procedure modifications. Please copy this form and use it to submit your suggestions for consideration. Forms may be mailed to DGS/DPS, P. O. Box 1199, Richmond, VA 23218-1199, sent by fax to 804-786-5712, or by e-mail to eugene.anderson@dgs.virginia.gov. Use additional sheets as necessary. If you would like to discuss your suggestions, call 804-786-1600.

***APSPM* section number affected**: _____

Suggestion: _____

_____

_____

_____

_____

Why the change is needed: _____

_____

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_____

_____

***APSPM* section number affected:** _____

Suggestion: _____

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Why the change is needed: _____

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_____

_____

(Optional)

Submitted by: _____ Telephone: _____

Agency: _____

AGENCY MANUAL, VENDORS MANUAL and CODE OF VIRGINIA CROSS REFERENCE

	APSPM	VENDORS MANUAL	CODE OF VIRGINIA
A			
Absolute Preference	3.14a; Appendix A		2.2-4324B
Acceptable Bid/Proposal Signatures	3.1g		
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