

July 9, 2012

MEMORANDUM

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

FROM: Ron Bell
Director

SUBJECT: Procurement Information Memoranda (PIM) #98-030

Enclosed is PIM #98-030, effective July 1, 2012, 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 website 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 #98-030 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 #98-030 should be filed in the back of the Appendix C log.

| APSPM Cite | Summary of Changes |
|-------------------|---|
| 1.4 b. | Replaces specific procedures and contacts for ordering IT goods and services with reference to VITA website for information. |
| 1.4 f. | Clarifies that Judicial and Legislative branch agencies are exempt from any rules and regulations as DGS/DPS may prescribe and provides those agencies an unlimited delegation of purchasing authority. |
| 2.1 b. | Deletes previous guidance on VCE written concurrences and waivers. Adds an exemption from buying from VCE when an identical item can be obtained at a verified lesser cost. |
| 2.1 h. | Adds exemption for Institutions of Higher Education from needing approval from fleet management to purchase vehicles. |
| 2.2 c. | Replaces “nonprofit sheltered workshops and nonprofit organizations” with “employment services organizations”. |
| Annex 2-A | Adds flowchart containing VCE exemption process. |
| 3.1 c. | Revises last sentence to extend the bid due date instead of the opening date when an addendum is issued. |
| 3.2 b. (1) | Adds an exception at the beginning of the sentence. Raises the payment and performance bond requirement minimum from \$250,000 to \$350,000 for transportation-related projects. |
| 3.2 b (3) | Changes the amount from \$250,000 to \$350,000 for transportation-related projects in which public bodies can require payment or performance bonds. |
| 3.2 b (6) | Adds section (6) clarifying requirements when a performance or payment bond is waived between \$250,000 and \$350,000 for transportation-related projects. |
| 3.4 b. | Updates Contractor License requirements for Class B and C contractors. |
| 3.18 c. | Adds guidance on minimizing the size and cost of newspaper advertisements. |
| 3.18 e. | Deletes \$50,000 reference for posting. |
| 3.27 | Adds statement to clarify that agencies shall not include personally identifiable information on purchase orders in eVA. Clarifies that agencies must redact other personally identifiable information in addition to social security numbers from contract files before files are disclosed to the general public. |
| 3.29 | Adds new section on Auctioning. |
| Annex 3-K | Adds example RFP newspaper advertisement. |
| 4.16 b. | Changes threshold for utilizing Conference Planning procedures from \$50,000 to \$30,000. |
| 4.16 b. 2a | Raises the number of contacts required from 3 to 4. |
| 4.16 c. | Changes threshold requiring a written solicitation from \$50,000 to \$30,000. |
| 5.3 a. | Clarifies that a written quotation is not required for over the counter SPCC transactions. |
| 5.6 b. | Deletes specific information on sourcing requirements. |
| 5.7 a. | Changes what a solicitation for unsealed proposals should include to what it shall include. |

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| 5.7 a. 1 | Adds that the procurement file for unsealed proposals shall be documented if not set-aside. Deletes specific information on sourcing requirements. |
| 5.7 a. 5 | Adds requirement to post Notice of Award for 10 days if a Notice of Intent to Award was not issued. |
| 5.8 | Deletes section on purchases for research and academic support. |
| Annex 5-F | Adds requirement to post Notice of Award for 10 days if a Notice of Intent to Award was not issued. |
| 6.1 | Deletes reference to Best Value concepts in competitive sealed bidding section. |
| Annex 6-D | Increases bond requirements threshold for construction procurements from over \$100,000 to over \$500,000. |
| Annex 6-I | Moves statement about certification to beginning. Adds code reference to definitions. |
| 7.2 d. | Replaces “factors” with “criteria” and clarifies that weights be published by the due date and time. |
| 7.2 i. | Changes threshold requiring advertisement from \$50,000 to any dollar threshold. |
| 7.5 i. | Changes \$50,000 threshold for newspaper advertisement of BVAs to any dollar amount. |
| Annex 7-B | Clarifies that evaluation criteria and point values be published by the due date and time. |
| Annex 7-E | Changes bond requirements in construction procurements from over \$100,000 to over \$500,000. |
| Annex 8-B, 5. | Changes threshold for posting sole source award notices from \$50,000 to any amount. |
| Annex 9-A, Step 1.a. | Revises last sentence to remove \$50,000 threshold for public posting. |
| 10.13 b. | Revises last sentence to state that an extension shall be in writing prior to expiration of current contract. |
| 12.7 b. 3 | Revises section to make it optional instead of mandatory that any public sale or auction of surplus materials be offered to political subdivisions of the Commonwealth (local governments and other public bodies), schools, and qualified non-profit 501(c) organizations. |
| 12.7 b. 9 | Adds “Other Methods of Disposal”. |
| 14.5 e. | Deletes specific information on sourcing requirements. |
| Appendix A | Replaces definition of “ Automated Data-Processing Equipment ” with “ Information Technology ”. |
| Appendix A | Replaces definition of “ Nonprofit Sheltered Workshops and Nonprofit Organizations Serving the Handicapped ” with “ Employment Services Organizations ”. |
| Appendix B, Section I, X | Updates General Term and Condition X. eVA BUSINESS-TO-GOVERNMENT VENDOR REGISTRATION , sections c and d to reflect a 12-month extension for the reduced eVA Vendor Transaction Fee. |
| Appendix B, Section II, 7. A | Updates When Used: to apply to any solicitation when bidding. |
| Appendix B, Section II, 17 | Updates Special Term and Condition 17, CONTRACTOR REGISTRATION , to change Class B Contractor Registration requirements from “\$7,500-\$120,000” to “\$10,000-\$120,000” and Class C Contractor Registration requirements from “\$1,000-\$7,500” to “\$1,000-\$10,000”. |
| Appendix B, Section II, 19 | Updates Special Term and Condition 19, DELIVERY , to re-write section and delete statement that delivery date may be a factor in making the award. |
| Appendix B, Section II, 59 | Updates Special Term and Condition 59, eVA BUSINESS-TO-GOVERNMENT CONTRACTS AND ORDERS , sections c and d to reflect a 12-month extension for the reduced eVA Vendor Transaction Fee. |
| Appendix B, Section II, 60 | Replaces language referring to “sheltered workshops” with “employment services organizations”. |
| Appendix B, Section III, 3. (a). | Updates Additional Term and Condition for Non-Capital Outlay Construction Projects, 3, LAWS AND REGULATIONS , to require Subcontractors and tradesman to have proper DPOR license. |
| Appendix B, Section III, 3. (f). | Adds an Additional Term and Condition for Non-Capital Outlay Construction Projects, 3, LAWS AND REGULATIONS , to add subsection (f) that mandates that bidders, offerors, contractors or subcontractors not be required to or prohibited from entering into contracts with labor organizations when contracting for construction, manufacturing, maintenance or operation of public works. |
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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 Suzanne Swinson at 804-225-3354 or suzanne.swinson@dgs.virginia.gov.

1.4 Administrative Exemptions

- b. **Acquisition of Information Technology and Telecommunications Equipment Goods and Services.** VITA has oversight and procurement responsibility for the purchase of information technology goods and services, including telecommunications equipment. Procedures for ordering IT goods and services can be found at <http://www.vita.virginia.gov>.

- f. **Purchases by Judicial Branch and Legislative Branch agencies.** Judicial and Legislative Branch agencies are exempt from any rules and regulations as DGS/DPS may prescribe (as permitted by *Code of Virginia*, § 2.2-1111 (c)) and have unlimited delegation of purchasing authority per *Code of Virginia*, § 2.2-1110.

2.1 Mandatory Sources.

- b. **Virginia Correctional Enterprises (VCE).**

Exemptions from VCE:

An agency may be granted an exemption from buying from VCE, with the consent of both the Director of Purchases and Supply and the Chief Executive Officer of VCE, in any case where the item does not meet the reasonable requirements of the agency, an identical item can be obtained at a verified lesser cost from the private sector, or the requisition made cannot be complied with due to insufficient supply, or otherwise. (*Code of Virginia*, § 53.1-48). See Annex 2-A for VCE exemption process.

- 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.

Institutions of Higher Education are not required to obtain approval from the Office of Fleet Management Services prior to purchasing a vehicle; however, the purchase is subject to the *Virginia Public Procurement Act* and the policies and procedures set forth in this Manual (*Acts of Assembly Chapter 781, 4-5.05*).

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

2.2 Nonmandatory Sources.

- c. **Employment Services Organizations (ESO).** (See definition in Appendix A.) State agencies may purchase selected goods and services from employment services organizations 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,

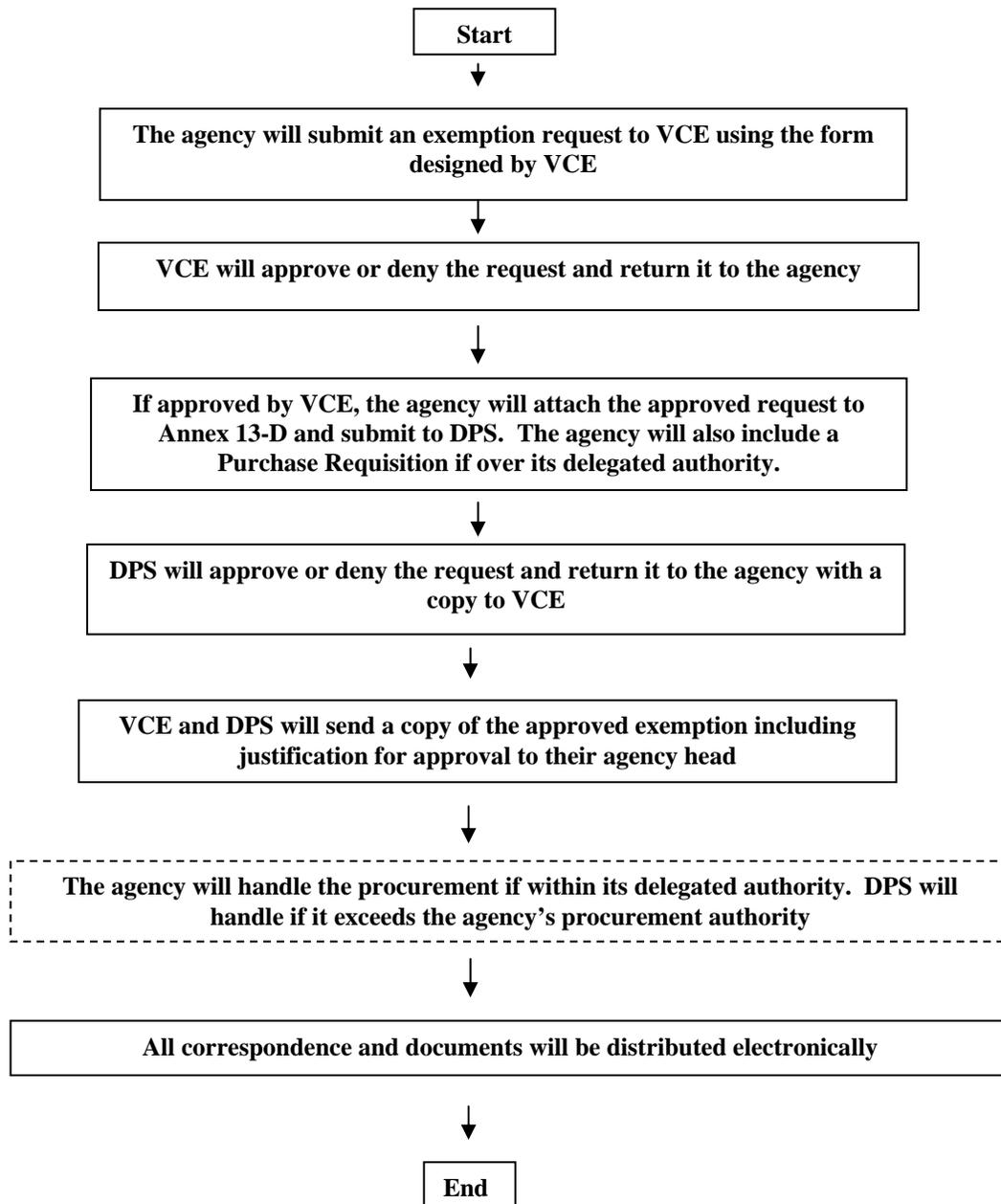
- (4) can be purchased within ten percent (10%) of fair market value. DGS/DPS deems fair market value to be the lowest purchase price paid by the purchasing agency or other governmental entity for like items or services purchased in a similar quantity within the last six months. If this information is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

A commodities list of available goods and services provided by employment services organizations is accessible from a link on the eVA home page, www.eva.virginia.gov or www.vadrs.org.

Purchase of goods from employment services organizations should be accomplished by utilizing an appropriate agency purchase order. Contracts may be negotiated with individual employment services organizations 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 Employment Services Organizations special term and condition, Appendix B, Section II.

Annex 2-A

VCE Exemption Process



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

(DELETED)

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

- 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 bid due date should be extended not less than ten (10) days after the issue date of the addendum (see Annex 6-F for example addendum).

3.2 **Bonds**

b. **Performance and Payment Bonds.**

- (1) Unless otherwise authorized in this section, upon the award of any (i) public construction contract exceeding \$500,000 awarded to any prime contractor, (ii) construction contracts exceeding \$500,000 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 \$350,000 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 up to \$500,000 for non transportation-related projects or \$350,000 for transportation-related projects authorized under *Code of Virginia*, § 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).
- (5) For nontransportation-related construction contracts in excess of \$100,000 up to \$500,000, where bond requirements are waived, prospective contractors must be prequalified for each individual project in accordance with *Code of Virginia*, § 2.2-4317.
- (6) The performance and payment bond requirements for transportation-related projects that are valued in excess of \$250,000 but less than \$350,000 may only be waived by a public body if the bidder provides

evidence, satisfactory to the public body, that a surety company has declined an application from the contractor for a performance or payment bond (*Code of Virginia*, § 2.2-4337).

3.4 **Contractor License Requirements.**

- 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 - \$10,000 or more, but less than \$120,000 or if the contractor does \$150,000 or more, but less than \$750,000 in business within a 12-month period.

Contractor License C – Over \$1,000 \$, but less than 10,000 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 contractors.

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.

3.18 **Publicly Posted Notices**

- c. RFP solicitations must be publicly posted on eVA VBO at least 10 days prior to the date set for receipt of proposals. Notices shall also be 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). The essential elements should include agency seeking proposals; goods or services to be purchased; how offerors can obtain information about the RFP including a reference to eVA VBO; pre-proposal conference date and time; and the closing date and time. The notice should be brief in order to minimize cost to the agency. See Annex 3-K for an example. Preproposal conferences or site visits should also 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 VBO.
- e. Documentation to support the posting/advertising requirements 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.

- 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. Agencies shall not include personally identifiable information on purchase orders. 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, Taxpayer Identification Numbers, or other personally identifiable information 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.

3.29 Auctioning

- a. **Public Auction:** Upon a determination made in advance by a public body and set forth in writing that the purchase of non-technology goods, products or commodities from a public auction sale is in the best interests of the public, such items may be purchased at the auction. The writing shall document the basis for this determination. (*Code of Virginia, § 2.2-4303.I*).
 1. Public auctioning (non-electronic) may be used up to the Agency's delegated authority.
 2. Participation in online public auctions is not permitted.
 3. 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.

- b. **Reverse Auctioning:** The purchase of non-technology goods or nonprofessional services may be made by utilizing the Reverse Auctioning tools available in eVA. However, construction, professional services, or the bulk purchases of commodities used in road and highway construction in maintenance, and aggregates shall not be made by reverse auctioning (*Code of Virginia, § 2.2-4303.J*).
 1. Reverse auctioning should be used for goods or services that can be easily described and specified, with definable quantities and when an adequate number of vendors can be expected to respond.
 2. Reverse auctioning should not be used for highly technical or complex solicitations, when prequalification is necessary, for solicitations with multiple attachments, for emergency procurements, or when there are numerous line items.
 3. Agencies are authorized to conduct reverse auctions up to the agency's delegated authority using Reverse Auctioning tools in eVA.
 4. eVA VBO advertising is required over \$5,000. See 3.18.
 5. Quick Quote Reverse Auctioning:
 - i. Any appropriate Special Terms and Conditions must be stated in or attached to the reverse auction. The reverse auction shall be open for the period of time stated, but must be open for at least three (3) business days (24 business hours). A reasonable amount of time should be allowed for vendors to respond based on the nature of the procurement.
 - ii. 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.
 - iii. The use of Quick Quote meets the public posting requirement.
 - iv. The closing time may not be extended and shall be set to close during eVA Customer Care's normal business hours, in order for vendors to have access to support if needed.
 - v. The maximum number of line items allowed for reverse auctioning is six (6). A bid is required for each line. \$0.00 is an acceptable line item bid and shall not be deemed to constitute a "no bid" but the bidder will be expected to provide that line item at no cost.
 - vi. Awards shall only be made on grand total basis.
 - vii. Receipt of Bids – Only eVA registered vendors can participate. Paper responses are not allowed. A bidder must participate electronically.

Annex 3-K

Example RFP Newspaper Advertisement

Request for Proposals # 1234

Food Services

The Department of General Services, Division of Purchases and Supply, is seeking proposals to contract for Food Services. Sealed proposals will be received until 1:00pm local prevailing time on August 1, 20xx. An optional pre-proposal conference will be held at 10:00am on July 1, 20xx. The RFP and any subsequent communications are available at the Commonwealth's eVA website www.eva.virginia.gov under Solicitations and Awards. For additional information, contact *buyer* at 804-123-4567 or *buyer_email@xxx.virginia.gov*.

4.16 **Conference Planning**

- b. For the purchase of a conference facilities package not expected to exceed \$30,000, 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 four (4) 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 \$30,000, 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)].
- 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.

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. For over the counter SPCC purchases, a written quotation is not required; however solicit a minimum of one (1) DMBE-certified small business, if available.

5.6 **Unsealed Bidding**. (Over \$5,000 to \$100,000)

- 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.

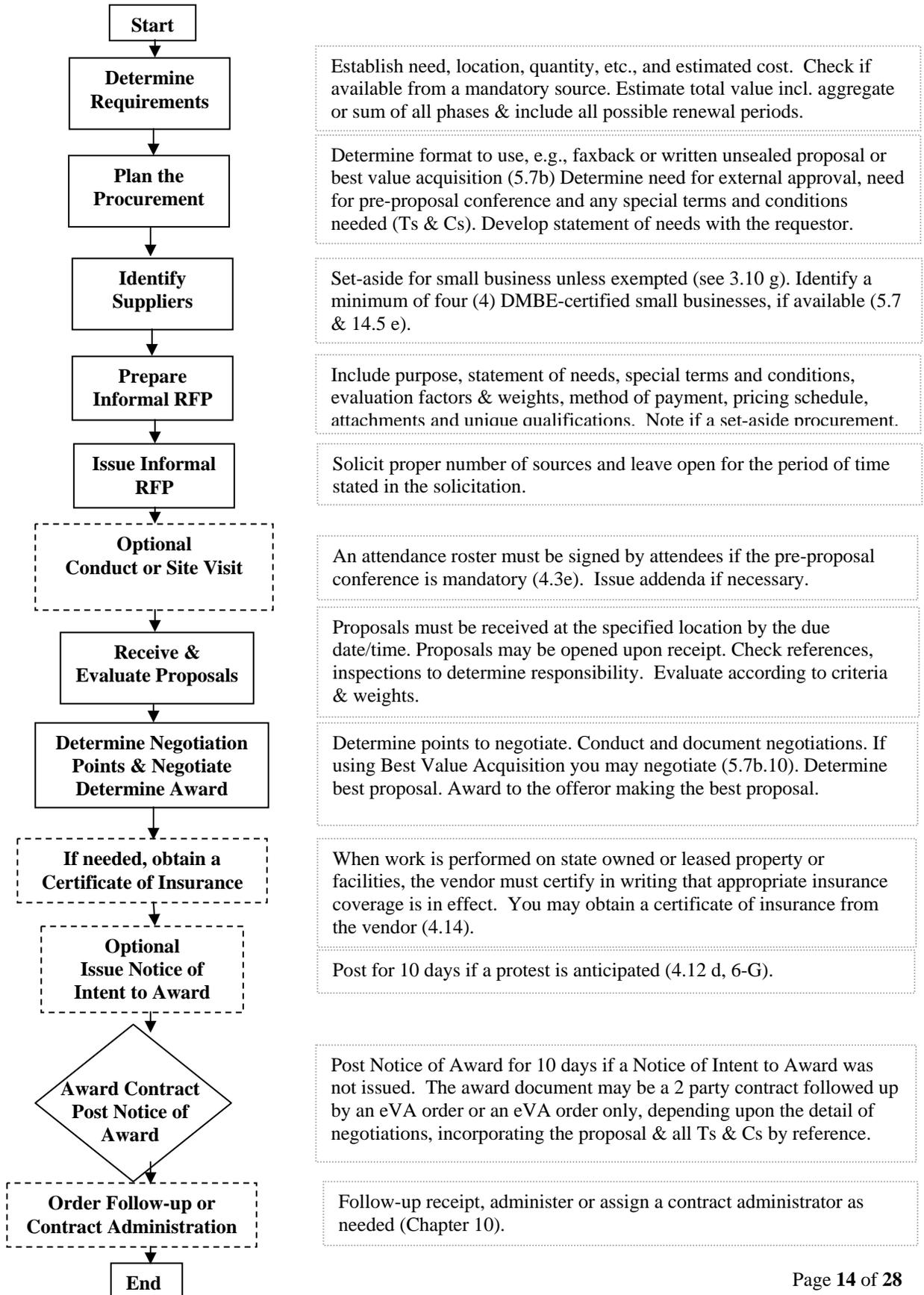
5.7 a. **Unsealed Proposals** (Over \$5,000 to \$100,000). Goods or nonprofessional services up to \$100,000 may be procured using the Unsealed Proposal process (see flowchart, Annex 5-F). A written determination for the use of competitive negotiation is not required for unsealed proposals. The solicitation shall 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). The procurement file shall be documented if the procurement does not qualify for a set-aside.
2. eVA VBO advertising is required over 5,000. 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. Post Notice of Award for 10 days if a Notice of Intent to Award was not issued.

5.8 Deleted

Annex 5-F

**Unsealed Proposal Process
For Goods and Non-professional Services over \$5,000 to \$100,000**



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).

Annex 6-D

IFB SOLICITATION AND FILE CHECKLIST

| ✓ | IFB SOLICITATION CHECKLIST | ✓ | FILE CHECKLIST |
|---|--|---|-----------------------|
| | For Construction Procurements: | | |
| | See 4.24 - The procurement of “construction” for “Capital Outlay Projects” is governed by the rules of the <i>Construction and Professional Services Manual</i> , issued by DGS/Division of Engineering and Buildings. | | |
| | <u>Bonds</u> : For construction contracts in excess of \$500,000, a bid bond, performance and payment bonds are required. | | |
| | <u>Drawings, As-Built</u> : If “as-built drawings” are required, specify the number of copies, when, and to whom they are to be delivered. | | |
| | <u>Drawings, Shop</u> : 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. | | |
| | <u>Material/Supplies</u> : 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-I

Small Business Subcontracting Plan

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.dmbv.virginia.gov (Customer Service).

Definitions

“Small business” means a business, independently owned and controlled by one or more individuals who are U.S. citizens or legal resident aliens, and together with affiliates, has 250 or fewer employees, or average annual gross receipts of \$10 million or less averaged over the previous three years. One or more of the individual owners shall control both the management and daily business operations of the small business.
(Code of Virginia, § 2.2-4310)

“Women-owned business” means a business that is at least 51% owned by one or more women who are U.S. citizens or legal resident aliens, 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 U.S. citizens or legal resident aliens, and both the management and daily business operations are controlled by one or more women.
(Code of Virginia, § 2.2-4310)

“Minority-owned business” means a business that is at least 51% owned by one or more minority individuals who are U.S. citizens or legal resident aliens, 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 who are U.S. citizens or legal resident aliens, and both the management and daily business operations are controlled by one or more minority individuals.
(Code of Virginia, § 2.2-4310)

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: _____

7.2 **Preparation and Issuance of a Request for Proposal (RFP)**

- 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 criteria to be used 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 due date and time. A breakout of subcomponent weights need not be listed. Price shall be one of the criteria considered, but need not be the determining one. Include a pricing schedule in the RFP (see Annex 7-B).

- 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 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.

7.5 **Best Value Acquisition (over \$100,000)**

- i. Sources may be solicited by mail, fax or electronically. Publicly post a copy of the solicitation on the DGS/DPS eVA website www.eva.virginia.gov. VBO advertising is required. In addition to advertising in the VBO, BVAs shall be advertised in a newspaper of general circulation in the area in which the contract is to be performed.

Annex 7-B

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

- 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 due date and time. 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:

Annex 7-E

RFP SOLICITATION AND FILE CHECKLIST

| ✓ | RFP SOLICITATION CHECKLIST | ✓ | FILE CHECKLIST |
|---|--|---|----------------|
| | For Construction Procurements: | | |
| | See 4.24 - The procurement of “construction” for “Capital Outlay Projects” is governed by the rules of the <i>Construction and Professional Services Manual</i> , issued by DGS/Division of Engineering and Buildings. | | |
| | <u>Bonds</u> : For construction contracts in excess of \$500,000, a bid bond, performance and payment bonds are required. | | |
| | <u>Drawings, As-Built</u> : If “as-built drawings” are required, specify the number of copies, when, and to whom they are to be delivered. | | |
| | <u>Drawings, Shop</u> : 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. | | |
| | <u>Material/Supplies</u> : 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. | | |

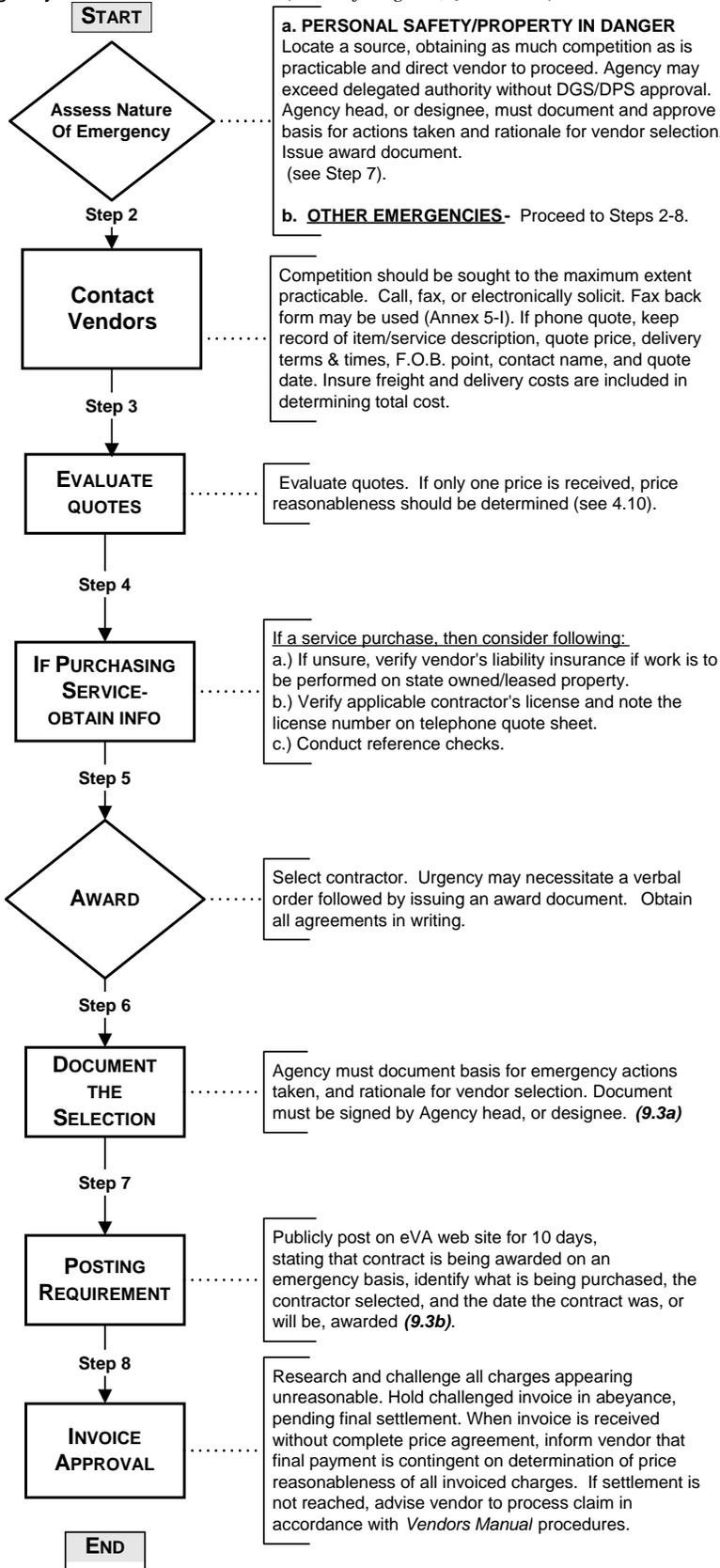
Annex 8-B

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. Post sole source notice of award on eVA VBO.
- _____ 6. PO or contract issued.

Annex 9-A

Emergency Procurement Process (*Code of Virginia, § 2.2-4310*) for Goods and Services



10.13 Contract Renewal and Extension

- 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 shall be taken in writing prior to the expiration of the current contract.

12.7 Surplus Property Disposal Methods and Procedures.

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:

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 may 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.

9. **Other Methods of Disposal.** If surplus property is not suitable for sale or the cost of selling it would exceed the potential revenue, and special circumstances pertaining to the property make the other disposal methods listed above inappropriate, the agency in possession of the property shall contact the Director, DGS/OSPM to review such special circumstances and to suggest alternative method(s) of disposal. Following a review of the alternative methods of disposal that are available, an alternative method may be permitted solely upon the written determination and direction by the Director, DGS/OSPM.

14.5 Small Purchase Competitive Requirements.

- e. **Unsealed Bidding:** (over \$5,000 up to \$100,000): Solicitation of bids or quotes via Quick Quote is mandatory for noncontract requirements over \$5,000 up to \$100,000; however, unsealed bidding may be used in lieu of Quick Quotes for complex procurements if the agency expects to issue addenda. Quick Quote may also be used to solicit for requirements under \$5,000. eVA VBO advertising is required over \$5,000.

APPENDIX A

GLOSSARY AND ACRONYMS

Information Technology: telecommunications, automated data processing, databases, the Internet, management information systems, and related information, equipment, goods, and services.

Employment Services Organization (ESO): an organization that provides employment services to individuals with disabilities that is an approved Commission on the Accreditation of Rehabilitation Facilities (CARF) accredited vendor of the Department of Rehabilitative Services.

APPENDIX B

SECTION I

REQUIRED GENERAL TERMS AND CONDITIONS GOODS AND NONPROFESSIONAL SERVICES

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 procurement solution either through the eVA Basic Vendor Registration Service or eVA Premium Vendor Registration Service. All bidders or offerors must register in eVA and pay the Vendor Transaction Fees specified below; failure to register will result in the bid/proposal being rejected.

Effective July 1, 2011, vendor registration and registration-renewal fees have been discontinued. Registration options are as follows:

- a. eVA Basic Vendor Registration Service: 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: 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.

Vendor transaction fees are determined by the date the original purchase order is issued and are as follows:

- 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 thru June 30, 2011, 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.
- c. For orders issued July 1, 2011 thru June 30, 2013, the Vendor Transaction Fee is:
 - (i) DMBE-certified Small Businesses: 0.75%, capped at \$500 per order.
 - (ii) Businesses that are not DMBE-certified Small Businesses: 0.75%, capped at \$1,500 per order.
- d. For orders issued July 1, 2013 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 specified vendor transaction fee will be invoiced, by the Commonwealth of Virginia Department of General Services, 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.**

SECTION II

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

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 solicitations when bidding for goods or services.**

17. **CONTRACTOR REGISTRATION:** If a contract for construction, removal, repair or improvement of a building or other real property is for \$120,000 or more, or if the total value of all such contracts undertaken by bidder/offeror within any 12-month period is \$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 \$10,000 or more but less than \$120,000, or if the total value of all such contracts undertaken by bidder/offeror within any 12-month period is \$150,000 or more, but less than \$750,000 or more, the bidder is required to be licensed as a "CLASS B CONTRACTOR." If such a contract is over \$1,000 but less than \$10,000, 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.**

19. **DELIVERY:** Delivery of goods or performance of services shall be within the number of calendar days stated below after receipt of order (ARO) by the bidder/offeror. The Agency requires the (bidder/offeror) to deliver within a reasonable time after ARO. If the bidder/offeror does not insert a stated delivery time in the blank below, the (bidder/offeror) will be deemed to offer delivery in accordance with the Agency's desired delivery time as stated below:

Agency's desired delivered time: _____ calendar days ARO

BIDDER'S/OFFEROR'S STATED DELIVERY TIME: _____ CALENDAR DAYS ARO

***When Used: Include when a firm delivery date is not specified by the agency. An agency may not reject a bid or proposal because the bidder/offeror stated a longer delivery date as long as it is within a reasonable time after receipt of order.**

Special Term and Condition 59 (Effective May 1, 2012)

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 thru June 30, 2011, 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.
- c. For orders issued July 1, 2011 thru June 30, 2013, the Vendor Transaction Fee is:
 - (i) DMBE-certified Small Businesses: 0.75%, Capped at \$500 per order.
 - (ii) Businesses that are not DMBE-certified Small Businesses: 0.75%, Capped at \$1,500 per order.
- d. For orders issued July 1, 2013, 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 specified vendor transaction fee will be invoiced, by the Commonwealth of Virginia Department of General Services, 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.

The eVA 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. **EMPLOYMENT SERVICES 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 employment services organizations. A list of employment services organizations can be found at www.vadrs.org or www.eva.virginia.gov.
- B. Each prime contractor who is awarded a contract where using a employment services organization 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 employment services organization, 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 employment services organization. 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 employment services organizations is a condition of the award (see 2.2 c.).**

SECTION III

ADDITIONAL TERMS AND CONDITIONS FOR NON-CAPITAL OUTLAY CONSTRUCTION PROJECTS

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. The Contractor shall assure that all Subcontractors and tradesmen who perform Work on the project are properly licensed by the Department of Professional and Occupational Regulation as required by Title 54.1, Chapter 11, Articles 1 and 3 and by applicable regulations.
- (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.
- (f) The Contractor is neither required nor prohibited from entering into or adhering to agreements with one or more labor organizations, or otherwise discriminating against subcontractors for becoming or refusing to become, or remaining signatories to or otherwise adhering to, agreements with one or more labor organizations. This section does not prohibit contractors or subcontractors from voluntarily entering into agreements with one or more labor organizations. Both the agency and contractor are entitled to injunctive relief to prevent any violation of this section.

This section does not apply to any public-private agreement for any construction in which the private body, as a condition of its investment or partnership with the state agency, requires that the private body have the right to control its labor relations policy and perform all work associated with such investment or partnership in compliance with all collective bargaining agreements to which the private party is a signatory and is thus legally bound with its own employees and the employees of its contractors and subcontractors in any manner permitted by the National Labor Relations Act, 29 U.S.C. § 151 et seq., or the Railway Labor Act, 45 U.S.C. § 151 et seq.

This section does not prohibit an employer or any other person covered by the National Labor Relations Act or the Railway Labor Act from entering into agreements or engaging in any other activity protected by law.

This section shall not be interpreted to interfere with the labor relations of persons covered by the National Labor Relations Act or the Railway Labor Act.