

December 7, 2007

MEMORANDUM

TO: Purchasing Offices
Departments, Institutions, Agencies
Commonwealth of Virginia

FROM: Ron Bell
Director

SUBJECT: Procurement Information Memoranda (PIM) #98-023

Enclosed is PIM #98-023, effective immediately, representing changes to the September 1998 edition of the *Agency Procurement and Surplus Property Manual (APSPM)*. The Summary of Changes below is in the order of the changes to the *APSPM*. All changes to the *APSPM* are incorporated into a web-based *APSPM*, which is downloadable from the eVA and Division of Purchases and Supply websites at <http://www.eva.virginia.gov> and <http://dps.dgs.virginia.gov/dps/>, respectively. The version containing changes as a result of this PIM will be posted to the website within the next week. The location of text changes is indicated by an arrow in the margin (→) with the corresponding PIM 98-023 number identified next to the changes. All arrows indicating previous changes are removed. Appendix C contains a log recording the PIM number and date of revision. This memorandum and the corresponding PIM #98-023 should be filed in the back of the Appendix C log.

APSPM Cite	Summary of Changes
1.1	Expands guidance on the responsibility of state agencies and institutions to comply with the Code of Virginia which includes that intentional violations 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. Additionally, the state 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 the Code. Contracts signed by individuals without authority to do so and/or contracts in violation of the VPPA or regulations promulgated by DGS/DPS are considered void. Individuals awarding such contracts may be held personally liable for payment to the contractor.
3.14 c.	In accordance with the Governor's Executive Order 48, requires agencies to purchase only recycled paper for use in office machines except where equipment limitations preclude the use of recycled paper.

3.14 g.	In accordance with the Governor's Executive Order 48, requires state agencies to purchase or lease Energy Star or equivalent rated appliances and equipment for all classifications for which an Energy Star or equivalent rating is available. Provides Energy Star's website (http://www.energystar.gov) for listing of available classifications. Additionally, requires that all new office equipment purchased or leased that uses paper shall be recycled paper-compatible.
3.19	Updates the DGS contact for information on recycled goods. The phone number is 804-786-0103.
4.21	Deletes sentence on procurements involving both professional and nonprofessional services that stated the procedure shall be determined by which service predominates in the solicitation.
4.22	Adds an economist procured by the State Corporation Commission to the list of professional services.
4.23 a.	Deletes sentence referencing guidelines for professional services. Directs agencies to obtain specific guidance from the appropriate agency/division such as DGS/Division of Engineering and Buildings for services such as architecture, professional engineering, landscape architecture, land surveying and the Attorney General's Office for legal services. A website link is provided for the <i>Construction and Professional Services Manual</i> , issued by DGS/Division of Engineering and Buildings.
4.23 b.	Adds an economist procured by the State Corporation Commission to the list of professional services. Deletes sentence referencing guidance on professional and nonprofessional services contained in section 4.21.
4.23 c.	Changes to advise that agencies should contact the Attorney General's Office for legal services.
4.23 d.	Deletes reference to 4.23 e. and references the <i>Code of Virginia</i> regarding competitive negotiation for procurement of professional services.
4.23 e.	Clarifies that the small purchase threshold for the procurement of professional services is \$30,000 and that professional services shall be procured in accordance with the <i>Code of Virginia</i> , § 2.2-4303H. Additionally, architectural, landscape architectural, land surveying, and professional engineering services shall be purchased in accordance with the <i>Construction and Professional Services Manual</i> .
4.24 a. (2)	Provides definition of "capital project" which updates the term and definition known as "capital outlay project." "Capital project" is further defined in the <i>Construction and Professional Services Manual</i> .
4.24 c. (2)	Deletes additional guidance on determining architectural and engineering services and what procurement method should be used. The <i>Construction and Professional Services Manual</i> provides instructions.
4.24 c. (3)	Provides additional information on determining which manual (the <i>APSPM</i> or the <i>Construction and Professional Services Manual</i>) and corresponding procedures to use for construction procurements. 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 <i>APSPM</i> and the <i>VPPA</i> .
4.24 g.	Deletes additional guidance on determining what procurement method should be used for systems necessary to make a building functional. The <i>Construction and Professional Services Manual</i> provides instructions.

11.2	Clarifies that appeals procedures must be consistent with the <i>VPPA</i> , 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. Deletes the requirement that appeal procedures be established by agency heads; thereby allowing agency heads flexibility in determining who can establish appeals procedures.
11.2 d.	Clarifies that bidders or offerors have the ability to submit an appeal within ten (10) days of the written decision by invoking administrative procedures under § 2.2-4365 of the Code of Virginia, if administrative procedures are available.
14.9 b. 23 (b) and (c)	Provides additional exclusions to the use of eVA for group travel up to \$50,000 per group travel event and group travel-related lodging regardless of the amount.

Changes to each of the chapters, appendices, index, and changes to the searchable whole *APSPM* version are available on the eVA website, under the *APSPM* Manual. Changes to the *Vendors Manual* are also available on the eVA website.

To print a hard copy of the manual, save the chapters and appendices to your hard drive or network and print from there. Printing directly from the website will result in lost formatting. Use the “whole *APSPM*” for text searches. If you should have questions about the changes, please contact Debbie Field at 804-786-1074 or debbie.field@dgs.virginia.gov.

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.

3.14 **Preferences**

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 in accordance with Executive Order 48, dated April 5, 2007.

g. **Appliances and Equipment.** Commonwealth agencies 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 48, dated April 5, 2007. 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 in accordance with Executive Order 48, dated April 5, 2007.

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*, § 2.2-4323C).

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.

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).

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.

<u>Service</u>	<u>Agency</u>
Architecture, Professional Engineering Landscape Architecture, Land Surveying website- http://bcom.dgs.virginia.gov/RDetailPg.aspx?I_PAGE_ID=251	DGS/Division of Engineering and Buildings
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 \$30,000.

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 \$30,000. 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.
- 4.24 a. Definitions
- (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*.
 - c. By agreement between the Division of Engineering and Buildings (DEB), and the Division of Purchases and Supply:
 - (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*.
 - 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.

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 ten 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.

- 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).

14.9 **Use of eVA and Exclusions:**

- a. **Use of eVA.**
- 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.

23. (a) Individual travel and lodging
23. (b) Group (i.e., two or more individuals) travel up to \$50,000 per group travel event
23. (c) Group travel-related lodging