

July 9, 2009

MEMORANDUM

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

FROM: Ron Bell
Director

SUBJECT: Procurement Information Memoranda (PIM) #98-026

Enclosed is PIM #98-026, effective July 9, 2009, 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>. The full *APSPM* version containing changes as a result of this PIM will be posted to the website. The location of text changes is indicated by an arrow in the margin (→) with the corresponding PIM #98-026 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 #98-026 should be filed in the back of the Appendix C log.

APSPM Cite	Summary of Changes
1.5 a.	Clarifies dollar threshold by replacing “under \$5,000” with “up to \$5,000”
2.1 a.	Removes language about optional use contracts. Clarifies that vendors who sell or attempt to sell goods or services that are under a mandatory contract with another vendor may be suspended or debarred. Clarifies mandatory use of eVA for all orders placed through mandatory contracts.
2.1 b.	Inserts <i>Code of Virginia</i> citation for Virginia Correctional Enterprises mandatory source requirement.
2.1 f.	Updates OGC mandatory source requirement.
2.2 a.	Adds language about optional use contracts. Clarifies mandatory use of eVA for all orders placed through DGS/DPS optional use term contracts.
3.4	Adds locksmith services to the list of services requiring licensing by the Department of Criminal Justice Services.
3.9	Adds additional guidance on federal grants and incorporates by reference guidance on American Recovery and Reinvestment Act (ARRA) funded purchases.
3.14 g.	Adds reference to Executive Order 82.
3.14 h.	Adds preference for Biodiesel Fuel beginning July 1, 2010.
3.14 i.	Adds item to prohibit purchases of individual serving-sized plastic water containers as set forth in Executive Order 82.
4.3.d (5)	Deletes reference to American Express.
4.16	Adds item e. to include the environmental standards for conferences and other meetings set forth in Executive Order 82.
4.23 b.	Changes the requirement for posting professional services solicitations from “over \$30,000” to “over \$50,000.”
4.23 e.	Replaces “\$30,000” with “\$50,000” as the small purchase threshold for professional services.
4.23 f.	Deletes procedures for evaluation of professional services and provides reference to the <i>Code of Virginia</i> §2.2-4301.3.a. for such guidance.
5.7 a.	Inserts paragraph to provide the general requirements for unsealed proposals.
5.10 d.	Corrects reference to <i>APSPM</i> section.
7.3 c.	Inserts the words “by the evaluation panel” in first sentence to clarify that the evaluation panel makes the determination that only one offeror is fully qualified, or that one offeror is CLEARLY more highly qualified than the others under consideration.
Annex 7 B Step 11, I.	Adds a final sentence reading “The determination shall be signed by the agency head or designee”.
8.2	Clarifies that sole source procurements for entertainment do not require DGS/DPS approval and that all other sole source procurements for non-technology goods and services over \$50,000 must be approved by DGS/DPS.

10.11 b.	Makes two technical corrections changing “Policies” to the word “Policies” and changing CAPP manual reference from “20335” to “20355”.
Annex 13-C	Corrects phone number for Bid Receipt and Analysis.
14.5 e.	Inserts language which requires an agency to update award status in Quick Quote when an award action is taken or a “no award” decision is made.
14.9 c.	Changes section title to “ eVA Required Terms and Conditions ”. Removes the requirement to include Special Term and Condition 43, Price Escalation/De-escalation in all contracts. Adds language requiring the inclusion of Special Term and condition 59, eVA Business-To-Government Contracts and Orders . Note that it is still mandatory to include the eVA General Term and Condition X, eVA Business-To-Government Vendor Registration .
Appendix B Section I, Z	Clarifies that “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”.
Appendix B Section I	Adds General Term and Condition AA. Bid Price Currency requiring bid prices to be stated in US dollars unless otherwise specified in the solicitation.
Appendix B Section II, 62	Adds Continuity of Services Special Term and Condition 62 to be used to effect an orderly and efficient transition of a contractor to its successor.
Appendix B Section II, 63	Adds Product Availability/Substitution Special Term and Condition 63 to be used to limit/control substitution of products in term contracts for goods.

Changes incorporating all PIMS are reflected in the *APSPM* full version, which will be made available on the eVA website, under the *APSPM* Manual link. Changes to the *Vendors Manual* are also available on the eVA website.

To print a copy of the manual, save it to your hard drive or network and print from there. Printing directly from the website may result in lost formatting. If you should have questions about the changes, please contact Keith Gagnon at 804-786-0324 or keith.gagnon@dgs.virginia.gov.

1.5

- a. Purchases up to \$5,000.

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.

- 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.

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.

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:

<u>Service</u>	<u>Regulatory Agency</u>
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 _____

- 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*, § 2.2-4343B). 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.

3.14 **Preferences**

- 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 and Executive Order 82, dated June 10, 2009. 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 and Executive Order 82, dated June 10, 2009.
- h. **Biodiesel Fuel.** Beginning on July 1, 2010, agencies and institutions other than public safety agencies shall procure only diesel 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 the cost of such procurement exceeds the cost of unblended diesel fuel by 5 percent or more. (Executive Order 82, dated June 10, 2009)
- i. **Individual Serving-Sized Plastic Water Containers.** No agency or institution shall procure water in individual serving-sized containers made of plastic except for use in emergencies or for safety and health reasons. (Executive Order 82, dated June 10, 2009)

4.3 **Preparing the Written Solicitation.**

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

(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.

4.16 **Conference Planning.**

- e. In selecting sites for conferences and other meetings that are to be held at places other than state facilities, agencies and institutions shall, after complying with procurement statutes and regulations, observe the following guidelines. For meetings attended by fewer than 50 people, agencies and institutions shall strive to use "Virginia Green" certified facilities. For meetings attended by 50 or more people, only "Virginia Green" certified facilities shall be used unless permission to select a different site has been granted by the Chief of Staff. In conducting meetings, agencies and institutions shall minimize the use of paper. When meals are served, disposable materials should be avoided to the greatest extent possible. Disposable materials that are used should be biodegradable or recyclable. (Executive Order 82, dated June 10, 2009)

4.23 **Professional Services.**

- 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.
- 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.

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.

5.10 **Blanket Purchase Agreements.**

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).

7.3 **Sealed Proposals - Receipt and Evaluation.**

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.

Annex 7-B

SAMPLE FORMAT AND STEP-BY-STEP PROCEDURES REQUEST FOR PROPOSAL (RFP)

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.

8.2 **Procurements Over \$50,000.**

Sole source procurements for entertainment (speakers, lecturers, musicians and performing artists) over \$50,000 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, using 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 must be included in the procurement file. In addition, a memorandum must be attached to the request which addresses the four points shown below. Such sole source procurements for entertainment do not require DGS/DPS approval. All other 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.
- 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.

10.11 **Payment and Invoice Processing.**

- 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.

Annex 13-C

Directory of Procurement Assistance

BID RECEIPT AND ANALYSIS

804-786-5415
804-786-8873

- 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.

14.9 **Use of eVA and Exclusions:**

- 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.

**APPENDIX B
SECTION I**

**REQUIRED GENERAL TERMS AND CONDITIONS
GOODS AND NONPROFESSIONAL SERVICES**

- 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.

**APPENDIX B
SECTION II**

**SPECIAL TERMS AND CONDITIONS
GOODS AND NONPROFESSIONAL SERVICES**

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.**