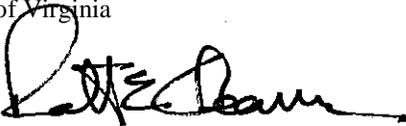


June 16, 2017

MEMORANDUM

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

FROM: Robert Gleason 
Director

SUBJECT: Procurement Information Memoranda (PIM) #98-034

Enclosed is PIM #98-034, effective July 1, 2017, 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*. Only changes/additions to the affected sections and/or subsections are included in this document. DPS is actively working to incorporate all changes into the web-based *APSPM*, and will post as soon as it is available. It is downloadable from the eVA website at <http://www.eva.virginia.gov>. Once posted, the location of text changes will be indicated by an arrow in the margin (→) with the corresponding PIM #98-034 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 #98-034 should be filed in the back of the Appendix C log.

APSPM Cite	Summary of Changes
All	Clarification of dollar thresholds throughout the manual to reflect <i>up to and including</i> the respective dollar figure or “ <i>and including</i> ” the respective figure. (example: \$5,000 up to and including \$100,000)
1.1	Clarifies that the exemption request to procure printing from another state agency (excluding VCE) shall be submitted via the eVA DPS Exemption eForm.
1.2.a	Adds “ <i>up to and including</i> ”
1.2.e.2	Adds “ <i>up to and including</i> ”
1.4.c	Adds “ <i>and including</i> ”
1.4.d	Adds references to Section 14.9
1.4.e	Adds “ <i>and including</i> ”
1.5.a	-Adds “ <i>and including</i> ” -Adds reference to Section 5.3
1.5.d	Adds reference to Sections 3.18.g and 14.9
1.5.h	Adds Virginia Grown foods to list of Exceptions to Competitive Requirements, when for use by a public body where the annual cost of the product is up to and including \$100,000
2.1.b.4	Adds standing desk to office systems available through VCE
2.1.e	Adds flags to the items available through VDC
2.2.c	Adds Employment Services Organizations (ESO) shall be credited against agency annual SWaM Plan goals
2.3	-Clarifies that eVA VBO and Sourcing and Contracting tool notifies sources of business opportunities -Identifies contract officer responsibilities regarding source list
2.6	Updates website addresses
3.1.a	Clarifies minimum number of sources
3.1.e	-Sealed Proposals: Clarifies that sealed proposals shall be held unopened until after the solicitation close date/time. -Late Bids or Proposals: Adds “ <i>up to and including</i> ”
3.1.g	Adds information regarding electronically submitted signatures through eVA
3.4.b	Adds information on exemptions of licensure
3.5.a	Adds “ <i>and including</i> ”

3.10.a	Adds Employment Services Organizations (ESO) shall be credited against agency annual SWaM Plan goals
3.10.g	Clarifies the Set-Aside Award Priority is applicable for Chapter 5, single quotation, unsealed bidding and unsealed proposals
3.10.g.1	Adds guidance on determining price reasonableness for competitive awards under \$10,000 and for awards \$10,000 up to and including \$100,000
3.10.g.1	Removes references to Special Term and Condition #36B
3.10.g.2	-Adds 1.5.h (Virginia Grown Foods) to procurements exempt from Set-Aside requirements -Updates Chapter 14 references -Adds Employment Services Organizations
3.10.h	- Restructures Section -Clarifies that a DSBSD-certified small business serving as a prime contractor will receive full credit of evaluation criteria -Adds guidance on Small Business Subcontracting Plan compliance and reporting
3.12	Adds information on Executive Order 61 (2017) –Anti-Discrimination Clause use
3.14.i	Adds Enhancement or Remedial Measures and Price Reasonableness thereof
3.15	Removes wording “The preferred method” from Competitive Sealed Bidding
3.18.a	Removes wording “The use of Quick Quote meets public posting requirements”
3.28.b	Updates code reference
3.29.a and b.	Updates code reference
3.29.b.4	Adds “ <i>up to and including</i> ”
Annex 3-B	-Adds “ <i>and including</i> ” throughout -Removes requirement for competitive negotiation written determination
Annex 3-E	-Deletes <i>Fidelity and Surety Report</i> as this is no longer available -Adds information on how to verify the name of surety on a bond
4.2	-Adds information on calculating a contract’s estimated or anticipated total value -Adds “ <i>and including</i> ”
4.3.a	Updates faith-based non-discrimination statement
4.4.d	Deleted the letter “D” to clarify that Vendor Assistance in Specification Preparation is not a specification category and is included as guidance
4.10.c-g	Clarifies that Sole Source procurements, single responses, contract changes/modifications, contract renewals and procurements conducted under the authorized enhancement plan are required to determine Price Reasonableness
4.10	-Clarifies that if a price is not deemed fair and reasonable, that the contracting officer can only negotiate if authorized to do so per the solicitation -Clarifies that the written documentation shall be attached to the applicable order/made part of the procurement file
4.15	Updates section for bookstores, commissary, canteen, gift shops, and similar retail outlet purchases for resale. -Clarifies guidance on small purchase procedure establishment requirements -Clarifies surplus guidance
4.16.c	Changes language from “between \$30,000 to \$100,000” to “over \$30,000 and up to and including \$100,000”
4.17.b	Adds “ <i>and including</i> ”
4.23.e	Adds “ <i>and including</i> ”
4.35	<i>New section.</i> Procurement of United States of America and Commonwealth of Virginia Flags
5	-Adds “ <i>up to and including</i> ” -Adds “ <i>and including</i> ”
5.1	Adds “ <i>and including</i> ”
5.3	Adds “ <i>and including</i> ”
5.6	Adds “ <i>up to and including</i> ”
5.6.a	-Clarifies that Quick Quote is the preferred sourcing tool for Unsealed bidding (\$5,000 up to and including \$100,000) -Updates reference to 14.6.b -Updates sourcing requirement information
5.6.b	Adds requirement to utilize the eVA VBO or Sourcing and Contracting tool for unsealed bidding if Quick Quote is not used
5.6.c	Adds “ <i>and including</i> ”

5.7.a	-Adds “ <i>up to and including</i> ” -Updated sourcing requirement information -Adds requirement to include a Small Business Subcontracting Plan when the procurement is not set-aside
5.7.a.1	Adds “ <i>and including</i> ”
5.7.a.2	Deleted
Annex 5-A	-Adds “ <i>up to and including</i> ” -Updates references
Annex 5-C	-Adds “ <i>up to and including</i> ” -Updates references
Annex 5-E	-Adds “ <i>up to and including</i> ” -Updates references -Removes sourcing information and adds section references
Annex 5-F	-Adds “ <i>up to and including</i> ” -Removes sourcing information and adds section references
Annex 5-G	Adds “ <i>and including</i> ”
6	Removes “the preferred” in reference to the Competitive Sealed Bidding procurement method
6.2.e	Updates sourcing requirement information
6.6	Removes requirement to return unopened two-step sealed bids and adds requirement to mark bids late and retain unopened in file
Annex 6-A	Removes sourcing requirement information
Annex 6-B	Updates discrimination statement
Annex 6-B IFB Step-By-Step	Step Three, Section VI. Method of Payment: Adds requirement to indicate anticipated type of payment
Annex 6-B IFB Step-By-Step	Step Four, Letter B. Adds sourcing information.
Annex 6-B IFB Step-By-Step	Step Seven: Adds requirement to mark bids late and retain in file
Annex 6-D IFB Solicitation and File Checklist	Method of Payment: Adds requirement to indicate anticipated type of payment
Annex 6-D IFB Solicitation and File Checklist	Bidders List: Updates information on required number of sources and references Section 6.2e
7.2.d	Removes requirement to state criteria weights in RFP
7.2.g	Updates sourcing requirement information
Annex 7-A	Updates sourcing requirement information
Annex 7-B	Updates discrimination statement
Annex 7-B Comp Neg Step-By-Step	Step 1, Section X. Method of Payment: Adds requirement to identify the anticipated type of payment
Annex 7-B Comp Neg Step-By-Step	Step 2, Section II. Adds sourcing information
Annex 7-B Comp Neg Step-By-Step	Step 6. Adds requirement to mark proposals late and retain in file
Annex 7-E	Method of Payment: Adds requirement to identify the anticipated type of payment
Annex 7-E	Offerors List: Updates information of required number of sources and references Section 7.2.g.
Annex 7-J	Removes form named “Non-Disclosure Statement” and replaces with “Public Procurement Ethics, Non-Disclosure, and Conflict of Interest Agreement”
8.1	-Adds <i>up to and including</i> -Adds requirement to include form named: “Public Procurement Ethics, Non-Disclosure, and Conflict of Interest Agreement” in certain circumstances
Annex 8-B.1	Adds form named: “Public Procurement Ethics and Conflict of Interest Agreement”
Annex 8-B.2	Adds “ <i>up to and including</i> ”
Annex 8-G	<i>New form:</i> “Public Procurement Ethics, Non-Disclosure, and Conflict of Interest Agreement”
10.13.a	Clarifies all renewals must be fully executed in writing prior to expiration of the current contract term
10.13.b	Adds guidance on contract extensions including time periods and approvals

Annex 10-H	Updates email information
11.2.d	Clarifies that public notice shall be given in the manner prescribed in the solicitation
12.7.c	Updates web addresses
12.8.d	Changes "Police Dogs" to Law Enforcement Animals and allows for the purchase of said service animal by the handler or immediate survivor at the cost of \$1
13.2	Updates website
13.3	Updates vendor source assistance information
Annex 13-B	Updates DGS/DPS area responsibility information
Annex 13-C	Updates contact information
14	Chapter has been reorganized throughout
14.2	Removes reference to eVA Implementation Guide
14.4	Moves and updates Section 14.6 to 14.4 for e-Mall Change Orders and includes additional guidance
14.5	Moves Section 14.4 To 14.5 for e-Mall Receiving
14.6	Competitive Requirements. Various changes including: clarifying sourcing requirements, posting, eVA Required General Term and Condition and adding "up to and including"
14.6.e	Adds requirement for agencies to use the eVA Sourcing and Contracting tool when a contract management tool is required by the agency
14.7.a	Clarifies the entry of a contract number shall be inserted in the PO contract number field
14.9.a-c	-Reorganizes and updates section -Various changes to mandatory and optional use of eVA
14.11	Clarifies information regarding unregistered vendors and assessment of eVA transaction fees
Appendix A, Glossary and Acronyms	-Adds definition for: Distributor, Method of Payment, Official Responsibility and Total Value -Updates definition for: Employment Services Organization
Appendix B, Section I General Terms & Conditions	- Introduction Paragraph: Adds guidance on use of the Anti-Discrimination General Term and Condition; - When used clause was removed from some GT&Cs - Updates were made to the following General Terms and Conditions: B. Applicable Laws and Courts C. Anti-Discrimination E. Immigration Reform and Control Act of 1986 F. Debarment Status J. Payment Q. Taxes T. Insurance V. Drug-Free Workplace Y. Availability of Funds
Appendix B, Section II Special Terms & Conditions	- Updates were made to the following Special Terms and Conditions: 2. Award of Contract (Introduction statement, Letters L and M) 3. Cancellation of Contract 5. Renewal of Contract 16. Contractor/Subcontractor License Requirements 27. Indemnification 32. Limitation of Liability 33. Liquidated Damages 36. Submission of Small Business Subcontracting Plan, Evidence of Compliance with Small Business Subcontracting Plan, and Subcontractor Reporting 51. Security License 55. Warranty (Commercial) -New Special Terms and Condition 65. Certification of Internal Controls
Appendix B, Section IV, Special Terms & Conditions (IT)	Removes section and adds reference to VITA.SCM
Appendix C, PIM Record of Changes	Adds summary of changes
Index	Various reference corrections

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 your Account Executive.

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

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

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

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

1.2 **Agency Purchasing Authority.**

- a. **Goods.** The general delegation threshold for the purchase of goods including printing is up to and including \$50,000. Requirements over the agency's delegated authority shall be forwarded to DGS/DPS for processing. Purchases from state contracts are unlimited except for limitations on specific contracts.
- e. **Authority to Sign Procurement Documents.**
 - (2) **Designated signature authority is required for the following documents:** purchase requisitions submitted to DGS/DPS, agency purchase orders, contracts, *VBO* waiver, multi-colored printing, waiver of a prebid or preproposal conference, contract modification, and written determinations to support the use of emergency procedures. The agency head may delegate approval authority in writing, for sole source procurements up to and including \$50,000 to the chief purchasing officer or a direct report to the agency head. Over \$50,000 the agency head may delegate approval authority in writing, to a direct report to the agency head.

1.4 **Administrative Exemptions**

- c. **DGS/DPS has delegated the authority to agencies and institutions to make bulk purchases of the following listed commodities.** Up to and including \$100,000, use small purchase procedures (see Chapter 5); over \$100,000 use the applicable method of procurement. However, bulk purchases of commodities used in road and highway construction and maintenance, and aggregates shall not be made by online public auctions (*Code of Virginia*, § 2.2-4303.I).
- d. **Government-to-Government Purchases.** The purchase of goods and services from the federal government, other states and their agencies or institutions, and Commonwealth public bodies. These purchases are not required to be requisitioned through DGS/DPS (see 1.5 Exceptions to Competitive Requirements, 3.18.g. Government-to-Government posting requirements and 14.9.b Requisitioning and Ordering – Use of eVA).

- e. **Purchase of Copyrighted Books and Copyrighted Audio-Visuals.** The purchase of copyrighted material such as books, written publications, standardized tests, answer sheets, and copyrighted audio/audio-visual film, diskettes, compact discs, and tapes are not required to be requisitioned through DGS/DPS. Up to and including \$100,000 use small purchase procedures, over \$100,000 use the applicable method of procurement.

1.5 Exceptions to Competitive Requirements.

- a. Purchases up to and including \$5,000. (See 5.3)
- d. Government-to-Government Purchases. The purchase of goods and services from the federal government, other states and their agencies or institutions, and public bodies. Care must be exercised to be certain that the price is fair and reasonable. (See Section 3.18g Government-to-Government posting requirements and 14.9 for eVA requirements).
- h. **Virginia Grown Foods.** Purchase of Virginia-grown food products for use by a public body where the annual cost of the product is up to and including \$100,000. Care must be exercised to be certain that the price is fair and reasonable. (Does not include catering services)

2.1 Mandatory Sources

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

- 4. **Office Systems:** VCE offers a broad spectrum of component office systems including, panels, work surfaces, filing systems, tables, cable management, keyboard trays, and standing desks. VCE also offers a complete line of remanufactured to new specifications systems products. Remanufactured products carry the same warranty as new systems offerings. The remanufactured systems products are an option for budgetary concerns.
- e. **Virginia Distribution Center (VDC).** The VDC purchases, stores, and distributes staple goods, canned foods, frozen foods, janitorial supplies, paper products, flags and other selected items for state agencies and institutions and political sub-divisions. To achieve optimal savings for the entire Commonwealth, the VDC purchases products in volume and ensures consistent quality through an extensive Quality Assurance Program, which includes an on-site VDC Laboratory. An agency may not use its local purchasing authority to purchase an item from another source that is available from the VDC without a written waiver from the VDC Quality Assurance Manager or designee.

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. These purchases are exempt from the set-aside requirement, see 3.10. g.2. Contracts may be negotiated with individual employment services organizations for nonprofessional services (*Code of Virginia*, § 2.2-1118). Contracts and subcontracts awarded to Employment Services Organizations (ESO) shall be counted toward the agencies goals set in their annual SWaM Plan. (*Code of Virginia*, § 2.2-4310.1B).

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.

2.3 **Source Lists.** Agencies shall utilize eVA VBO or Sourcing and Contracting functionality to notify sources through public posting of all business opportunities. eVA's functionality will send electronic notifications to sources registered for the solicitation commodity codes. The procurement officer should review notified sources to ensure such businesses are capable of providing, as a regular part of their business, the goods or services needed. Agency personnel at all levels should make a concerted effort to identify responsible vendors as sources of supply for goods and services and encourage them to register in eVA, including Virginia vendors and DSBSD-certified small, women-owned and minority-owned businesses.

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

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

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

e. **Receipt of Bids or Proposals.** Bids or proposals should be received at one central location. A clock, publicly displayed, or an electronic date/time stamp machine should be used to establish receipt times. When bids or proposals are received, the bids or proposals shall be date stamped and the time noted or stamped on the envelope showing the time of receipt. The bid or proposal receipt time deadline must strictly comply with the date and time stated in the solicitation. The purchasing officer shall be responsible for deciding when the receipt deadline has arrived and should announce wording to the effect that, "Bids/Proposals for solicitation number ___ are now closed. No further bids/proposals will be treated as timely." It is the responsibility of the bidder or offeror to have the bid or proposal at the specified location by the appointed time. Bid or proposal receipt deadlines and public openings scheduled during a period of suspended state business operations will be deemed rescheduled for processing at the same time on the next regular business day. Nothing in this paragraph limits the agency's ability to entertain, during competitive negotiation, new or different content to a timely-submitted proposal.

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

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

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

Sealed Proposals. Sealed proposals must be held unopened in a secure area until after the solicitation close date and time. Public openings are not required by law for proposals submitted under competitive negotiation, but doing so avoids the appearance of impropriety. If a public opening of proposals is conducted, only the

names of the firms submitting proposals shall be disclosed. Questions on the proposals of other offerors should not be answered until after evaluation and negotiations are complete and an award decision has been made.

Late Bids or Proposals. Bids or proposals received after the date and time specified for receipt in the solicitation, shall not be considered. For late **sealed** bids or proposals, the envelope shall be date and time stamped, marked “late” and retained unopened in the procurement file. Late **unsealed** bids or proposals, those solicited for requirements up to and including \$100,000, shall be marked “late” and placed in the procurement file.

- g. **Acceptable Bid/Proposal Signatures.** The bid or proposal and all addenda returned by the bidder or offeror by facsimile must be signed. The original bid or proposal must be signed in ink or submitted electronically through eVA (*Code of Virginia*, § 1-257 and § 59.1-485). The person signing the bid or proposal must be a person authorized by the bidder or offeror to sign bids or proposals. Typewritten or stamped signatures are not acceptable. The person signing must include his or her title, and if requested, must verify his or her authority to bind the company to the contract. Failure to sign the face of the bid/proposal in the space provided will result in rejection of the bid/proposal unless the unsigned bid/proposal is accompanied by other signed documents indicating the bidder’s/offeror’s intent to be bound [see *Vendors Manual*, 5.13c(1)(b)].

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.

Work undertaken by a person providing construction, remodeling, repair, improvement, removal, or demolition valued at \$2,500 or less per project on behalf of a properly licensed contractor, provided that such contractor holds a valid license in the residential or commercial building contractor classification shall be exempt for licensure. However, any construction services that require an individual license or certification shall be rendered only by an individual licensed or certified in accordance with Chapter 11 of Title 54.1 of the *Code of Virginia*.

Further, any contractor that directly employs or otherwise contracts with a person who is not credentialed by the State Board for Contractors for work requiring a credential under Chapter 11 of Title 54.1 of the *Code of Virginia*, shall be solely responsible for any monetary penalty or other sanction resulting from the act of employing or contracting with a person who lacks the proper credential based upon such person’s failure to obtain or maintain the required credential.

- 3.5 **Contract/Purchase Order Modification Restrictions.** A contract or purchase order may not be modified or renewed unless provided for in the original contract or solicitation. No additional consideration or increase in contract price may be paid to the contractor because of renewal unless specifically authorized under the original contract. The issuance of a change order or contract modification is required when the purchasing office has issued

an agency purchase order or contract or eVA order and the approved change exceeds \$500. This limitation applies to cumulative change orders in a contract or purchase order. The DPS Purchase Order Change (Annex 10-E), Agency Purchase Order Change (Annex 10-F), and Contract Modification Agreement (Annex 10-G); are the recommended forms to be used for all modifications to contracts and purchase orders awarded outside of eVA. Use the eVA Change Order functionality to make changes to orders issued in eVA (see 14.6).

- a. **Cumulative Modifications up to and including \$50,000** - Cumulative contract modifications up to and including \$50,000 shall not exceed 25% of the original contract price without advance written approval of the agency head or his/her designee (see also *Vendors Manual*, 7.17 for exception).

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

- a. **Agency Plans.** Each executive branch agency and institution of the Commonwealth shall prepare and adopt an annual SWaM (Small, Women and Minority-owned businesses) plan that will specify that agency's or institution's race-neutral and gender-neutral small business goals for procurement in accordance with Executive Order 20, dated July 22, 2014. Executive branch agencies and institutions shall submit an annual SWaM plan to the Department of Small Business and Supplier Diversity (DSBSD) and the appropriate cabinet secretary, in a form specified by the DSBSD, on September 1 of each fiscal year. The plan shall include the annual designation of a SWaM Equity Champion to ensure nondiscrimination in the solicitation and awarding of contracts.

Agencies shall establish internal procedures consistent with the provisions of the *VPPA*, this manual, and Executive Order 20, to facilitate the participation of small businesses and businesses owned by women and minorities in procurement transactions. The procedures established shall be in writing and shall comply with the provisions of any enhancement or remedial measures authorized by the Governor pursuant to § 2.2-4310 of the *VPPA*, and shall include specific plans to achieve any goals established therein.

Contracts and subcontracts awarded to Employment Services Organizations (ESO) shall be counted toward the agencies goals set in their annual SWaM Plan. (Code of Virginia, § 2.2-4310.1B). To procure goods/services from ESOs see 2.2c for guidance.

- g. **Set-aside for Award Priority.** The goal of the Commonwealth is that more than 42% of its purchases be made from small businesses. "Small businesses" are those which have received certification from DSBSD by the due date for receipt of bids or proposals, including those small businesses (including micro) which also have been certified as women-owned and/or minority-owned certification. Procurements shall follow applicable procedures in Chapter 5 for single quotation, unsealed bidding and unsealed proposals. For competitive purchases include a tiered award clause as specified in Special Term and Condition 2.L or 2.M. Award of a contract shall be made in order of the Small Business Enhancement Award Priority as follows:

1. **Small Business Enhancement Award Priority**

Awards Under \$10,000: For competitive purchases under \$10,000, the award of a contract shall be made to the lowest priced or highest ranked DSBSD-certified micro business bidder/offeree that is responsive and responsible (for bids) or fully qualified and most suitable (for proposals) if such micro business bid or offer is available and the price is fair and reasonable (4.10). For unsealed bidding the bid price shall not exceed 5% of the lowest responsive and responsible noncertified bidder. If there are no reasonably priced bids/offers meeting the above criteria received from certified micro businesses, an award shall be made to the lowest priced or highest ranked DSBSD-certified small business bidder/offeree that is responsive and responsible (for bids) or fully qualified and most suitable (for proposals) if such small business bid or offer is available and the price is fair and reasonable (4.10). For unsealed bidding the bid price shall not exceed 5% of the lowest responsive and responsible noncertified bidder. If there are no reasonably priced bids or offers meeting the above criteria received from certified micro or small businesses, an award may be made to the lowest priced bidder or highest ranked offeror of any size that is responsive and responsible (for bids) or fully qualified and most suitable (for proposals) if the price is fair and reasonable (4.10). If the agency or Institution determines and documents that no bid/offered price is fair and reasonable (4.10) then the procurement may be cancelled and re-solicited removing the set-aside award priority.

Awards \$10,000 up to and including \$100,000: For competitive purchases from \$10,000 up to and including \$100,000, an award shall be made to the lowest priced or highest ranked DSBSD-certified small business bidder/offeree that is responsive and responsible (for bids) or fully qualified and most suitable (for proposals) if such small business bid or offer is available and the price is fair and reasonable (4.10).

For unsealed bidding the bid price shall not exceed 5% of the lowest responsive and responsible noncertified bidder. If there are no reasonably priced bids/offers meeting the above criteria received from certified micro or small businesses, an award may be made to the lowest priced bidder or highest ranked offeror of any size that is responsive and responsible (for bids) or fully qualified and most suitable (for proposals) if the price is fair and reasonable (4.10). If the agency or Institution determines and documents that no bid/offered price is fair and reasonable then the procurement may be cancelled and re-solicited removing the set-aside award priority.

Set-aside Award Priority:

Micro Business Set-Aside Award Priority

under \$10,000.00

- 1) Micro Business
- 2) Small Business
- 3) Open to all

Small Business Set-Aside Award Priority

\$10,000 up to and including \$100,000

- 1) Small Business (including micro businesses)
- 2) Open to all

2. However, the procurement is exempted from the set-aside requirement if exempted from competitive requirements in 1.5 b, d and h; or in 14.9 b items 1-17, and 14.9 c items 2-11; or is available from mandatory sources or non-mandatory sources in 2.1 and 2.2, such as the Virginia Industries for the Blind, Virginia Correctional Enterprises, Employment Services Organizations, as well as purchases made from existing mandatory or optional statewide contracts. Small businesses shall be identified on the vendor list.

Additionally, the procurement may be exempted from the Small Business Enhancement Award Priority if there is not a reasonable expectation that the agency or institution will receive at least two competitive bids or offers from DSBSD-certified micro/small businesses and the agency includes in the procurement file determination, supported by factual evidence explaining in sufficient detail that the procurement does not qualify for a set-aside.

- h. **Prime Contractor Small Business Subcontracting Plan.** For procurements over \$100,000 unless a determination has been signed by the chief purchasing officer and supported by factual evidence explaining in sufficient detail why no subcontracting opportunities exist, all agencies and institutions shall include in the terms and conditions, the requirement for a Small Business Subcontracting Plan for the award of any prime contract (see Annexes 6-I and 7-G). A DSBSD-certified small business, which shall include women-owned and minority-owned businesses when they have also received DSBSD small business certification who serves as prime contractor will receive full credit of the evaluation criteria for the Small Business Subcontracting Plan. See Appendix B, Section II, 36 for the special term and condition that shall be included in solicitations requiring the plan and the contractor to provide evidence of compliance with this requirement.

Prime Contractor Compliance with Subcontracting Plan. Each prime contractor who wins an award in which provision of a small business subcontracting plan is a condition of the award, shall deliver to the contracting agency or institution timely reports substantiating compliance in accordance with the small business subcontracting plan (subject only to insubstantial shortfalls and to shortfalls arising from subcontractor default). If a variance exists, the contractor shall provide a written explanation that shall be kept with the contract file and made available upon request. A subcontractor shall be considered a Small Business for purposes of a contract if and only if the subcontractor holds or held a certification as such by the DSBSD on the due date for receipt of bids or proposals (if the subcontractor was included in the originally submitted small business subcontracting plan) or on the date the parties' amend the contract to add a new subcontractor to the contract's small business subcontracting plan). The purchasing agency shall confirm that the contractor has certified compliance with the contractor's submitted Small Business Subcontracting Plan or receipt of a written explanation of the variance, before making final payment.

Prime Contractor Subcontractor Reporting

All prime contractors shall report subcontracting activities in accordance with Appendix B., Special Terms and Conditions, Section II. 36. When such business has been subcontracted the contractor agrees to furnish the purchasing office at a minimum, the following information: name of firm, phone number, total dollar amount subcontracted, category type (Businesses that are DSBSD-certified small, women-owned, minority-owned, Service Disabled Veteran, or Employment Services Organization), and type of product/service provided, at the frequency required in the contract.

3.12 **Nondiscrimination.**

- a. In the solicitation, awarding or administration of contracts, no agency shall discriminate against a bidder, offeror, or contractor because of the race, religion, color, sex, age, disability, national origin, sexual orientation, gender identity, political affiliation, or veteran status, or any other basis prohibited by state law relating to discrimination in employment (*Code of Virginia*, § 2.2-4310A; Executive Order 1 (2014)). Agencies and institutions shall prominently display a nondiscrimination statement in all invitations to bid, requests for proposals, contracts, and purchase orders indicating that the public body does not discriminate against faith-based organizations (*Code of Virginia*, § 2.2-4343.1D).
- b. In the solicitation or awarding of contracts, no state agency, department or institution shall discriminate against a bidder or offeror because the bidder or offeror employs ex-offenders unless the state agency, department or institution has made a written determination that employing ex-offenders on the specific contract is not in its best interest (*Code of Virginia*, § 2.2-4310.E).

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

- c. To implement the policy of Executive Order 61 (2017) that Executive Branch agencies will only contract with those who abide by the non-discrimination policies in Executive Order 1 (2014), all Executive Branch entities shall include in their solicitations where the estimated value is greater than \$10,000 General Term and Condition C - ANTI-DISCRIMINATION subparagraph 1.e., unless the state agency, department or institution issuing the solicitation has made a written determination not to include subparagraph 1.e in General Term and Condition C. This written determination may be made upon good cause shown by a request from a faith-based organization, based upon consideration of other applicable laws or regulations, and must be made prior to the close date. The written determination and any request for the written determination shall be maintained in the procurement file. All Invitations to Bid and Request for Proposals should also explicitly state that faith-based organizations, otherwise qualified to respond to the Initiation to Bid or Request for Proposal, may request that the agency not include subparagraph 1.e. in General Terms and Condition C. Such a request should be in writing and explain why an exception should be made in that Invitation to Bid or Request for Proposal. For the purposes of this provision, a “faith-based organization” is (1) an entity organized for the purposes of engaging in religious practice or (2) a charitable or educational organization affiliated with such an entity.”

The decision not to include subparagraph 1.e. in General Terms and Condition C does not indicate that any contractor or subcontractor is permitted to engage in discrimination in the provision of goods and services on behalf of the Commonwealth such that no person is excluded from participation in, denied the benefits of, or subjected to discrimination in the administration of public programs and services based on non-merit factors such race, sex, color, national origin, religion, sexual orientation, gender identity, age, political affiliation, disability, or veteran status. Such discrimination would itself constitute a violation of any contract or subcontract to provide goods and services to the public on behalf of the Commonwealth.

3.14 **Preferences**

- i. **Enhancement or Remedial Measures:** Measures authorized by the Governor pursuant to § 2.2-4310 relating to Small Business Enhancement Programs that allow for small businesses certified by the DSBSD or a subcategory of small businesses established as a part of the enhancement program to have a price preference over noncertified businesses competing for the same contract award, provided that the certified small business or the business in such subcategory of small businesses does not exceed the low bid by more than five percent (See 3.10g).

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

- Small Purchase procedures
- Competitive Sealed Bidding
- Competitive Negotiation
- Sole Source

- Emergency
- Reverse Auctioning (See 3.29)

Annex 3-A contains a flowchart depicting the first five methods and when it should be used. In addition, a separate chapter is dedicated to each of those methods of procurement. Reverse auctioning is described in Section 3.29. See chapters 5, 6, 7, 8, and 9 for the other methods described above.

3.18 **Publicly Posted Notices.** All informal solicitations, Invitations to Bid, Requests for Proposal, sole source award notices, emergency award notices, government-to-government service contracts starting at \$25,000, and conceptual proposals received under a PPEA or PPTA shall be posted on the DGS central electronic procurement system, commonly known as eVA VBO. (*Code of Virginia*, § 2.2-1110). Small purchases for goods and services greater than \$5,000 and any professional service procurements over \$30,000 must be posted per §2.2-4303. Addenda are also required to be posted. The eVA web site address is www.eva.virginia.gov. The agency must include in the posting access to an electronic version of all solicitation documents.

- All written informal solicitations, including Quick Quote, that are expected to exceed \$5,000 shall require the posting of a public notice in eVA VBO.

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

- The *Code of Virginia*, § 2.2-4311.2 subsection B requires that “Pursuant to competitive sealed bidding or competitive negotiation, all public bodies shall include in the solicitation a provision that requires a bidder or offeror organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 to include in its bid or proposal the identification number issued to it by the State Corporation Commission. Any bidder or offeror that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 or as otherwise required by law shall include in its bid or proposal a statement describing why the bidder or offeror is not required to be so authorized” (see Annexes 6-J and 7-I). Accordingly, Special Term and Condition **62: STATE CORPORATION COMMISSION IDENTIFICATION NUMBER** shall be included in all Invitations for Bids or Requests for Proposals.

3.29 **Auctioning**

- 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.H).
 - Public auctioning (non-electronic) may be used up to the Agency’s delegated authority.
 - Participation in online public auctions is not permitted.
 - Set-aside for DSBSD-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.
- Reverse Auctioning: The purchase of non-technology goods or nonprofessional services may be made by utilizing the Reverse Auctioning tool 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.I).
 - Procurements up to and including \$100,000 shall be Set-aside accordance with the Small Business Enhancement Award Priority, unless exempted.

Annex 3-B

Summary of Procurement Thresholds and Associated Small Business Enhancements Policies

I. Small Purchases - Goods and Services, other than Professional Services (see Chapter 5)

Thresholds	Procedures
<p>Small Purchase: Up to and including \$5,000</p>	<p>Single quote from a DSBSD-certified micro business, if available. Quick Quote may be used.</p>
<p>Over \$5,000 but less than \$10,000 →</p>	<p>Quick Quote, Unsealed Bidding, or Unsealed Request for Proposals are allowed. Quick Quote is the preferred method for unsealed bidding. Solicitations under \$10,000 shall be set-aside for award to a DSBSD-certified micro business unless exempted and documentation is required. See Small Business Enhancement Award Priority in 3.10g. For procurements that are expected to exceed \$5000, public posting on eVA VBO is required if Quick Quote is not used.</p>
<p>\$10,000 up to and including \$100,000 →</p>	<p>Quick Quote, Unsealed Bidding, or Unsealed Request for Proposals are allowed. Quick Quote is the preferred method for unsealed bidding. Solicitations \$10,000 up to and including \$100,000 shall be set-aside for DSBSD-certified small business unless exempted and documentation is required. See Small Business Enhancement Award Priority in 3.10g. For procurements that are expected to exceed \$5000, public posting on eVA VBO is required if Quick Quote is not used.</p>

II. Competitive Sealed Bidding or Competitive Negotiation (see Chapters 6 & 7)

Threshold	Procedures
<p>Over \$100,000; may be used for lesser amounts. →</p>	<p>If used for purchases \$100,000 or less it shall be set-aside unless documented (3.10). The Solicitation shall include a tiered award clause as specified in Special Term and Condition 2.L or 2.M, and follow procedures described in Chapters 6, or 7, as applicable.</p> <p>Procurements over \$100,000 shall include a Prime Contractor Small Business Subcontracting Plan unless documented (3.10h).</p> <p>Use one of the following methods for purchases over \$100,000 unless an exception (see III. below). 1 - Competitive sealed bidding. 2 - Two-step competitive sealed bidding. 3 - Competitive negotiation.</p> <p>Public posting on eVA VBO is required. Requests for Proposal also required to be advertised in a newspaper.</p>

III. Exceptions To Competitive Procurement (see Chapters 8 & 9)

Thresholds	Procedures
<p>Emergency →</p>	<p>Take immediate action if required to protect personal safety or property and noncompetitively negotiate. Other emergencies, seek competition to the extent practicable. Requires written determination signed by the agency/institution head or designee. Public posting on eVA VBO is required.</p>
<p>Sole Source (Unlimited dollar amounts) →</p>	<p>Over \$5,000, a written quotation must be obtained from the vendor. Requires written justification approved in advance by the agency/institution head. Over \$50,000 requires approval from DGS/DPS. Agencies and institutions may make contract awards after appropriate approval. Purchase using noncompetitive negotiation. Public posting on eVA VBO is required.</p>

Annex 3-E

Bond Documentation Review Checklist

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

- _____(1) First time approvals may take bidder/contractor several weeks - there is an extensive prequalification process.
- _____(2) Return bid deposits to unsuccessful bidders as soon as possible.
- _____(3) If letters of credit are used, they should be "irrevocable" and be sure to verify the financial soundness of the issuer. The use of letters of credit is not recommended.
- _____(4) Contact the issuing surety company directly, in writing, to authenticate the bond immediately after it is presented and verify that the bond is correct and valid.
- _____(5) Check the name of surety on the bond - it should be identical to the name appearing on the State Corporation Commission (SCC) website <http://scc.virginia.gov/boi/index.aspx> under the "Company Lookup" feature. If you have additional questions, please contact the SCC Financial Regulation Division at 804-371-1502.
- _____(6) Check the wording. Look for strikeover, white out, etc. Be sure that form CO-10, *Commonwealth of Virginia Standard Performance Bond*, and form CO-10.1, *Commonwealth of Virginia Standard Labor and Material Payment Bond* are used. These forms are specifically intended for bid, performance and payment (labor and material) bonds and contain the most appropriate language. These forms are available on the DEB web site: <http://deb.dgs.virginia.gov>.
- _____(7) Unlike other property and casualty insurance companies, fidelity, and surety companies are excluded from guarantee fund coverage, so it is important to check surety's status. Call the SCC's Bureau of Insurance at 804-371-9636 to insure that the surety is licensed and in good standing.
- _____(8) A single bond cannot exceed 10% of the net worth shown on the SCC list. You may need more than one company on a major project.
- _____(9) Sureties must have a minimum of \$4 million in net worth.
- _____(10) Make certain the surety is furnished all copies of addenda and of all change orders issued, after award.
- _____(11) Do not delay if you must call in a bond. The surety who issued the bond should be copied on correspondence to the contractor when cure attempts are initiated.
- _____(12) If you get a "Notice To Owner" (NTO) from a subcontractor, send the subcontractor a copy of the performance and payment bond and stay out of the issue. If you get a lot of "NTO's" - tell the surety as well.
- _____(13) Do not recommend issuing of "joint checks" (contractor and subcontractor) check payment. If required to do it, be sure the letter accompanying the payment states that such practice does not place owner in position of guaranteeing payment.

4.2 **Selection of Procurement Method.** It is important to select the proper procurement method. The estimated or anticipated total value of the contract must be determined first, unless the purchase is an emergency (for emergencies, see Chapter 9). The estimated or anticipated total value of the contract includes all monetary and non-monetary considerations from all parties for the initial period of the contract, and includes all possible renewal periods. The expected trade-in value of equipment should not be considered when determining the anticipated value of a contract. When determining the estimated or anticipated total value of a contract, factor in all cost elements such as travel related expenses (e.g., travel, lodging, and meals) and direct bill expenses (e.g., copying costs, postage, shipping and handling costs, long distance charges). If purchases up to and including \$100,000 are required, then the small purchase procedures in Chapter 5 shall be used. If over \$100,000, a decision should be made whether to use competitive sealed bidding or competitive negotiation. For competitive sealed bidding see Chapter 6. For competitive negotiation see Chapter 7. For purchases where there is only one source practicably available, see Chapter 8.

4.3 **Preparing the Written Solicitation.**

- a. **General.** Solicitations should convey to the reader, in a clear, concise and logical sequence, the information necessary to answer the basic questions of who, what, why, where, when and how. Section 3.12.a requires public bodies to prominently display a nondiscrimination statement concerning faith-based organizations in all Invitation for Bids (IFB), Request for Proposals (RFP), contracts, and purchase orders (§ 2.2-4343.1D), and section 3.12.c requires executive branch agencies to explicitly state that faith-based organizations may request that the agency not include subparagraph 1.e in General Terms and Condition C. The following statement must be prominently displayed on the cover page of every IFB or RFP:

Note: This public body does not discriminate against faith-based organizations in accordance with the Code of Virginia, § 2.2-4343.1 or against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, sexual orientation, gender identity, political affiliation, or veteran status or any other basis prohibited by state law relating to discrimination in employment. Faith-based organizations may request that the issuing agency not include subparagraph 1.e in General Terms and Condition C. Such a request shall be in writing and explain why an exception should be made in that invitation to bid or request for proposal.

4.4 **Specifications.**

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

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

- a. competition is restricted or lacking,
- b. the prices offered do not appear to be fair and reasonable,
- c. sole source procurements
- d. a single response (Quote, bid or offer) received
- e. contract changes/modifications
- f. contract renewals
- g. procurements conducted under the authorized enhancement plan (EO20) See 3.10.g.

The written determination of a fair and reasonable price requires that the price is acceptable to both the agency or institution and the bidder or offeror considering all circumstances. Circumstances include, but are not limited to, the

degree of competition, market conditions, quality, location, inflation, value, technology and unique requirements of the procuring agency or institution. The written determination may be based on price analysis (comparison with prices previously paid, prices charged for functionally similar items, prices paid by other consumers, prices set forth in a public price list or commercial catalog, or state estimates) or through the analysis of price-to-unit variations, value analysis (make-or-buy study), or cost analysis. Advice and assistance can also be obtained from the appropriate buyer or contract officer at DGS/DPS. The written analysis must be supported by factual evidence in sufficient detail to demonstrate why the proposed price is deemed to be reasonable. If a determination is made that the prices offered are not fair and reasonable, then a decision has to be made whether to rebid seeking broader competition, revise specifications and rebid the requirement, or to negotiate, if authorized. A combination of these methods may be necessary. If it is a negotiated procurement, then the price should be negotiated to one that is fair and reasonable (see 3.1.j and 7.4.a). The contracting officer shall ensure that such written documentation is attached to the applicable order or is otherwise made a part of the procurement file.

4.15 **Bookstore, Commissary, Canteen, Gift Shops, and Similar Retail Outlet Purchases For Resale.** All purchases for resale, such as those above, are subject to the *VPPA* and this manual.

- a. An agency may establish its own small purchase procedures for purchases for resale in accordance with 2.2-4303G, up to and including \$100,000, if adopted in writing and approved by DPS. Such small purchase procedures shall require the utilization of eVA sourcing tools (Quick Quote, VBO Buyer, Sourcing and Contracting) when competition is required. Also such small purchase procedures shall take into consideration any enhancement or remedial plan in effect.
- b. (deleted)
- c. (deleted)
- d. (deleted)
- e. (deleted)
- f. For all other purchases, follow the applicable portions of this manual.
- g. Public institutions of higher education purchases of items for resale at retail bookstores and similar retail outlets operated by such institutions are exempt from the *VPPA* and this manual (*Code of Virginia*, § 2.2 4343.A7); however, such purchase procedures shall provide for competition where practicable.
- h. Surplus (unsold) resale items that are no longer required must be disposed of using surplus procedures in accordance with surplus regulations (Chapter 12).

4.16 **Conference Planning**

- c. For purchases of conference facilities packages over \$30,000 and up to and including \$100,000, agencies shall issue a written solicitation following the guidelines in Chapter 5. For purchases of conference facilities over \$100,000, agencies shall follow the procedures prescribed for competitive sealed bidding or competitive negotiation (see Chapter 6 or Chapter 7, as applicable).

4.17 **Used Equipment.**

- b. Upon a determination in writing that the price is fair and reasonable for used equipment meeting the agency's needs, a contract may be noncompetitively negotiated and awarded up to and including \$30,000 (see 1.5 b. (3)). Used equipment purchases over \$30,000 that are available from only one source, may be purchased in accordance with Chapter 8. If the cost exceeds the agency's delegated authority, a requisition containing the above information shall be submitted to DGS/DPS for purchase.

4.23 **Professional Services.**

- e. **Professional Services Small Purchases.** The small purchase threshold for the procurement of professional services is \$60,000. Procurements up to and including \$60,000 for Professional services may only be procured by other than competitive negotiation if the agency has implemented small purchase procedures in accordance with the *Code of Virginia*, § 2.2-4303G. Professional services procurements less than \$10,000 shall be set-

aside for micro businesses. For purchases from \$10,000 up to and including \$50,000, procurements shall be set-aside for small businesses (including micro businesses). Procurements shall follow the agency's implemented procedures or § 2.2-4302.2 and include a tiered award clause as specified in Special Term and Condition M. 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. Public posting is required for professional service procurements over \$30,000

4.35 **Procurement of United States of America and Commonwealth of Virginia Flags**: All United States and Commonwealth of Virginia Flags purchased by state agencies, institutions, local bodies and public school divisions shall be made in the United States from articles, materials or supplies that are grown, produced and manufactured in the United States, if available. All state agencies and institutions shall procure United States and Commonwealth of Virginia flags from the Virginia Distribution Center (See 2.1.e).

5. **General**. The *Virginia Public Procurement Act (VPPA)* permits a public body to establish small purchase procedures, if adopted in writing, not requiring the use of competitive sealed bidding or competitive negotiation for single or term contracts if the aggregate or sum of all phases up to and including \$100,000; however, such small purchase procedures shall provide for competition wherever practicable (*Code of Virginia*, § 2.2-4303G). The following small purchase procedures have been established by DGS/DPS for use by state agencies and institutions when acquiring materials, supplies, equipment, printing, nonprofessional services and non transportation-related construction up to and including \$100,000 (excluding information technology and telecommunications goods and services). Procurements made pursuant to these procedures do not require public bid openings or newspaper advertising of competitively negotiated procurements. Small purchases that are expected to exceed \$5,000 shall require the posting of a public notice on eVA VBO. Quick Quote solicitations meet the public posting requirement. For your convenience, process flowcharts for each category of small purchases have been developed and are in the annex of this chapter. Annex 5-A depicts the decision making process that will assist in determining the appropriate small purchase procedure to use up to and including \$100,000.

5.1 **Competitive Requirements**. Procurements up to and including \$100,000 shall be set-aside exclusively for award to DSBSD-certified small business (including micro) participation in accordance with 3.10 g. For any particular procurement, a bidder/offeror shall be considered a Small Business or a Micro Business if and only if the bidder/offeror holds a certification as such by the Department of Small Business and Supplier Diversity (DSBSD) on the due date for receipt of bids or proposals. Competition, where required, is to be made according to the number of competitive sources shown in this chapter. If two or more DSBSD-certified small businesses cannot be identified to set-aside the procurement up to and including \$100,000, then the file shall be documented with the efforts made to obtain the number of required sources. See Chapter 4.10 for Price Reasonableness Determination.

Estimate the total cost, including all possible renewal periods of a term contract, to determine if the procurement will exceed \$100,000. If the procurement is expected to exceed \$100,000 over the entire term of the contract, including all possible renewal periods, use the procedures outlined in Chapter 6 for competitive sealed bidding or in Chapter 7 for competitive negotiation. The expected trade-in value of equipment shall not be considered when determining the anticipated total value of a contract.

a. Deleted

b. Deleted

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

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

a. Quick Quote is the preferred sourcing tool to solicit bids and quotes for goods and nonprofessional services over \$5,000 up to and including \$100,000 (see 14.6.b). A minimum of four sources shall be solicited in accordance with the selected Small Business Enhancement Award Priority. (i.e. Micro or Small) See 3.10g. All appropriate special terms and conditions must be stated in or attached to the Quick Quote, including an award term. The solicitation shall be open for the period of time stated in the solicitation 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 and any subsequent amendments.

b. Unsealed bidding may be used in lieu of Quick Quote for complex procurements. If Quick Quote is not used, agencies shall utilize the eVA VBO or Sourcing & Contracting tool to publically post the solicitation.

- c. Procurements under \$10,000 shall be set-aside exclusively for award to DSBSD-certified micro businesses if available and the price is fair and reasonable. If prices do not appear to be fair and reasonable, the agency shall document the procurement file to that effect, including stating the basis for the determination, and then an award may be made in accordance with the Small Business Enhancement Award Priority (3.10g). The solicitation shall designate in the title of the solicitation that the procurement is set-aside for micro businesses. Select “Micro Business Set-Aside Award Priority” once the set-aside box has been checked in Quick Quote or VBO.

Procurements from \$10,000 and up to and including \$100,000 shall be set-aside exclusively for award to DSBSD-certified small businesses (including micro) if available and the price is fair and reasonable. If prices do not appear to be fair and reasonable, the agency shall document the procurement file to that effect, including stating the basis for the determination, and then an award may be made in accordance with the Small Business Enhancement Award Priority (3.10g). The solicitation shall designate in the title of the solicitation that the procurement is set-aside for small businesses. Select “Small Business Set-Aside Award Priority” once the set-aside box has been checked in Quick Quote or VBO.

- d. Award should be made to the lowest responsive and responsible bidder in accordance with the Small Business Enhancement Award Priority. Post Notice of Award for 10 days if a Notice of Intent to Award was not issued.

- 5.7 a. **Unsealed Request for Proposals** (Over \$5,000 up to and including \$100,000). Goods or nonprofessional services up to and including \$100,000 may be procured using the Unsealed Request for Proposal process (see flowchart, Annex 5-F). A written determination for the use of competitive negotiation is not required for unsealed Request for Proposals. A minimum of four sources shall be solicited in accordance with the selected Small Business Enhancement Award Priority. (i.e. Micro or Small) See 3.10g. The solicitation for unsealed proposals 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, any Special Terms and Conditions including unique capabilities or qualifications that will be required, award term, and a requirement that under the Small Business Enhancement Award Priority they shall provide their appropriate DSBSD-certified small business (including micro) number.

1. Procurements under \$10,000 shall be set-aside exclusively for award to DSBSD-certified micro businesses if available and the price is fair and reasonable. If prices do not appear to be fair and reasonable, the agency shall document the procurement file to that effect, including stating the basis for the determination, and then an award may be made in accordance with the Small Business Enhancement Award Priority (3.10g). The solicitation shall designate in the title of the solicitation that the procurement is set-aside for micro businesses. Select “Micro Business Set-Aside Award Priority” once the set-aside box has been checked in VBO.

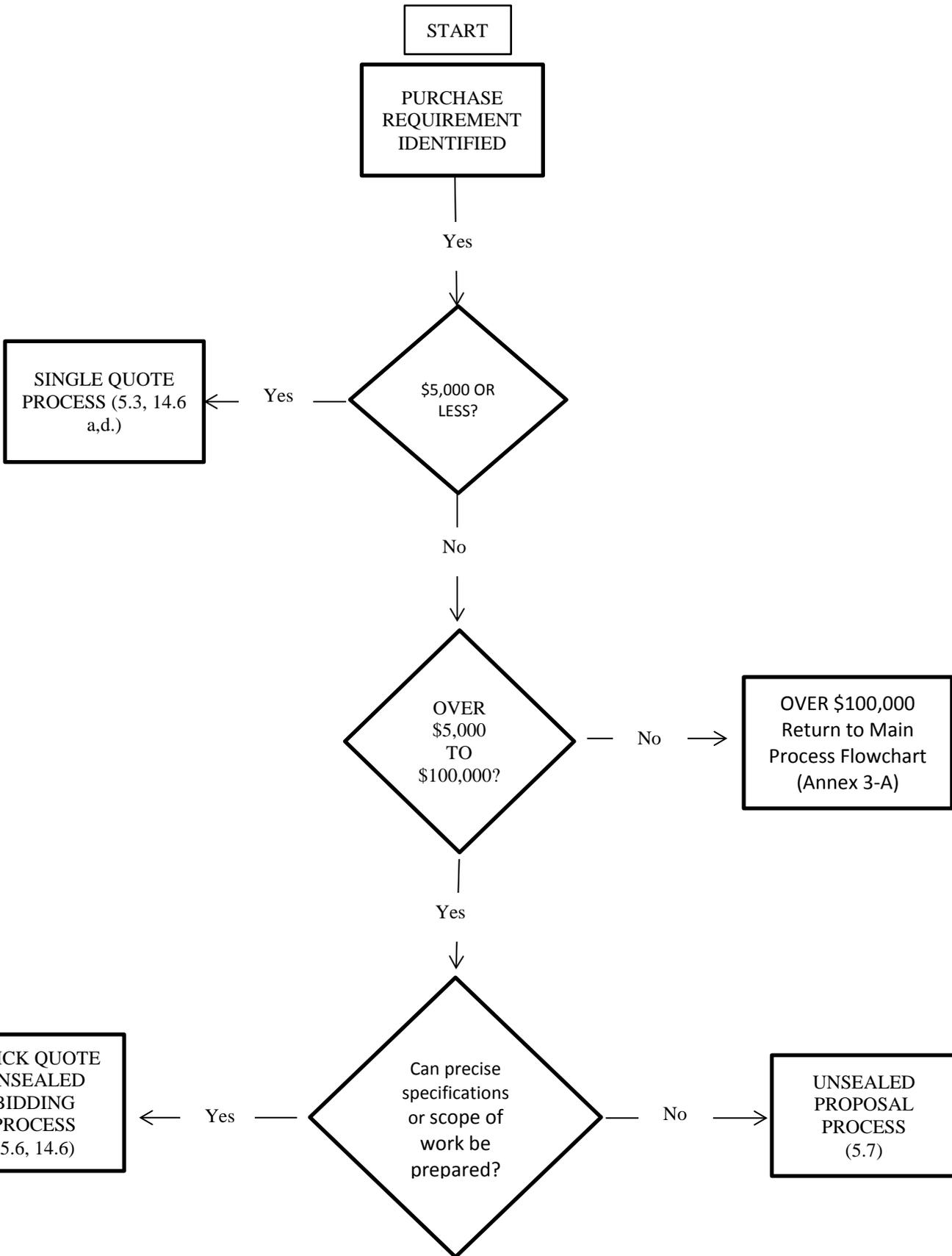
Procurements from \$10,000 and up to and including \$100,000 shall be set-aside exclusively for award to DSBSD-certified small businesses (including micro) if available and the price is fair and reasonable. If prices do not appear to be fair and reasonable, the agency shall document the procurement file to that effect, including stating the basis for the determination, and then an award may be made in accordance with the Small Business Enhancement Award Priority (3.10g). The solicitation shall designate in the title of the solicitation that the procurement is set-aside for small businesses. Select “Small Business Set-Aside Award Priority” once the set-aside box has been checked in VBO.

If the procurement is not set-aside as permitted in 3.10.g.2 agencies and institutions shall include the requirement for the Prime Contractor Small Business Subcontracting Plan (see 3.10.h)

2. Deleted
3. eVA VBO advertising is required See 3.18.
4. 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).
5. 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.
6. Award should be made to the highest ranking offeror in accordance with the Small Business Enhancement Award Priority. Post Notice of Award for 10 days if a Notice of Intent to Award was not issued.

Annex 5-A

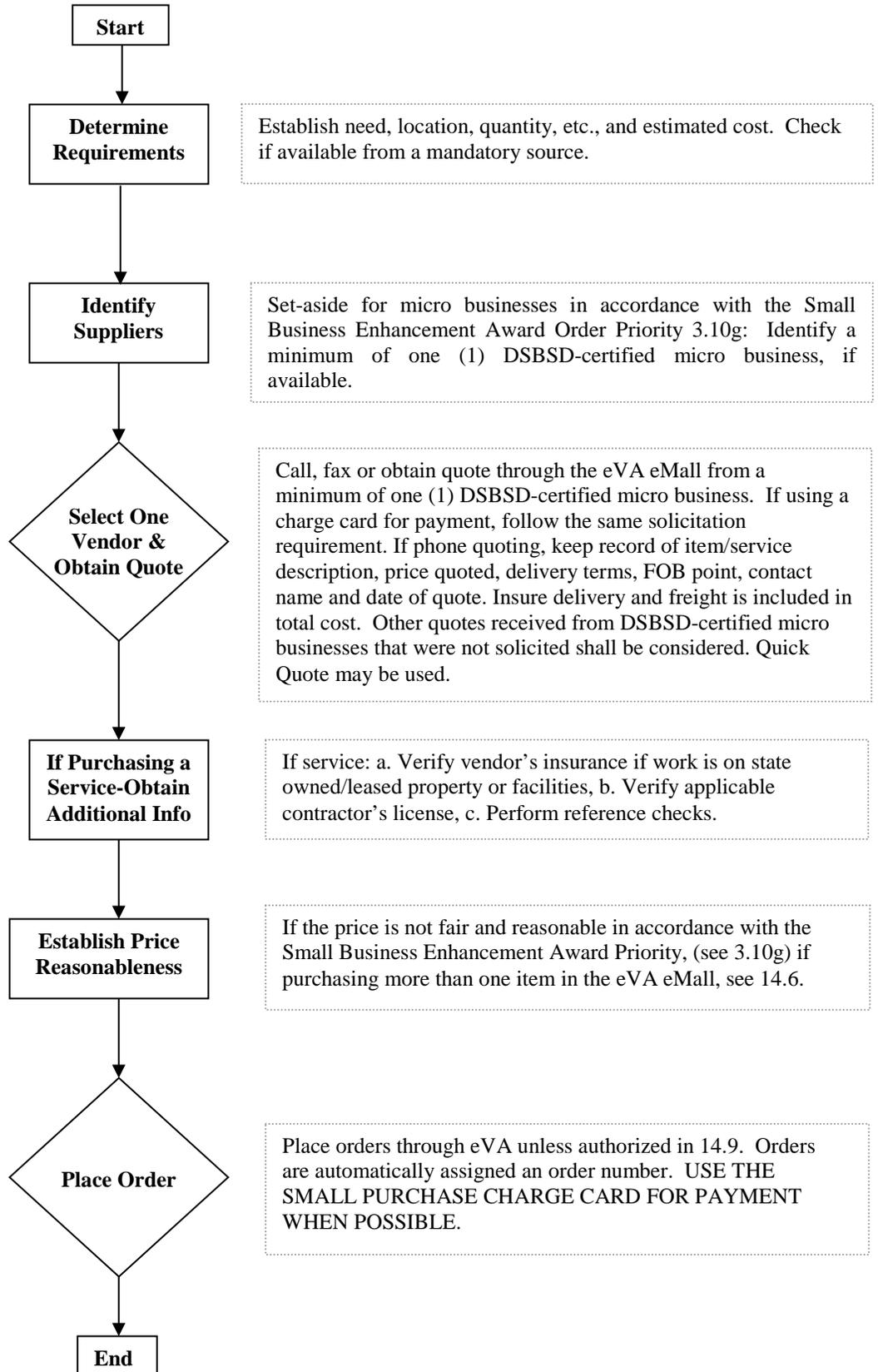
Small Purchase Procedures (Code of Virginia § 2.2-4303G)
Small Purchase Process (goods and nonprofessional services up to and including \$100,000)



Annex 5-C

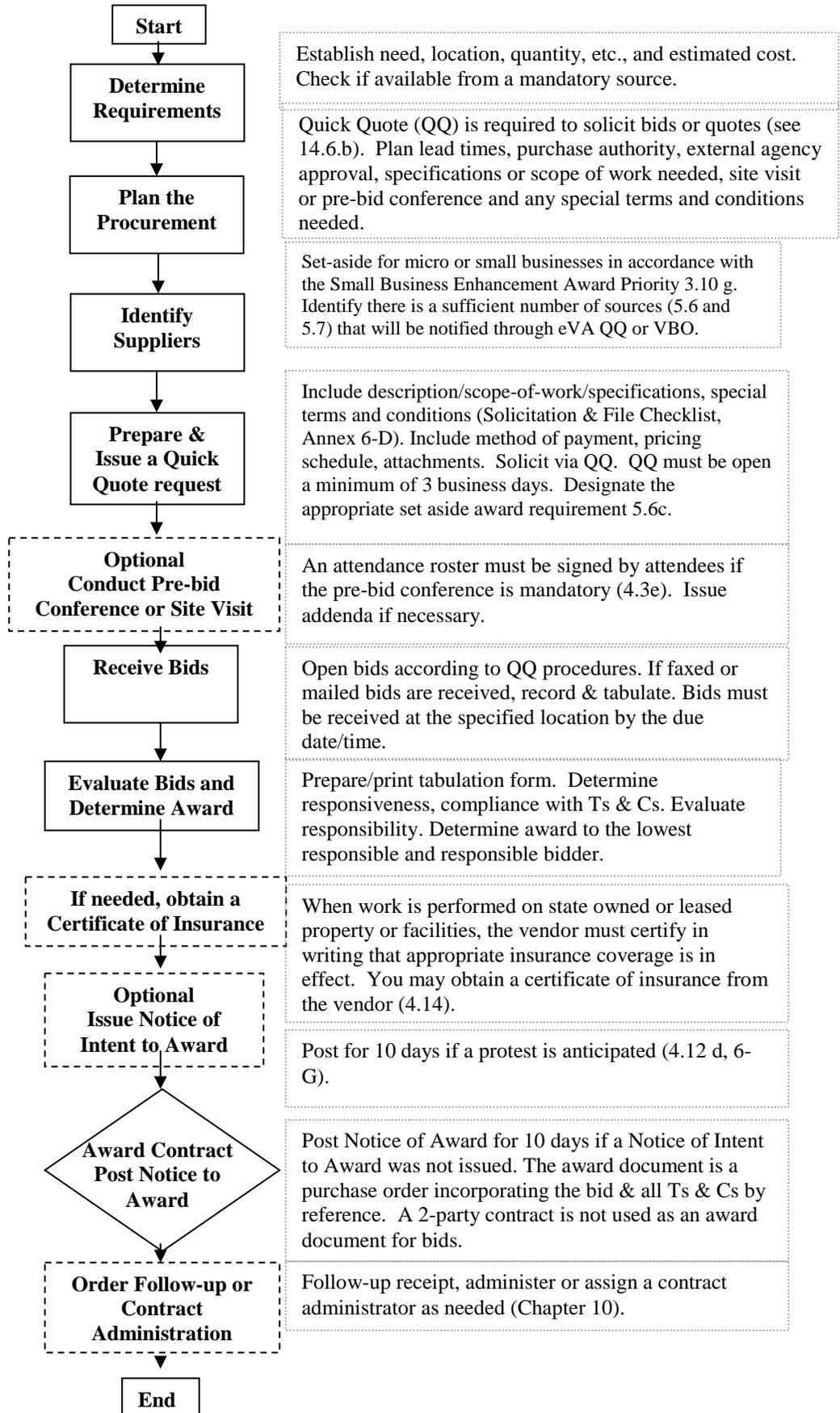
Single Quotation Process

For Goods and Non-professional Services up to and including \$5,000



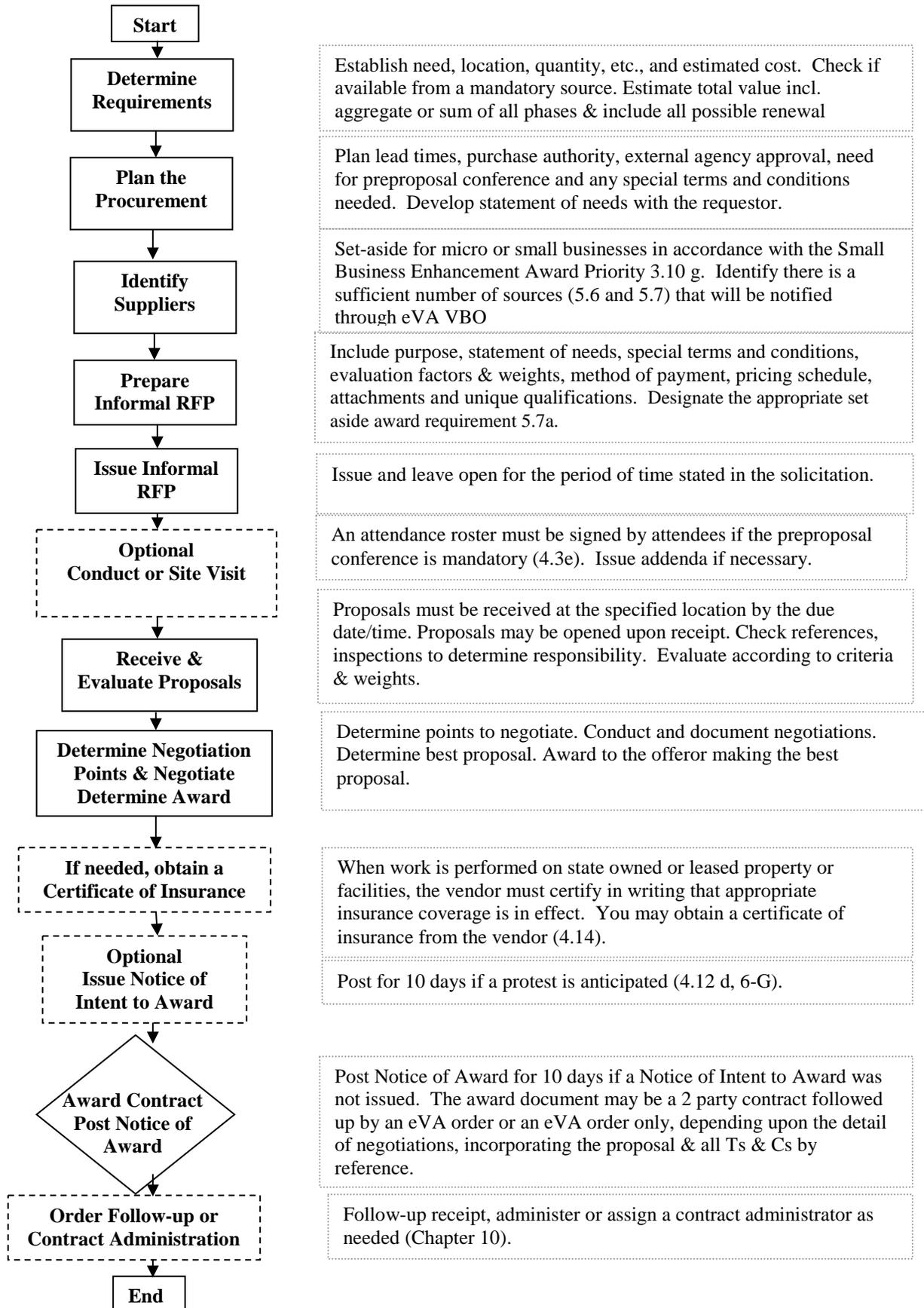
Annex 5-E

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



Annex 5-F

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



Annex 5-G

TELEPHONE RECORD FOR GOODS – Use up to and including \$5,000; over \$5,000 use Quick Quote.

REQUEST NUMBER: _____		BIDDER #1	BIDDER #2	BIDDER #3
BUYER: _____		DATE: _____	DATE: _____	DATE: _____
eVA VENDOR ID or DUNS NUMBER >				
VENDOR NAME >				
VENDOR ADDRESS >				
CONTACT PERSON >				
PHONE NUMBER >				
FAX NUMBER >				
QUANTITY	ITEM DESCRIPTION	UNIT PRICE / TOTAL PRICE	UNIT PRICE / TOTAL PRICE	UNIT PRICE / TOTAL PRICE
(1)				
(2)				
(3)				
(4)				
(5)				
(6)				
DELIVERY DATE or TIME >				
PROMPT PAYMENT TERMS >				
ARE SHIPPING/HANDLING COSTS INCLUDED IN TOTAL PRICE? YES or NO >				
IF NO: CITE SHIPPING COST >				
TOTAL ORDER VALUE >				

6. **General.** Competitive sealed bidding is a method for acquiring goods, printing, non-capital outlay construction and nonprofessional services for public use when the estimated cost is over \$100,000. The competitive sealed bidding process is depicted in the flowchart in Annex 6-A.

6.2 **Preparation and Issuance of IFBs**

e. **Sources.**

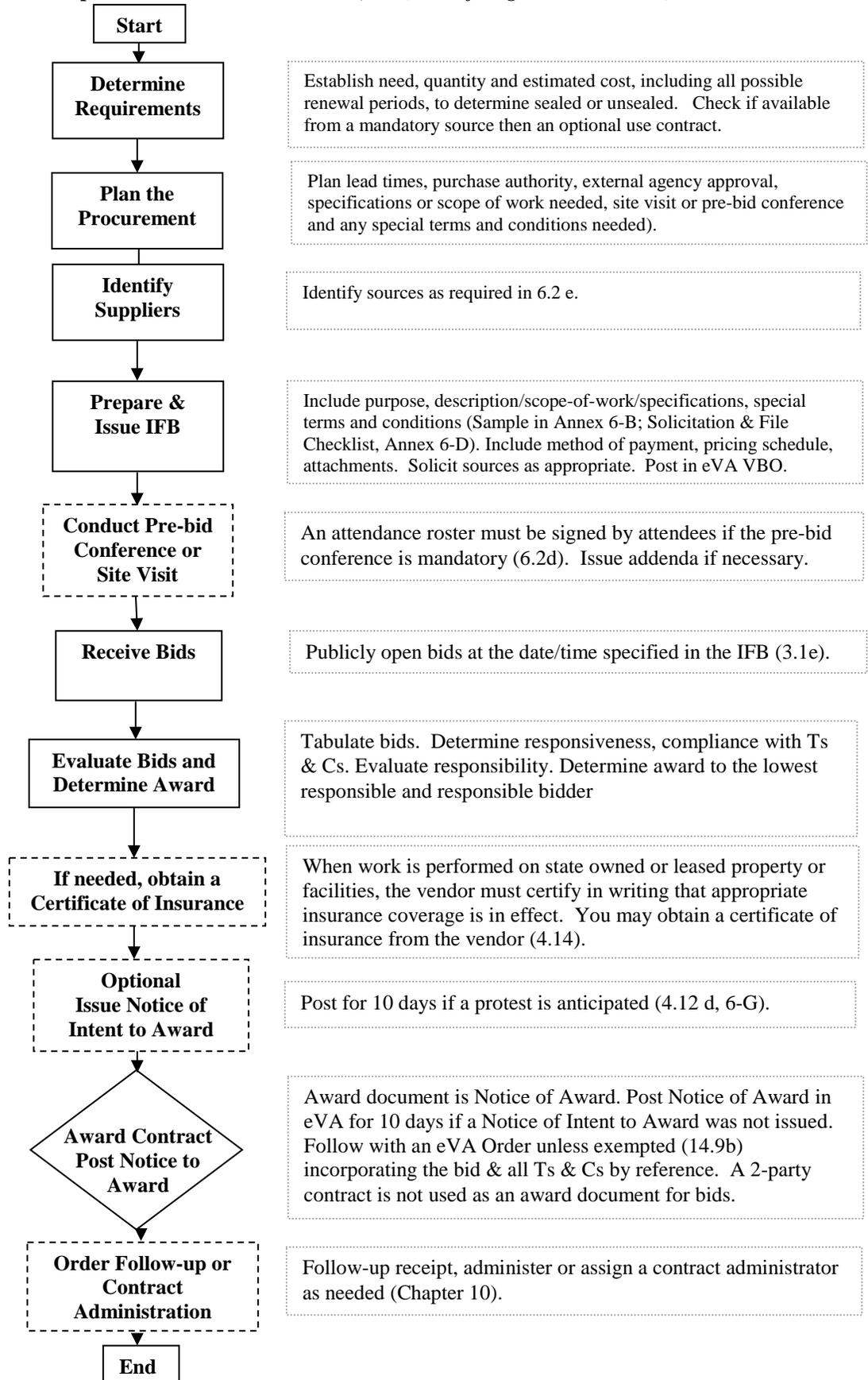
- 1) If the solicitation is over \$100,000, identify if there is a sufficient number of sources (a minimum of four), including DSBSD-certified small businesses, which includes any woman-owned and minority-owned businesses also certified as a small business, if available, that will be notified through eVA Virginia Business Opportunities (VBO).
- 2) If the solicitation is up to and including \$100,000 follow guidelines in Chapter 5.6.

6.6 **Combined Two-Step Competitive Sealed Bidding.** The two steps can be combined by requiring the firms who respond to the solicitation to furnish their unpriced technical proposals in one sealed envelope and their bid prices in a second sealed envelope at the same time. The instructions issued must specify that the responses are to be submitted in two separate sealed envelopes - one marked "Technical Proposal" and the other "Bid Price." If the solicitation is a combined two-step IFB, the bidders should be instructed to identify both the technical proposal and pricing envelope with the bidder's name, company name and address, and bid reference number. If set-aside under 3.10(g), the solicitation shall include a tiered award clause as specified in Special Term and Condition 2.L.. The technical proposals are opened and evaluated as described in 6.5.a, then only the price envelopes for those technical proposals selected as acceptable are opened. The award is made to the lowest responsive and responsible bidder. The award document will incorporate by reference the terms and conditions of the solicitation and include the contractor's technical proposal and the bid price. For late sealed bids the envelope shall be date and time stamped, marked "late" and retained unopened in the procurement file.

Annex 6-A

Competitive Sealed Bidding Process

For Goods and Non-professional Services over \$100,000 (Code of Virginia § 2.2-4302.1)



Annex 6-B

SAMPLE FORMAT AND STEP-BY-STEP PROCEDURES

INVITATION FOR BIDS (IFB)

Issue Date: IFB# _____

Title:

Commodity Code:

Issuing Agency: Commonwealth of Virginia

Using Agency And/Or Location Where Work Will Be Performed:

Period Of Contract: From _____ Through _____ (*Renewable). (* If contract has renewal clause)

Sealed Bids Will Be Received Until _____ (Time and Date)

For Furnishing The Goods/Services Described Herein And Then Opened In Public.

All Inquiries For Information Should Be Directed To: _____ Phone: (____) _____.

IF BIDS ARE MAILED, SEND DIRECTLY TO ISSUING AGENCY SHOWN ABOVE. IF BIDS ARE HAND DELIVERED, DELIVER TO:

Street Address Building Floor Room No.

In compliance with this Invitation For Bids (IFB) and all conditions imposed in this IFB, the undersigned firm hereby offers and agrees to furnish all goods and services required by this IFB at the prices indicated in the pricing schedule, and the undersigned firm hereby certifies that all information provided below and in any schedule attached hereto is true, correct, and complete.

* Virginia Contractor License No. _____ Class: _____ Specialty Codes: _____

* DSBSD-certified Small Business No. _____

Name And Address Of Firm:

Zip Code: _____

Date: _____
By: _____
(Signature In Ink)

Name: _____
(Please Print)

eVA Vendor ID or DUNS #: _____

Fax Number: (____) _____

Title: _____

E-mail Address: _____

Telephone Number: (____) _____

* PREBID CONFERENCE: A (mandatory/optional) prebid conference will be held on _____ at the _____ (Reference: Paragraph ____ herein). (If mandatory add: "NO ONE WILL BE ADMITTED AFTER _____ (Time) _____")* If special ADA accommodations are needed, please contact _____ (Name) at (phone number) by _____ (date) .

* Delete if not applicable.

Note: This public body does not discriminate against faith-based organizations in accordance with the Code of Virginia, § 2.2-4343.1 or against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, sexual orientation, gender identity, political affiliation, or veteran status or any other basis prohibited by state law relating to discrimination in employment. Faith-based organizations may request that the issuing agency not include subparagraph 1.e in General Terms and Condition C. Such a request shall be in writing and explain why an exception should be made in that invitation to bid or request for proposal.

Annex 6-B

IFB STEP-BY-STEP PROCEDURES

STEP THREE:

VI. METHOD OF PAYMENT: Specify when payment will be made, e.g., upon delivery, monthly, quarterly, completion of project, etc. In addition, specify when and where invoices are to be submitted, e.g., by the 10th of the month following the month services were rendered, upon shipment, completion of project, etc. The method of payment should be specified in the IFB. The solicitation shall also indicate the anticipated type of payment, e.g. SPCC, check, EDI, etc.

STEP FOUR:

B. IDENTIFY POTENTIAL SOURCES: A sufficient number of sources (a minimum of four) must be solicited.

STEP SEVEN:

RECEIVE BIDS: Receive bids until the due date and time specified in the IFB. Publicly open bids follow receipt or at the date and time specified in the IFB (see 3.1e). Unsealed bids may be opened and tabulated upon receipt. For late sealed bids the envelope shall be date and time stamped, marked "late" and retained unopened in the procurement file.

Annex 6-D

IFB SOLICITATION AND FILE CHECKLIST

✓	IFB SOLICITATION CHECKLIST	✓	FILE CHECKLIST
	<u>Approval</u> : If an approval is required, it should be obtained prior to preparing the solicitation and a copy placed in the solicitation file. Examples include: a release from Corrections to purchase a good(s) or service they produce from a commercial source, authority from the DGS/DPS for an agency to make a direct procurement in excess of its delegated purchase authority (see 1.2, 1.4 and 2.1 of this manual).		Special Approval
	<u>Approved Request</u> : Written approval to expend funds must be included in the file.		Purchase Requisition
	<u>Specifications/Scope of Work</u> : The most important part of every solicitation, the specifications or scope of work is a detailed description of what is to be procured. It establishes the quality level that is used to determine the acceptability of the goods or services delivered. The solicitation should clearly state what is wanted, where, when, and how many or how much.		
	<u>Prebid Conferences/Site Visits</u> : If a prebid conference or site visit is to be held, the solicitation must state the date, time, place, and whether attendance is optional or mandatory.		Prebid sign-in sheet
	<u>General Terms and Conditions</u> : The general terms and conditions or “boilerplate” must be included in every solicitation. Taxes, Use of Brand Names, and Transportation and Packaging General Terms and Conditions are not normally required for service contracts. The Insurance clause is not normally required for goods purchases.		
	<u>Special Terms and Conditions</u> : Each procurement is different, and for each solicitation the special terms and conditions used should be carefully reviewed to ensure that the proper ones are included. They should be essential to the requirement, protect the interests of the Commonwealth, and assist the bidder in understanding the agency’s intent.		
	<u>Method of Award</u> : The method of award must be stated in the solicitation, and be based on the requirements stated therein. If the award is based on other than line item, lot, or grand total, a pricing scenario should be included to illustrate how the low bid will be determined.		
	<u>Method of Payment</u> : If payment is to be made prior to final acceptance of the service or goods to be provided, the solicitation should set forth the procedure; e.g., progress payments, partial payments, etc The solicitation shall also identify the anticipated type of payment, e.g. SPCC, check, EDI, etc.		
	<u>References</u> : If references are required, the number and type should be specified in the solicitation, and those listed should be checked.		Results of Reference Checks (if requested)

Pre-Award, Receipt & Evaluation, and Post-Award Activities:			
	<u>Bidders List</u> : Solicit the required number of source per 6.2e. Note which vendors are DSBSD-certified small businesses.		Bidders List: Name, addresses of Bidders solicited
	<u>Public Notice</u> : Public notice of the solicitation is required at least ten days prior to the date set for receipt of bids by posting on eVA VBO (see 3.18).		Posted notice of solicitation from eVA VBO
	<u>Solicitation</u> : Original IFB, as issued.		Original solicitation

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 indicate if a numerical scoring system will be used in the evaluation of proposals. The weights assigned to the evaluation criteria shall also be posted in the location used for public posting of procurement notices prior to the due date and time if the weights were not included in the RFP. A breakout of subcomponent weights need not be listed. Price shall be one of the factors considered, but need not be the determining one. Include a pricing schedule in the RFP (see Annex 7-B).

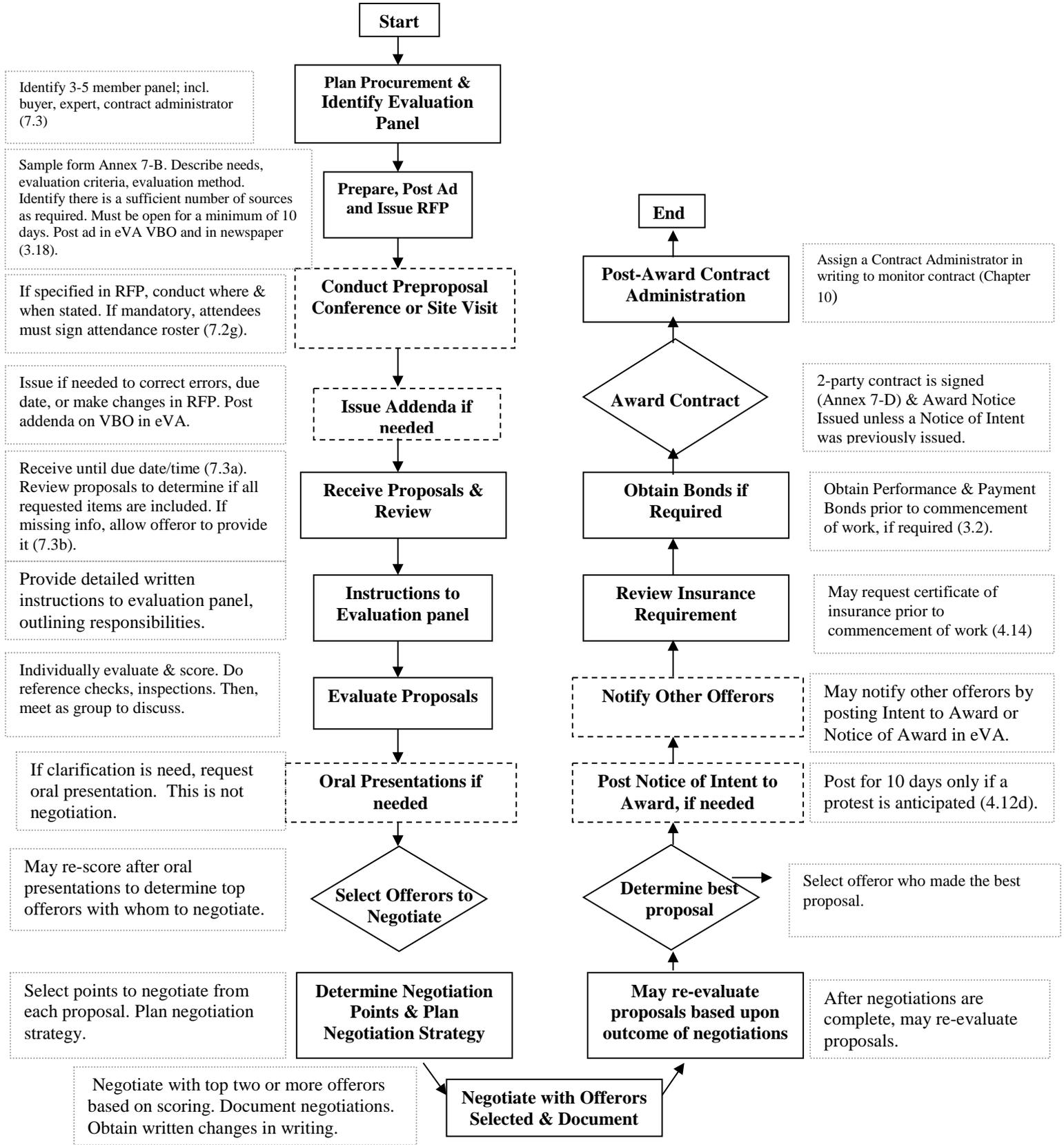
g. Sources.

1) If the solicitation is over \$100,000, identify if there is a sufficient number of sources (a minimum of four), including DSBSD-certified small businesses, which includes any woman-owned and minority-owned businesses also certified as a small business, if available, that will be notified through eVA Virginia Business Opportunities (VBO).

2) If the solicitation is up to and including \$100,000 follow guidelines in Chapter 5.6

Annex 7-A

**Competitive Sealed Proposal Process
For Goods and Non-professional Services over \$100,000 (Code of Virginia §2.2-4302.2)**



COMPETITIVE NEGOTIATION STEP-BY-STEP PROCEDURES

STEP 1 - PREPARE THE REQUEST FOR PROPOSAL (RFP)

- X. METHOD OF PAYMENT: Specify when payment will be made, i.e., monthly, quarterly, completion of project, etc. In addition, specify when invoices are to be submitted, i.e., by the 10th of the month following the month services were rendered, upon shipment, upon completion of project, etc. The solicitation shall identify the anticipated type of payment, e.g. SPCC, check, EDI, etc.

STEP 2 – PREPARE COVER SHEET AND ISSUE THE REQUEST FOR PROPOSALS

- II. IDENTIFY POTENTIAL SOURCES: A sufficient number of sources (a minimum of four) must be solicited

STEP 6 - RECEIVE PROPOSALS

Receive proposals at the date and time specified. Publicly open them if indicated on the cover sheet. A public opening is not required by law. If a public opening is held, read only the names of the offerors. See 3.1e for proposal opening procedure. Unsealed proposals may be opened and evaluated upon receipt. For late sealed proposals the envelope shall be date and time stamped, marked “late” and retained unopened in the procurement file.

RFP SOLICITATION AND FILE CHECKLIST

✓	RFP SOLICITATION CHECKLIST	✓	FILE CHECKLIST
	<u>Approval</u> : Required approvals should be obtained prior to preparing the solicitation and a copy placed in the solicitation file. Examples include a release from Corrections to purchase a good(s) or service they produce from a commercial source, authority from the DGS/DPS for an agency to make a direct procurement in excess of its delegated purchase authority (see 1.2, 1.4 and 2.1).		Special Approval
	<u>Approved Request</u> : Written approval to expend funds must be included in the file. When considering the value of the procurement, include all possible renewal periods.		Purchase Requisition
	<u>Statement of Needs</u> : The Statement of Needs describes in general terms what is to be procured.		
	<u>Preproposal Conferences/Site Visits</u> : If a preproposal conference or site visit is to be held, the solicitation must state the date, time, place, and whether attendance is optional or mandatory.		Preproposal sign-in sheet
	<u>General Terms and Conditions</u> : The general terms and conditions or “boilerplate” must be included in every solicitation. Taxes, Use of Brand Names, and Transportation and Packaging General Terms and Conditions are not normally required for service contracts. The Insurance clause is not normally required for goods purchases.		
	<u>Special Terms and Conditions</u> : Each procurement is different, and for each solicitation the special terms and conditions used should be carefully reviewed to ensure that the proper ones are included. They should be essential to the requirement, protect the interests of the Commonwealth, and assist the offeror in understanding the agency’s intent.		
	<u>Evaluation Criteria</u> : The evaluation criteria must be stated in the solicitation, and be based on the requirements stated therein. Typical evaluation criteria include price, approach to the work, experience and qualifications of offerors. Indicate in the RFP whether a numerical scoring system will be used in the evaluation of the proposal. The weights assigned to each criteria must be either included in the RFP or posted prior to receipt of proposals.		Evaluation criteria weights (if not included in the RFP)
	<u>Method of Payment</u> : If payment is to be made prior to final acceptance of the service or goods to be provided, the solicitation should set forth the procedure; e.g., progress payments, partial payments, etc. The solicitation shall identify the anticipated type of payment, e.g. SPCC, check, EDI, etc.		
	<u>References</u> : If references are required, the number and type should be specified in the solicitation, and those listed should be checked.		Results of Reference Checks (if requested)

Pre-award, Receipt & Evaluation, and Post-Award			
	<u>Evaluation Committee</u> : Proposal Evaluation Committee is identified.		Names of Evaluation Committee
	<u>Offerors List</u> : Solicit a list of sources per 7.2g. Note which vendors are DSBSD-certified small businesses		Offerors List: Name, addresses of Offerors Solicited

Annex 7-J SAMPLE
**PUBLIC PROCUREMENT ETHICS, NON-DISCLOSURE,
AND CONFLICT OF INTEREST AGREEMENT**

The procurement of goods and services by a public body from a private enterprise is a sensitive process governed by law. We must be assured that all public parties involved in the selection process do nothing to contribute to the “**fact**” or “**appearance**” of any impropriety or personal interest in the outcome of the procurement, and thus maintain public confidence in the objectivity of the evaluation process. To better make you aware of the sensitivity of public procurements, each person serving on this evaluation/selection committee will be required to agree and comply with the following statements derived from *Article 6, Ethics In Public Contracting, Virginia Public Procurement Act*, and other laws and policy.

For purposes of the statements below, an “interested firm” includes any firm that may realize a reasonably foreseeable direct or indirect benefit or detriment as a result of the above procurement. At a minimum, this includes any vendor that foreseeably may respond to the above Request for Proposal (RFP), as well as any business entity that foreseeably may participate as a supplier, subcontractor, or consultant to such a vendor in connection with the procurement.

- A. I certify that I am not an officer or director of any interested firm. Similarly, no member of my immediate family is an officer or director of any interested firm.
- B. I certify that neither I nor any member of my immediate family owes any money or other obligation to any employee or officer of any interested firm.
- C. I certify that I do not have any funds invested in any interested firm. Similarly, neither I nor any member of my immediate family own or control an interest in any interested firm.
- D. I certify that neither I, nor any member of my immediate family, received lodging, entertainment, transportation, money or anything else of nominal value offered by an employee or officer of any interested firm. (This includes tickets to sporting events or shows, meals or lodging, gifts, etc.). During and after the procurement process, I will not accept any of the forgoing from any employee or officer of any interested firm.

NOTE: Exceptions to D. must be approved by the Agency Director. Such approval could include acceptance of a meal which is widely offered to many individuals inside and outside the agency (i.e. provided on-site when a break in the proceedings is not practicable).

- E. I certify that I have not received any compensation from any interested firm. No member of my immediate family has received compensation, salary or wages in excess of \$5,000 from any interested firm.

NOTE: If at any time during the evaluation/selection process, I find that I, or any member of my immediate family, have a personal interest in any interested firm, then I will promptly notify the selection committee chairperson of this conflict and voluntarily remove myself from this evaluation/selection process and file any necessary official disqualification required by law.

- F. During the course of this procurement, I understand that **ALL** communications with any firms regarding this RFP must be handled by the Contracting Officer. I agree not to contact any interested firm, and if any of these firms attempt to contact me directly, then I agree to refer the firm to the Contracting Officer. I also agree that the information acquired through this evaluation/selection process will not be divulged to anyone outside the panel until after award of the contract resulting from this process.

I further agree to abide by all the policies/procedures contained in this document relative to this procurement as well as any other instructions and directions issued by Contracting Officer.

Signature

Date

Printed Name

Agency

Title

- 8.1 **Approval for Sole Source Procurements up to and including \$50,000.** All sole source procurements for non-technology goods and services up to and including \$50,000 must be approved in advance by the agency head or designee, which shall be the chief purchasing officer or a direct report to the agency head [see 1.2e (2)]. The written determination, using the Sole Source Procurement Approval Request form in Annex 8-C, documenting that there is only one source practicably available for that which is to be procured, must be included in the procurement file. In addition, a memorandum must be attached to the request which addresses the four points shown in 8.2. The writing shall document the basis for the determination, which should include any market analysis conducted in order to ensure that the good or service required was practicably available from only one source. All purchasing agency employees having official responsibility with the procurement must complete a Public Procurement Ethics and Conflict of Interest Agreement (Annex 8-G). They should also be provided a copy of VPPA, Article 6. Ethics in Public Contracting.

Annex 8-B

SOLE SOURCE CHECKLIST

- _____ 1. Public Procurement Ethics and Conflict of Interest Agreement) (Annex 8-G) by all agency employees having an involvement with the sole source procurement.
- _____ 2. Written determination approved by the agency head or designee as provided in 8.1, for procurements up to and including \$50,000. The procurement must address the four points shown in 8.2.
- _____ 3. 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. All request for approval must be submitted online using the eform available in eVA.
- _____ 4. Noncompetitive negotiation shall be conducted. The file shall include the results of the negotiations.
- _____ 5. Evidence that a determination of price reasonableness was conducted.
- _____ 6. Post sole source notice of award on eVA VBO.
- _____ 7. PO or contract issued.

Annex 8-G SAMPLE

**PUBLIC PROCUREMENT ETHICS,
AND CONFLICT OF INTEREST AGREEMENT**

The procurement of goods and services by a public body from a private enterprise is a sensitive process governed by law. We must be assured that all public parties involved in the selection process do nothing to contribute to the “**fact**” or “**appearance**” of any impropriety or personal interest in the outcome of the procurement, and thus maintain public confidence in the objectivity of the evaluation process. To better make you aware of the sensitivity of public procurements, each person having official responsibility with the procurement shall be required to agree and comply with the following statements derived from *Article 6, Ethics In Public Contracting, Virginia Public Procurement Act*, and other laws and policy.

For purposes of the statements below, an “interested firm” includes any firm that may realize a reasonably foreseeable direct or indirect benefit or detriment as a result of the procurement. At a minimum, this includes any business entity that foreseeably may participate as a supplier, subcontractor, or consultant to such a vendor in connection with the procurement.

- A. I certify that I am not an officer or director of any interested firm. Similarly, no member of my immediate family is an officer or director of any interested firm.
- B. I certify that neither I nor any member of my immediate family owes any money or other obligation to any employee or officer of any interested firm.
- C. I certify that I do not have any funds invested in any interested firm. Similarly, neither I nor any member of my immediate family own or control an interest in any interested firm.
- D. I certify that neither I, nor any member of my immediate family, received lodging, entertainment, transportation, money or anything else of nominal value offered by an employee or officer of any interested firm. (This includes tickets to sporting events or shows, meals or lodging, gifts, etc.). During and after the procurement process, I will not accept any of the forgoing from any employee or officer of any interested firm.

NOTE: Exceptions to D. must be approved by the Agency Director. Such approval could include acceptance of a meal which is widely offered to many individuals inside and outside the agency (i.e. provided on-site when a break in the proceedings is not practicable).

- E. I certify that I have not received any compensation from any interested firm. No member of my immediate family has received compensation, salary or wages in excess of \$5,000 from any interested firm.

NOTE: If at any time during the evaluation/selection process, I find that I, or any member of my immediate family, have a personal interest in any interested firm, then I will promptly notify the selection committee chairperson of this conflict and voluntarily remove myself from this evaluation/selection process and file any necessary official disqualification required by law.

I further agree to abide by all the policies/procedures contained in this document relative to this procurement as well as any other instructions and directions issued by Contracting Officer.

Signature

Date

Printed Name

Agency

Title

10.13 **Contract Renewal and Extension.**

- a. **Renewal.** A term contract may contain a renewal clause describing the conditions under which it may be renewed for a stipulated period of time. However, no contract may be renewed and no additional consideration may be paid unless specifically provided for in the original contract. Often indices such as the Consumer Price Index (CPI) or Producer Price Index (PPI) are used as a benchmark in pricing renewal options and assist in determining price reasonableness. Price increases should not be given automatically at renewal. It is the responsibility of the contractor to request a price increase, if desired, up to the amount authorized by the index referenced in the contract. The agency may then negotiate the amount of the increase up to the indexed amount.

Prior to renewing a contract that contains the requirement of Small Business Subcontracting, the agency shall review the contractor's compliance with their submitted plan. Failure to meet the small business participation levels as submitted in the plan shall be considered prior to executing the renewal (see 3.10 h). All renewals must be fully executed in writing prior to the expiration of the current contract term.

- 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 no more than 18 months. Agencies may extend such contracts up to six (6) months without DPS approval. After that extension such contracts may be extended for up to twelve (12) additional months only with advance written approval of DPS. The extension request shall be made using the Procurement Exemption Request eform in eVA (see Annex 13-D). All extensions shall be executed in writing prior to the expiration of the current contract.

Annex 10-H
COMMONWEALTH OF VIRGINIA
Department of General Services
Division of Purchases and Supply
PROCUREMENT COMPLAINT FORM

INSTRUCTIONS FOR COMPLETING THE PROCUREMENT COMPLAINT FORM:

Form Preparation Instructions

Heading: Vendor /Agency information and distribution instructions.

1. Insert the full name and address of the vendor/agency and Insert the eVA Number when submitting the report.
2. Name the person that is to be contacted.
3. **Any responsible person's signature is acceptable (Authorized Vendor/Agency Signature).**
4. Insert phone number of contact person.

Closure: Agency and Order Entry Information

1. Insert the full name and address of the agency/vendor against which this report is filed.
2. Insert the agency representative/buyer/vendor you last contacted, including the phone number and extension.
3. Insert buyer /agency/vendor representative signature.
4. Insert date this form was initiated.
5. Insert the bid number if not an agency order.
6. Insert the purchase order number
7. Insert the purchase order date.
8. Insert the contract number if using state or single agency contract.
9. Insert generic commodity name of the item. Example: chair, etc.
10. Insert Agency Code/ eVA number.

Nature of Complaint: Insert (X) for principle reason (s) for complaint. Attach additional information and documentation.

NOTE:

1. Additional documentation can be attached to e-mail or faxed.
2. Transmit Copy by e-mail, fax or postal delivery.
3. Send via Email to: cidna.unger@dgs.virginia.gov , fax (804) 786-5413 or mail to 1111 E. Broad Street, Richmond ,VA 23218-1199.
4. Agency/Vendor must print or save a copy for their files.
5. **This form may be used by both Agency and Vendor for complaint issues concerning contracts.**

11.2 **Judicial and Administrative Appeals**

- d. Protest of Award or Decision to Award. Any bidder or offeror may protest the award or decision to award a contract by submitting such protest in writing to the procuring agency, or an official designated by the agency, no later than ten days after public notice of the award or the announcement of the decision to award, whichever occurs first. Public notice of the award or the announcement of the decision to award shall be given by the public body in the manner prescribed in the terms or conditions of the solicitation. Any bidder, offeror, or contractor, or a potential bidder or offeror on a contract negotiated on a sole source or emergency basis who desires to protest the award or decision to award such contract shall submit such protest in the same manner no later than ten (10) days after posting or publication of the notice of such contract as provided in 3.18c. The written protest must be received in the purchasing office no later than 5:00 p.m. on the tenth day. If the tenth day falls on a weekend or an official holiday, the ten-day period expires at 5:00 p.m. on the next regular workday. However, if the protest of any actual or potential bidder or offeror depends in whole or in part upon information contained in public records pertaining to the procurement transaction, then the time within which the protest must be submitted shall expire ten (10) days after those records are available for inspection by such bidder or offeror, or at such later time as provided in this section. No protest shall lie for a claim that the selected bidder or offeror is not a responsible bidder or offeror. The written protest shall include the basis for the protest and the relief sought. The procuring agency or an official designated by that agency shall issue a decision in writing within ten (10) days stating the reasons for the action taken. This decision shall be final unless the bidder or offeror appeals within ten (10) days of receipt of the written decision by invoking administrative procedures under § 2.2-4365 of the Code of Virginia, if available, or in the alternative by instituting legal action under § 2.2-4364 of the Code of Virginia. Nothing in this subsection (§ 2.2-4364) shall be construed to permit a bidder to challenge the validity of the terms or conditions of the Invitation for Bids or Request for Proposals.

If prior to an award it is determined that the decision to award is arbitrary or capricious, then the sole relief shall be a finding to that effect. The agency shall cancel the proposed award or revise it to comply with the law. If, after an award, it is determined that an award of a contract was arbitrary or capricious, then the sole relief shall be as hereinafter provided. Where the award has been made but performance has not begun, the performance of the contract may be enjoined. Where the award has been made and performance has begun, the agency may declare the contract void upon a finding that this action is in the best interest of the public. Where a contract is declared void, the performing contractor shall be compensated for the cost of performance up to the time of such declaration. In no event shall the performing contractor be entitled to lost profits (*Code of Virginia*, § 2.2-4360).

When an agency, an official designated by that agency, or an appeals board determines, after a hearing held following reasonable notice to all bidders, that there is probable cause to believe that a decision to award was based on fraud or corruption the agency-designated official or appeals board may enjoin the award of the contract to a particular bidder (*Code of Virginia*, § 2.2-4360).

12.7 **Surplus Property Disposal Methods and Procedures.**

b. Surplus Property Disposal Methods

7. Surplus Computers and Related Equipment:

- (c) When computers and related equipment are obsolete, broken, or do not have resale value as determined by DGS/OSPM, recycling, to the extent practicable, should be utilized in accordance with *Code of Virginia* § 2-2-1124.B.15, and in consideration of environmental regulations. For additional information and resources on electronics recycling, please visit the recycling section of the DGS Surplus website at <http://www.dgs.virginia.gov/surplus/> and the electronics recycling section of the Virginia Department of Environmental Quality at <http://www.deq.virginia.gov/Programs/LandProtectionRevitalization/RecyclingandLitterPreventionPrograms/ElectronicsRecycling.aspx>.

12.8 **Disposal Methods for Regulated or Special Items.**

- d. **Law Enforcement Animals.** Any animal especially trained for police work may be sold at a price of \$1 to the handler who was last in control of such animal. The agency or institution may allow the immediate survivor of any full-time sworn law-enforcement officer who (i) is killed in the line of duty or (ii) dies in service and has at least 10

years of service to purchase the service animal at a price of \$1. Any such sale shall not be deemed a violation of the State and Local Government Conflict of Interest Act, § 2.2-3100 et seq.

- 13.2 **DGS/DPS Home Page.** DGS/DPS has a home page on the Internet. Included on the home page are the *VPPA*, *Vendors Manual*, this manual, staff telephone directory, organizational chart, Procurement Information Memoranda (PIMs), DGS/DPS purchase requisition, master contract list, state contracts, Hotel/Motel Guide, list of mandatory sources, information about the VCO program and other training opportunities, *VBO* information, contract compliance information, vendor registration information, alphabetical list of all state purchasing offices, list of agencies with increased delegated purchasing authority, and information regarding the VDC and surplus property. It also includes hot links to other web sites that have useful information for purchasing professionals. New information is added regularly. The web site address is www.dgs.virginia.gov/dps/ or www.eva.virginia.gov.
- 13.3 **Vendor Source Assistance.** Vendor source list are available through eVA on the public page and available through the Reports and Resource Center.

Annex 13-B

**Department of General Services
Division of Purchases and Supply**

Director

Executive Secretary

Director, Virginia Distribution Center	Deputy Director, DPS Purchasing Bureau	Director, Administration/Development	Director, Policy, Consulting & Review	Director, E-Procurement Bureau
Develop Specifications for Distributed Commodities	Perform Supplier & Market Research	Provide Administrative Support for Procurement Activities	Monitor All Agencies for Compliance & Performance Analysis	Facilitate Reassessment of DPS Business Processes & Systems for Effectiveness & Efficiency Research, Design & Implement Automation Technologies in Support of DPS Business Initiatives
Procure Agency Required Commodities	Assist With Specifications Preparation	Provide Daily Support for Automated Systems	Address Matters of Delegation	Manage Electronic Commerce Development & Implementation
Maintain Advisory Committees Which Will Advise VDC on Quality Requirements Monitor/Manage Costs to Ensure Superior Competitive Posture	Execute Procurements	Manage Budget Development & Execution	Facilitate Code, Policy, Procedure Review & Upgrade	Provide Inter-Agency Guidance in Pursuit of Consistency
Optimize Inventory to Ensure Quality Service	Collaborate with Agencies on Current, Future "Unique" Needs		Advise Agency on Procurement Issues	eVA Functional Project Management
Conduct a Marketing Program for Distributed Commodities	Monitor Supplier Compliance		Analyze Expenditure Data & Recommend Action Plans	
Provide Quality Assurance Program Through VDC Laboratory	Manage the Virginia Institute of Procurement		Monitor, Analyze, & Develop Legislation	
	Promote Supplier Participation in State Bid Programs			

Annex 13-C

Directory of Procurement Assistance

<http://www.eva.virginia.gov/pages/eva-dps-directory-of-procurement.htm>

Division of Purchases and Supply
 P. O. Box 1199, Richmond, VA 23218-1199
 (1111 East Broad Street, Richmond, VA 23219)

Phone: 804-786-3842
Main FAX: (804) 225-3707
eVA Customer Care: (804) 371-2525 **Toll-Free** 1-866-289-7367

DIVISION MANAGEMENT			
Director	Robert Gleason	804-786-3846	Robert.gleason@dgs.virginia.gov
Deputy Director	Linwood Spindle	804-786-3846	Linwood.spindle@dgs.virginia.gov
Administrative Support	Sherie Sensabaugh	804-786-3846	Sherie.sensabaugh@dgs.virginia.gov
FAX		804-371-7877	
BUSINESS SERVICES			
Director	Vacant		
Business Manager	Dawn Harper	804-786-6641	Dawn.harper@dgs.virginia.gov
Flags	Davina Ellis	804-692-0747	Davina.ellis@dgs.virginia.gov
Reception	Letha Ferrell	804-786-3842	Letha.ferrell@dgs.virginia.gov
FAX		804-371-7877	
eVA Business Manager	Jan Giffin	804-225-3689	Jan.giffin@dgs.virginia.gov
eVA Billing Manager	Bryan Chamberlain	804-225-4046	Bryan.chamberlain@dgs.virginia.gov
FAX		804-786-5413	
PROCUREMENT MANAGEMENT			
Statewide Strategic Sourcing Manager	Pete Stamps	804-786-0079	Pete.stamps@dgs.virginia.gov
Administrative Support	Diane Coles	804-786-8996	Diane.coles@dgs.virginia.gov
FAX		804-786-5712	
<i>CLICK HERE FOR LIST OF BUYERS</i>			
Statewide Strategic Sourcing Manager	Ron King	804-786-1601	Ron.king@dgs.virginia.gov
Administrative Support	Pauline Loving	804-786-3862	Pauline.loving@dgs.virginia.gov
FAX		804-786-5413	
<i>CLICK HERE FOR LIST OF BUYERS</i>			
SUPPLIER RELATIONSHIP MANAGEMENT (Compliance)			
Manager	Cidna Unger	804-225-4045	Cidna.unger@dgs.virginia.gov
FAX		804-786-5712	
POLICY, CONSULTING AND REVIEW			

Director	Sandra Gill	804-786-1600	Sandra.gill@dgs.virginia.gov
Administrative Support	Angela Smith	804-371-8355	Angela.smith@dgs.virginia.gov
FAX		804-786-5712	
<i>CLICK HERE FOR LIST OF ACCOUNT EXECUTIVES</i>			
eVA - ePROCUREMENT			
Director	Shane Caudill	804-786-3855	Shane.caudill@dgs.virginia.gov
Deputy Director	Lisa Kirby	804-786-5079	Lisa.Kirby@dgs.virginia.gov
Administrative Support	Vacant		
eVA Customer Care	Ghania Matias	804-371-2525	866-289-7367 or www.eva.virginia.gov
eVA Website	David Foster	804-225-4628	David.foster@dgs.virginia.gov
FAX		804-786-3883	
LEARNING AND DEVELOPMENT – VIRGINIA INSTITUTE OF PROCUREMENT			
Manager	Vacant		
Coordinator	Frances Boynton	804-225-4058	Frances.boynton@dgs.virginia.gov
FAX		804-371-8937	
VIRGINIA DISTRIBUTION CENTER			
Director	Andy Repak	804-328-3233	Andy.repak@dgs.virginia.gov
Assistant Director	Tom Daniel	804-328-3234	Tom.daniel@dgs.virginia.gov
Customer Service, Ordering & Delivery		804-328-3232 x 0	
Invoice Questions		804-328-3232 x 253	
Quality Assurance/Product Specs		804-328-3223	
Receiving Appointments	Warehouse Manager	804-328-3224	
Technical Support	Teresa Owens	804-328-3226	Teresa.owens@dgs.virginia.gov
Vendor Relations	Gary Borden	804-328-3230	Gary.borden@dgs.virginia.gov
	Kevin Davis	804-328-3228	Kevin.davis@dgs.virginia.gov
FAX		804-328-3222	

14.2 **Agency Responsibility.** Agencies and institutions should develop written internal policies, procedures and controls on the use of eVA. This should include re-delegation of purchasing authority, requisition approval process, how to incorporate terms and conditions, interface with finance and accounting, record keeping, encumbrance of funds, receiving (central and/or decentralized) and interface with internal automated systems. Additionally, guidelines should be included for conducting compliance audits/reviews of purchase transactions made by or on behalf of agency employees.

14.4 e-Mall Change Orders: Change orders, regardless of dollar value, shall be processed whenever requested by a supplier to ensure the supplier's eVA transaction fee is accurate, as may be required by internal policy when the actual invoiced amount differs from the purchase order total, and in accordance with the requirements set forth in Sections 3.5 and 10.12 of the Agency Procurement and Surplus Property Manual (APSPM).

e-Mall Change Orders: When the actual invoiced amount differs from the purchase order total change orders, regardless of dollar value, shall be processed whenever requested by a supplier to ensure the supplier's eVA transaction fee is accurate; as may be required by internal policy; and in accordance with the requirements set forth in Sections 3.5 and 10.12 of the Agency Procurement and Surplus Property Manual (APSPM).

14.5 **e-Mall Receiving:** Agencies and institutions shall receive all purchase orders in eVA using either central receiving or desktop receiving functionality.

14.6 **Competitive Requirements.** A sufficient length of time should be given to all bidders/offerors to respond considering but not limited to solicitation requirements, complexity of the procurement, market trends, etc. in addition to the minimum requirements stated below:

- a. **Single Quotation (up to and including \$5,000):** An e-Mall catalog (non-contract) price is acceptable as a quote when the value of the purchase is up to and including \$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. **Sourcing:** eVA advanced sourcing tools (i.e., Quick Quote, VBO Buyer, Sourcing & Contracting) shall be used for all solicitations over \$5,000 requiring competition. Use the appropriate eVA advanced sourcing tool to conduct procurements in compliance with APSPM Chapters 5-9

Sourcing up to and including \$100,000: All small purchase solicitations shall be open for a minimum of three (3) business days (24 business hours) unless exempted in writing by the agency head or designee who shall be a direct report to the agency head.

Unsealed Bidding: Quick Quote is the preferred sourcing tool for unsealed bidding. If Quick Quote is not used, agencies shall utilize eVA VBO or Sourcing & Contracting

Unsealed Request for Proposals: Agencies shall utilize eVA VBO or Sourcing and Contracting.

Sourcing over \$100,000

Agencies shall utilize the eVA VBO or Sourcing & Contracting tool.

Emergency Purchases

Emergency purchase requirements meeting the criteria of paragraph 9.1 may be solicited via Quick Quote up to any dollar amount.

- c. **Posting on eVA:** Posting on eVA meets the public posting requirements set forth in 3.18.
 - i. All Quick Quotes, Invitations to Bid, Requests for Proposal and related addenda are publically posted on eVA through the Sourcing and Contracting tool are required in 14.6b.
 - ii. All sole source award notices and emergency award notices shall be posted on eVA utilizing eVA VBO or the Sourcing and Contracting tool.

- iii. Each agency and institution shall post on the eVA home page under the “Future Procurements” link any government-to-government purchases for services over \$25,000 that appears on the Commercial Activities List provided by the Department of Planning and Budget. The posting requirement does not apply to Mandatory Sources, central services state agencies, activities operated by an Internal Service Fund or purchases from Institutions of Higher Education.
 - iv. Each agency and institution shall post on eVA VBO or Sourcing and Contracting tool the solicitation/opportunity for receipt of proposals/applications to receive grant awards/funds. The posting in VBO shall be designated as “Grant Opportunity”.
 - v. Conceptual proposals submitted in accordance with PPEA § 56-575.17 or PPTA § 33.2-1820 shall be posted on eVA VBO or Sourcing and Contracting tool.
- d. **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 4 shall be used in all solicitations, contract awards and contract renewals. All purchase orders shall include the standard eVA order term and condition (see Annex 14-A). Existing contracts without General Term and Condition X or without special Term and Condition 4 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 4 at the time of renewal.

Modification of Existing Contracts as a Result of Changes to the eVA Fee Schedule. Agencies and institutions with existing contracts that will result in new purchase orders issued after the change to the eVA Fee Schedule may give Contractors the opportunity to adjust contract prices based on any impact to the Contractor resulting from the new order transaction fee.

- e. **Contract Management -** Agencies shall use the eVA functionality in Sourcing and Contracting when a contract management tool is required by the agency.

14.7 **Documentation of Purchase Transactions.**

- a. **Electronic Files:** Electronic files created in eVA and any attached from other sources are acceptable as documentation to support the why, who, what, when, where and how of purchase transactions and receiving reports. If the order is against a term contract, then the contract number shall be included on the order in the contract number field. Paper documents need not be printed and maintained. Reports are available in eVA to provide sufficient detail to support the basis and history of each purchase. Any transaction that cannot be fully documented electronically should contain a cross-reference (what and where) to any other documents, such as large drawings or other files maintained as a hard copy.

14.9 **Requisitioning and Ordering –Use of eVA:**

- a. **Mandatory Use of eVA for Purchases and Assessment of Fees.**
 - (1) All purchase transactions, regardless of funding source, shall be processed through eVA by issuing the order to the vendor including purchases to mandatory sources (VCE, VDC, and VIB); and coding the requisition with the appropriate purchase order category ending in “1” (e.g., R01, P01, VR1, VP1, etc.)

eVA purchase orders should be issued prior to contractors performing any work. However, should the agency find it necessary to issue any eVA confirming orders, the confirming orders must be placed in eVA within five (5) business days after directing the contractor to proceed. This includes orders imported to eVA from ERPs (enterprise resource planning systems).

- (2) eVA Fees. Agencies and vendors shall pay eVA fees as set forth on the eVA Fee Schedule published on the eVA billing portal. The eVA Fee Schedule is defined as a listing of eVA transaction fees (eVA fees) that are assessed to eVA users, including Vendors. The eVA Fee Schedule is published on the eVA website. Each fee set forth on the eVA Fee Schedule is effective dated so eVA users, including Vendors, can determine the appropriate fee by cross referencing a fee’s effective date to the date of the activity for which the fee is assessed.

(3) For Agencies authorized to use Enterprise Resource Planning Systems (ERPs), any ERP order provided to vendors in lieu of or in advance of a corresponding eVA order, shall include the standard eVA order term and condition. See Annex 14-A.

- b. **Mandatory Use of eVA for Purchases exempted from Assessment of Fees.** The following transactions shall be processed through eVA by issuing the order to the vendor and coding the requisition with the X02 purchase order category.

eVA purchase orders should be issued prior to contractors performing any work. However, should the agency find it necessary to issue any eVA confirming orders, the confirming orders must be placed in eVA within thirty (30) days after directing the contractor to proceed. This includes orders imported to eVA from ERPs (enterprise resources planning systems).

eVA Fees: These transactions are exempt from eVA agency and vendor transaction fees; however, use of eVA is mandatory to enhance transaction transparency, analysis and reporting.

1. Advertisements such as in newspapers, magazines, journals, radio, television, etc.
2. Entertainment (speakers, lecturers, musicians, performing artists)
3. Accreditation fees and academic testing services
4. Exhibition rental fees for exhibitions of historical artifacts or original works of art. (The rental fee may include charges other than the rental of the exhibition, such as transportation costs.)
5. Goods or personal services for direct use by the recipients of programs specified in the *Code of Virginia*, § 2.2-4345, if the procurement is made for an individual recipient. Contracts and/or spot purchases for the bulk procurement of goods or services for the use of recipients shall not be exempted.
6. Purchases by agencies and institutions to charitable organizations in accordance with the provisions of APSPM 8.7, Legislatively Directed Contract Awards.
7. Medical (Health Care) Services when the service is provided by a hospital or an individual licensed and authorized by law to engage in the prevention, diagnosis, or treatment of human illness, injury, or physical disability, mental health, mental retardation, substance abuse, or emotional condition. Contracts and purchase orders between the agency or institution and temporary service providers or independent laboratory testing companies are not exempt from purchasing through eVA.
8. Purchases made using the DPS-authorized multi-state drug contract
9. Revenue contracts, e.g., scrap, recycling or contracts with \$0 payment made by the Commonwealth, e.g., contracted out Bookstore, Food service operations.
10. Government-to-Government purchases, excluding the mandatory sources identified in 14.9.a.1 (This does not apply to services provided by central service state agencies, activities operated as an internal service or enterprise fund)
11. Purchases from public auctions (non-electronic)
12. Purchases of State and Federal Surplus property
13. Contracts with commercial fisherman for replenishment, research and stock assessment activities
14. Financing when goods/services procured from one source are being financed by another (i.e., third party) source. The financing exclusion does not apply to lease purchases.
15. Purchases with public and private hospitals, as well as pharmacy chains and independent pharmacies, that are licensed and authorized by law to dispense controlled drugs and other medications based on prescriptions written by medical practitioners licensed to engage in the prevention, diagnosis, or treatment of human illness, injury, or physical disability, mental health, mental retardation, substance abuse, or emotional condition, when the purpose of the contract is to provide on-site mentoring and practical experience to pharmacy students enrolled in state institutions of higher education.

16. Purchases with public and private hospitals, medical practices, and medical clinics that are licensed and authorized by law to engage in the prevention, diagnosis, or treatment of human illness, injury, or physical disability, mental health, mental retardation, substance abuse, or emotional condition, when the purpose of the contract is to provide on-site mentoring and practical experience to medical students enrolled in state institutions of higher education.
17. Purchases with individuals providing instructional services in conjunction with a contract between an institution of higher education, including community colleges, and a local business or industry for non-credit workforce development classes to be provided by the institution of higher education.

- c. **Optional Use of eVA for Purchases exempted from Assessment of Fees.** At the option of the agency or institution, and to enhance transaction transparency, analysis, and reporting, non-procurement (payment) transactions and the following procurement transactions may be processed through eVA, by issuing the order to the vendor and coding the requisition with the X02 purchase order category.

eVA purchase orders should be issued prior to contractors performing any work. However, should the agency find it necessary to issue any eVA confirming orders, the confirming orders should be placed in eVA within thirty (30) days after directing the contractor to proceed. This includes orders imported to eVA from ERPs (enterprise resource planning systems).

eVA Fees: These transactions are exempt from eVA agency and vendor transaction fees.

1. Over the counter small purchase charge card (SPCC) purchases that are made at the site of the sale and picked up by the individual card holder.
2. Real Estate Leases
3. Professional organizational membership dues and training classes sponsored by the professional organization when payment is made directly to the professional organization sponsoring the training class. A “professional organization” is generally defined as a group of professional individuals in a like occupation charged with educating, certifying or lobbying for its members.
4. Conference registrations
5. Honoraria
6. Award of grants (disbursement of grant funds) by agencies and institutions to public bodies or tax exempt non-profit charitable organizations. This exception does not apply to the expenditure of grant funds by agencies and institutions for the purchase of goods and/or services (see APSPM 13.8e)
7. Public Utilities (electric, natural gas, water, sewer)
8. Purchases made using the DPS statewide contract for Express Delivery Services
9. Voyager (fuel) charge card purchases.
10. Individual travel and lodging
 - (a) Group (i.e., two or more individuals) travel up to \$50,000 per group travel event
 - (b) Group travel-related lodging
11. Business and/or financial transactions to which public procurement regulations do not apply. Examples include debt service payments, Medicare and Medicaid payments, and child support payments.

14.11 **Orders To Unregistered and State Entered Vendors In eVA and Related Fees.** There may be times when an agency or institution is compelled to do business with a vendor that refuses to register in eVA (State Entered and Unregistered [ad hoc] vendor) and the specific purchase transaction is not exempt from the assessment of fees set forth in APSPM Section 14.9.b or c. In such cases, the agency or institution is required to process the order through eVA and pay the associated transaction fee.

APPENDIX A

GLOSSARY AND ACRONYMS

Distributor: An individual or business that buys and sells products from a manufacturer. Generally, a wholesaler who may represent various manufacturers and maintains an inventory of material.

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

Method of Payment: Specifies when the payment will be made, e.g. upon delivery, monthly, quarterly, completion of project, etc. Also specifies the details and location of where invoices are to be submitted, e.g. by the 10th of the month following the month services were rendered, upon shipment, completion of project, etc. Additionally, it should also indicate the anticipated type of payment, e.g. SPCC, check, EDI, etc.

Official Responsibility: As defined in § 2.2-4368 as administrative or operating authority, whether intermediate or final, to initiate, approve, disapprove or otherwise affect a procurement transaction, or any claim resulting therefrom.

Total Value: The total of all considerations (monetary and non-monetary) from all parties (public body, contractors and any third parties) for the initial period of the contract plus any possible renewal periods. If the total value is up to and including \$100,000, then the small purchase procedures in Chapter 5 shall apply. If the total value is over \$100,000, a decision must be made to use competitive sealed bidding (Chapter 6) or competitive negotiations (Chapter 7). Also see emergency (Chapter 9) and sole source (Chapter 8) procurements if applicable.

APPENDIX B
SECTION I
REQUIRED GENERAL TERMS & CONDITIONS:
GOODS & NONPROFESSIONAL SERVICES

These General Terms and Conditions are required for use in written solicitations issued by state agencies for procurements that are subject to this manual unless changed, deleted or revised by the legal advisor to your agency. You should edit the wording to fit the type of solicitation (IFB or RFP) by either deleting or lining out the inappropriate words in all parentheses. For service contracts clauses, Q, R, and S are normally not applicable and may be omitted. For goods contracts, omit clause T. For goods and services contracts, a written determination must be made in order to omit subparagraph 1.e of clause C (“ANTI-DISCRIMINATION”) see 3.12.c.

- B. **APPLICABLE LAWS AND COURTS:** This solicitation and any resulting contract shall be governed in all respects by the laws of the Commonwealth of Virginia, without regard to its choice of law provisions, and any litigation with respect thereto shall be brought in the circuit courts of the Commonwealth. The agency and the contractor are encouraged to resolve any issues in controversy arising from the award of the contract or any contractual dispute using Alternative Dispute Resolution (ADR) procedures (*Code of Virginia*, § 2.2-4366). ADR procedures are described in Chapter 9 of the *Vendors Manual*. The contractor shall comply with all applicable federal, state and local laws, rules and regulations.
- C. **ANTI-DISCRIMINATION:** By submitting their (bids/proposals), (bidders/offerors) certify to the Commonwealth that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and § 2.2-4311 of the *Virginia Public Procurement Act (VPPA)*. If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (*Code of Virginia*, § 2.2-4343.1E).

In every contract over \$10,000 the provisions in 1. and 2. below apply:

1. During the performance of this contract, the contractor agrees as follows:
 - a. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 - b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.
 - c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
 - d. The requirements of these provisions 1. and 2. are a material part of the contract. If the Contractor violates one of these provisions, the Commonwealth may terminate the affected part of this contract for breach, or at its option, the whole contract. Violation of one of these provisions may also result in debarment from State contracting regardless of whether the specific contract is terminated.
 - e. In accordance with Executive Order 61 (2017), a prohibition on discrimination by the contractor, in its employment practices, subcontracting practices, and delivery of goods or services, on the basis of race, sex, color, national origin, religion, sexual orientation, gender identity, age, political affiliation, disability, or veteran status, is hereby incorporated in this contract.

2. The contractor will include the provisions of 1. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

E. **IMMIGRATION REFORM AND CONTROL ACT OF 1986:** Applicable for all contracts over \$10,000:

By entering into a written contract with the Commonwealth of Virginia, the Contractor certifies that the Contractor does not, and shall not during the performance of the contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

F. **DEBARMENT STATUS:** By participating in this procurement, the vendor certifies that they are not currently debarred by the Commonwealth of Virginia from submitting a response for the type of goods and/or services covered by this solicitation. Vendor further certifies that they are not debarred from filling any order or accepting any resulting order, or that they are an agent of any person or entity that is currently debarred by the Commonwealth of Virginia.

If a vendor is created or used for the purpose of circumventing a debarment decision against another vendor, the non-debarred vendor will be debarred for the same time period as the debarred vendor.

J. **PAYMENT:**

1. **To Prime Contractor:**

- a. Invoices for items ordered, delivered and accepted shall be submitted by the contractor directly to the payment address shown on the purchase order/contract. All invoices shall show the state contract number and/or purchase order number; social security number (for individual contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations).
- b. Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.
- c. All goods or services provided under this contract or purchase order, that are to be paid for with public funds, shall be billed by the contractor at the contract price, regardless of which public agency is being billed.
- d. The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act.
- e. **Unreasonable Charges.** Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges which appear to be unreasonable will be resolved in accordance with *Code of Virginia*, § 2.2-4363 and -4364. Upon determining that invoiced charges are not reasonable, the Commonwealth shall notify the contractor of defects or improprieties in invoices within fifteen (15) days as required in *Code of Virginia*, § 2.2-4351.,. The provisions of this section do not relieve an agency of its prompt payment obligations with respect to those charges which are not in dispute (*Code of Virginia*, § 2.2-4363).

2. **To Subcontractors:**

- a. Within seven (7) days of the contractor's receipt of payment from the Commonwealth, a contractor awarded a contract under this solicitation is hereby obligated:
 - (1) To pay the subcontractor(s) for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or
 - (2) To notify the agency and the subcontractor(s), in writing, of the contractor's intention to withhold payment and the reason.
- b. The contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all amounts owed by the contractor that remain unpaid seven (7) days following receipt of payment from the Commonwealth, except for amounts withheld as stated in (2) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier contractor performing under the primary contract. A contractor's

obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Commonwealth.

3. Each prime contractor who wins an award in which provision of a SWaM procurement plan is a condition to the award, shall deliver to the contracting agency or institution, on or before request for final payment, evidence and certification of compliance (subject only to insubstantial shortfalls and to shortfalls arising from subcontractor default) with the SWaM procurement plan. Final payment under the contract in question may be withheld until such certification is delivered and, if necessary, confirmed by the agency or institution, or other appropriate penalties may be assessed in lieu of withholding such payment.
 4. The Commonwealth of Virginia encourages contractors and subcontractors to accept electronic and credit card payments.
- Q. **TAXES:** Sales to the Commonwealth of Virginia are normally exempt from State sales tax. State sales and use tax certificates of exemption, Form ST-12, will be issued upon request. Deliveries against this contract shall usually be free of Federal excise and transportation taxes. The Commonwealth's excise tax exemption registration number is 54-73-0076K.

If sales or deliveries against the contract are not exempt, the contractor shall be responsible for the payment of such taxes unless the tax law specifically imposes the tax upon the buying entity and prohibits the contractor from offering a tax-included price.

(NOT NORMALLY REQUIRED FOR SERVICE CONTRACTS)

- T. **INSURANCE:** By signing and submitting a bid or proposal under this solicitation, the bidder or offeror certifies that if awarded the contract, it will have the following insurance coverage at the time the contract is awarded. For construction contracts, if any subcontractors are involved, the subcontractor will have workers' compensation insurance in accordance with §§ 2.2-4332 and 65.2-800 et seq. of the *Code of Virginia*. The bidder or offeror further certifies that the contractor and any subcontractors will maintain these insurance coverage during the entire term of the contract and that all insurance coverage will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

MINIMUM INSURANCE COVERAGES AND LIMITS:

1. Workers' Compensation - Statutory requirements and benefits. Coverage is compulsory for employers of three or more employees, to include the employer. Contractors who fail to notify the Commonwealth of increases in the number of employees that change their workers' compensation requirements under the *Code of Virginia* during the course of the contract shall be in noncompliance with the contract.
2. Employer's Liability - \$100,000.
3. Commercial General Liability - \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, products and completed operations coverage. The Commonwealth of Virginia must be named as an additional insured and so endorsed on the policy.
4. Automobile Liability - \$1,000,000 combined single limit. (Required only if a motor vehicle not owned by the Commonwealth is to be used in the contract. Contractor must assure that the required coverage is maintained by the Contractor (or third party owner of such motor vehicle).)

Profession/Service

Accounting
Architecture
Asbestos Design, Inspection or Abatement Contractors
Health Care Practitioner (to include Dentists, Licensed Dental Hygienists, Optometrists, Registered or Licensed Practical Nurses, Pharmacists, Physicians, Podiatrists, Chiropractors, Physical Therapists, Physical Therapist Assistants, Clinical Psychologists, Clinical Social Workers, Professional Counselors, Hospitals, or Health Maintenance Organizations.)
(Limits increase each July 1 through fiscal year 2031 per

Limits

\$1,000,000 per occurrence, \$3,000,000 aggregate
\$2,000,000 per occurrence, \$6,000,000 aggregate
\$1,000,000 per occurrence, \$3,000,000 aggregate

\$2,150,000 per occurrence, \$4,250,000 aggregate

Insurance/Risk Management

\$1,000,000 per occurrence, \$3,000,000 aggregate

Landscape/Architecture	\$1,000,000 per occurrence, \$1,000,000 aggregate
Legal	\$1,000,000 per occurrence, \$5,000,000 aggregate
Professional Engineer	\$2,000,000 per occurrence, \$6,000,000 aggregate
Surveying	\$1,000,000 per occurrence, \$1,000,000 aggregate

*** When Used: FOR CONSTRUCTION, SERVICE CONTRACTS AND GOODS CONTRACTS WHEN INSTALLATION IS REQUIRED - Required in all solicitations where a contractor will perform work or services in or on state facilities. The limits are minimums and may be increased. The Department of Treasury, Division of Risk Management (804-786-3152) should be contacted when other types of coverage may be required or when in doubt as to the need for other limits. When soliciting one of the Professions/Services listed above include the Professional Liability/Errors and Omissions coverage and limits as shown. When not soliciting one of these Professions/Services, omit the required coverages section from the General Terms and Conditions boilerplate.**

- V. **DRUG-FREE WORKPLACE:** Applicable for all contracts over \$10,000:
 During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "*drug-free workplace*" means a site for the performance of work done in connection with a specific contract awarded to a contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

- Y. **AVAILABILITY OF FUNDS:** It is understood and agreed between the parties herein that the agency shall be bound hereunder only to the extent that the legislature has appropriated funds that are legally available or may hereafter become legally available for the purpose of this agreement.

**APPENDIX B
SECTION II**

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

2. **AWARD OF CONTRACT:** All solicitations must contain one of the following award clauses to specify the method of award.

L. **AWARD:** The Commonwealth will make the award(s) on _____ basis to the lowest responsive and responsible bidder that is a DSBSD-certified micro business if such a bid is received, provided that the bid is less than \$10,000 and the agency in its sole discretion determines that the bid price is fair and reasonable. Otherwise, award of the contract shall be made to the lowest responsive and responsible bidder that is a DSBSD-certified small business if such a bid is received, provided that the bid is not more than \$100,000 and the agency in its sole discretion determines that the bid price is fair and reasonable. If, in the agency's opinion, the criteria in the previous two sentences are not present, then award shall be made to the lowest responsive and responsible bidder of any size, provided the agency in its sole discretion determines that the price is fair and reasonable. If applicable, 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 early 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: For goods or non-professional services up to and including \$100,000 that are set-aside in accordance with the Small Business Enhancement Award Priority by filling in the blank, i.e., line item, total sum, lot, etc. This clause shall be used for unsealed competitive bidding and shall not be used for informal request for proposals.**

M. **AWARD:** Selection shall be made of two or more DSBSD-certified micro business offerors deemed to be fully qualified and best suited among those submitting proposals on the basis of the evaluation factors included in the Request for Proposals, including price, if so stated in the Request for Proposals, provided that the price proposal is for less than \$10,000. Negotiations shall be conducted with the offerors so selected. Price shall be considered, but need not be the sole determining factor. After negotiations have been conducted with each offeror so selected, the agency shall select the offeror which, in its opinion, has made the best proposal, and shall award the contract to that offeror. The Commonwealth may cancel this Request for Proposals or reject proposals at any time prior to an award, and is not required to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous (Code of Virginia, § 2.2-4359D). Should the Commonwealth determine in writing and in its sole discretion that only one DSBSD-certified micro business offeror is fully qualified, or that one such offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror. Any award to a DSBSD-certified micro business offeror pursuant to the above process may be made only if the price as negotiated remains under \$10,000. The award document will be a contract incorporating by reference all the requirements, terms and conditions of the solicitation and the contractor's proposal as negotiated. If the agency in its sole discretion determines that the above criteria for limiting the negotiation to micro businesses are not present, the agency shall follow the same process as specified above, but restricting the negotiation instead to DSBSD-certified small business offerors, provided that the price proposal is not more than \$100,000. If the agency determines that the above criteria for limiting the negotiation to small businesses are not present, the agency shall follow the same process as specified above, but without restricting the negotiation to small or micro business offerors.

*** When Used: For goods or services up to and including \$100,000 where the procurement is set-asides in accordance with the Small Business Enhancement Award Priority. This clause shall be used for competitive negotiations and shall not be used for unsealed bidding.**

3. **CANCELLATION OF CONTRACT:** The purchasing agency reserves the right to cancel and terminate any resulting contract, in part or in whole, without penalty, upon 60 days written notice to the contractor. In the event the initial contract period is for more than 12 months, the resulting contract may also be terminated by the contractor, without penalty, after the initial 12 months of the contract period upon 60 days written notice to the other party. Any contract cancellation notice shall not relieve the contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation.

*** When Used: Include in all term contracts for goods or services. This clause is not appropriate for use in spot purchases.** It is required that Contract Officers consider including Special Term and Condition #60 (Continuity of Services) when contracting for services vital to the agency.

5. **RENEWAL OF CONTRACT:** (NOTE: A term contract may not be renewed unless a renewal clause is included in the solicitation and the renewal is fully executed in writing prior to the expiration of the current contract term. Select one of the following clauses if an option to renew the contract beyond the original period of the contract is desired. Select either “one year” or complete the blank, indicating the number of “successive one year periods” the contract may be renewed.)

A. **RENEWAL OF CONTRACT:** This contract may be renewed by the Commonwealth upon written agreement of both parties for (one year)/(____ successive one year periods), under the terms of the current contract, and at a reasonable time (approximately 90 days) prior to the expiration.

*** When Used: Include in solicitations for term contracts for goods and services, if desired, to permit renewal of the contract for a specific period of time, i.e., one year, two successive one-year periods, etc., at the same price(s), terms and conditions as in the original contract. Renegotiation of the price(s), terms and conditions is not permitted. If market prices are not expected to remain stable for goods, the Price Escalation/De-escalation clause (No. 43) should be considered for use with this provision.**

B. **RENEWAL OF CONTRACT:** This contract may be renewed by the Commonwealth for (one year)/(____ successive one year periods) under the terms and conditions of the original contract except as stated in 1. and 2. below. Price increases may be negotiated only at the time of renewal. Written notice of the Commonwealth’s intention to renew shall be given approximately 90 days prior to the expiration date of each contract period.

1. If the Commonwealth elects to exercise the option to renew the contract for an additional one-year period, the contract price(s) for the additional one year shall not exceed the contract price(s) of the original contract increased/decreased by more than the percentage increase/decrease of the _____ category of the CPI-U section of the Consumer Price Index of the United States Bureau of Labor Statistics for the latest twelve months for which statistics are available.

2. If during any subsequent renewal periods, the Commonwealth elects to exercise the option to renew the contract, the contract price(s) for the subsequent renewal period shall not exceed the contract price(s) of the previous renewal period increased/decreased by more than the percentage increase/decrease of the _____ category of the CPI-U section of the Consumer Price Index of the United States Bureau of Labor Statistics for the latest twelve months for which statistics are available.

- When Used: For service contracts, use of this clause permits renewal of a contract with an increase/decrease in the labor rate portion only of the original contract. This clause should only be used when renewal of the contract may be desirable and price adjustments may be necessary. Select the most appropriate category that would apply to the contract and fill in the blank. If only a one-year renewal is desired, delete paragraph 2. of the clause. For recent Consumer Price Index statistics, contact the Bureau of Labor Statistics at their website <http://stats.bls.gov/news.release/cpi.toc.htm> or by telephone at 202-691-7000. A link to the Bureau of Labor Statistics is on the DGS/DPS website at www.dgs.state.va.us/dps. Click on the “references” tab along the top of the screen and a link to their web site is listed under “Bureau of Labor Statistics.”**

16. **CONTRACTOR/SUBCONTRACTOR LICENSE REQUIREMENT:** By my signature on this solicitation, I certify that this firm/individual and subcontractor is properly licensed for providing the goods/services specified. Furthermore, the contractor and subcontractors shall maintain the required license throughout the term of the contract. The contractor or their subcontractor shall immediately notify the contracting agency in writing in the event the license has been revoked.

Contractor Name: _____

License # _____ Type _____

Subcontractor Name: _____

License # _____ Type _____

*** When Used: Include in all solicitations for specific types of services for which State statutes or regulatory agencies require contractors or subcontractors to be properly registered, licensed or hold a permit prior to performing such work. See 3.4.**

27. **INDEMNIFICATION:** Contractor agrees to indemnify the Commonwealth of Virginia, its officers, agents, and employees for any loss, liability, cost, or reasonable settlement cost incurred as a result of any claims, damages and actions of any kind or nature, whether at law or in equity, arising from or caused by the use of any materials, goods, or equipment of any kind or nature furnished by the contractor/any services of any kind or nature furnished by the contractor, provided that such liability is not attributable to the sole negligence of the using agency or to failure of the using agency to use the materials, goods, or equipment in the manner already and permanently described by the contractor on the materials, goods or equipment delivered.

*** When Used: For all contracts involving substantial risk of third party injuries/claims. Authorization to use this clause must be granted by the Department of Treasury, Division of Risk Management or be directed by your Assistant Attorney General.**

32. **LIMITATION OF LIABILITY:**

- A. To the maximum extent permitted by applicable law, the contractor will not be liable under this contract for an indirect, incidental, special or consequential damages, or damages from loss of profits, revenue, data or use of the supplies, equipment and/or services delivered under this contract. This limitation of liability will not apply, however, to liability arising from: (a) personal injury or death; (b) defect or deficiency caused by willful misconduct or negligence on the part of the contractor; or (c) circumstances where the contract expressly provides a right to damages, indemnification or reimbursement.

*** When Used: This clause should be used on an exception basis and only when it is anticipated that liability may be an issue and the risk and liability to the Commonwealth is negligible. In such cases, the above clause should be included in written solicitations and contracts, as well as procurements made on a sole source or emergency basis. Examples are: office supplies and equipment, paper products, printing, furniture, audio/visual equipment, consultant services, media services, equipment maintenance, etc. Prior review by risk management and legal counsel is required before including in a solicitation or contract. Note: The clause may be modified, as applicable, depending on the intended use of the goods and/or services.**

- B. **LIMITATION OF LIABILITY:** To the maximum extent permitted by applicable law, the contractor's liability under this contract for loss or damages to government property caused by use of any defective or deficient supplies, products, equipment and/or services delivered under this contract shall not exceed the greater of \$ _____ or _____ times the amount of money paid to the contractor under this contract during the twelve month period preceding the event or circumstance giving rise to such liability. The contractor will not be liable under this contract for any indirect, incidental, special or consequential damages, or damages from loss of profits, revenue, data or use of the supplies, equipment and/or services delivered under this contract. The above limitation of liability is per incident. The limitation and exclusion of damages in the foregoing sentences will not apply, however, to liability arising from: (a) personal injury or death; (b) defect or deficiency caused by willful misconduct or negligence on the part of the contractor; or (c) circumstances where the contract expressly provides a right to damages, indemnification or reimbursement.

*** When Used: This clause should be used on an exception basis and only when it is anticipated that liability will be an issue and the risk to the Commonwealth may be extensive. In such cases, the above clause should be included in written solicitations and contracts, as well as procurements made on a sole source or emergency basis. Examples are: software; hardware; two-way communication devices; telephone equipment; medical, dental and laboratory equipment and supplies; elevator maintenance and inspection services; food service; medical service, etc. Caution: The potential risk must be calculated in dollars and indicated in the first blank. Delete the remaining part of the sentence. If the risk value cannot be determined within a reasonable amount and the contract is for indefinite quantity (e.g., annual contract), estimate the approximate annual value and fill in the dollar amount. Enter a multiplication factor in the second blank, such as two (2) or some other reasonable number. Prior review by risk management and/or**

legal counsel is recommended before including in a solicitation or contract. The clause may be modified, as applicable, depending on the intended use of the goods and/or services.

33. **LIQUIDATED DAMAGES:**

- B. **LIQUIDATED DAMAGES, FURNISH AND INSTALL:** Work shall begin ____ calendar days after receipt of purchase order or contract and all work shall be completed in ____ calendar days. It is hereby understood and agreed by the bidder that time is of the essence in the delivery of supplies, services, materials, or equipment of the character and quality specified in the bid document. In the event these specified supplies, services, materials, or equipment are not delivered by the date specified, there will be deducted, not as a penalty but as liquidated damages, the sum of \$_____ per day for each and every calendar day of delay beyond the time specified; except that if the delivery be delayed by any act, negligence, or default on the part of the Commonwealth, public enemy, war, embargo, fire, or explosion not caused by the negligence or intentional act of the contractor or his supplier(s), or by riot, sabotage, or labor trouble that results from a cause or causes entirely beyond the control or fault of the contractor or his supplier(s), a reasonable extension of time as the procuring public body deems appropriate may be granted. Upon receipt of a written request and justification for an extension from the contractor, the purchasing office may extend the time for performance of the contract or delivery of goods herein specified at the purchasing office's sole discretion for good cause shown.

*** When Used: For furnish and install contracts covering modifications, repair and other non-capital outlay construction-type contracts. The dollar amount must be filled in by the agency. The two blanks for the number of calendar days may be filled in by the agency prior to issuing the solicitation or the bidder/offeror may be required to fill in the number of days with the bid/proposal. The dollar amount must be reasonable. It is recommended that contract officers consult with legal counsel when determining the appropriate rate(s) of liquidated damages.**

36. **SUBMISSION OF SMALL BUSINESS SUBCONTRACTING PLAN, EVIDENCE OF COMPLIANCE WITH SMALL BUSINESS SUBCONTRACTING PLAN, AND SUBCONTRACTOR REPORTING:**

- A. **Submission of Small Business Subcontracting Plan:** It is the goal of the Commonwealth that 42% of its purchases be made from small businesses. This includes discretionary spending in prime contracts and subcontracts. All bidders/offerors are required to submit a Small Business Subcontracting Plan. The contractor is encouraged to offer such subcontracting opportunities to DSBSD-certified small businesses. This shall include DSBSD-certified women-owned and minority-owned businesses when they have received DSBSD small business certification. Where it is not practicable for any portion of the goods/services to be subcontracted to other suppliers, the bidder/offeror shall note such on the Small Business Subcontracting Plan. No bidder/offeror or subcontractor shall be considered a small business unless certified as such by the Department of Small Business and Supplier Diversity (DSBSD) by the due date for receipt of bids or proposals.
- B. **Evidence of Compliance with Small Business Subcontracting Plan:** Each prime contractor who wins an award in which provision of a small business subcontracting plan is a condition of the award, shall deliver to the contracting agency or institution timely reports substantiating compliance in accordance with the small business subcontracting plan. If a variance exists, the contractor shall provide a written explanation. A subcontractor shall be considered a Small Business for purposes of a contract if and only if the subcontractor holds a certification as such by the DSBSD. Payment(s) may be withheld until the purchasing agency confirms that the contractor has certified compliance with the contractor's submitted Small Business Subcontracting Plan or is in receipt of a written explanation of the variance. The agency or institution reserves the right to pursue other appropriate remedies for non-compliance to include, but not be limited to, termination for default.
- C. **Prime Contractor Subcontractor Reporting:**
1. Each prime contractor who wins an award greater than \$100,000, shall deliver to the contracting agency or institution on a ____ (insert monthly, quarterly, or other frequency) ____ basis, information on use of subcontractors that are DSBSD-certified businesses or ESOs. The contractor agrees to furnish the purchasing office at a minimum the following information: name of firm, phone number, total dollar amount subcontracted, category type (Businesses that are DSBSD-certified small, women-owned, minority-owned, Service Disabled Veteran, or Employment Services Organization) and type of product/service provided, at the frequency required.
 2. In addition each prime contractor who wins an award greater than \$200,000 shall deliver to the contracting agency or institution on a ____ (insert monthly, quarterly, or other frequency) ____ basis, information on use of subcontractors that are **not** DSBSD-certified businesses. The contractor agrees to furnish the purchasing office at a minimum the following information: name of firm, phone number, total dollar amount subcontracted and type of product/service provided, at the frequency required.

*** When Used: Use in solicitations for goods, nonprofessional services, or non capital outlay construction when a small business subcontracting plan is a condition of the award. Required in solicitations valued over \$100,000, unless a written determination, signed by the chief purchasing officer and supported by factual evidence explaining in sufficient detail why no subcontracting opportunities exist is made. Fill in the blank with period of time or occurrence when evidence of compliance is due, e.g., request for final payment, monthly, quarterly, annually, end of contract period.**

51. **SECURITY LICENSE:** In accordance with *Code of Virginia* § 9.1-139 the bidder/offeror or their subcontractor shall be licensed by the Department of Criminal Justice Services for solicitations which include the following work: installation, service, maintenance, or design of security equipment; security officer service; and/or private investigator service. Licenses must be obtained prior to submitting a bid/offer. Furthermore, the contractor or their subcontractor shall maintain the required license throughout the course of the contract term. The contractor or their subcontractor shall immediately notify the contracting agency in writing in the event the license has been revoked.

The bidder/offeror shall place their license number or their subcontractor's license number in the space provided below:

Bidder/Offeror Private Security Services Business License

Number: _____

Subcontractor Private Security Services Business License

Number: _____

For assistance, bidders/offerors may contact the Department of Criminal Justice Services at 804-786-4700.

*** When used: In all solicitations for the installation, service, maintenance, or design of security equipment, security officer service, central station alarm condition monitoring service, and/or private investigator service that require the contractor to have a Private Security Services Business License issued by the Department of Criminal Justice Services under the *Code of Virginia* § 9.1-139.**

55. **WARRANTY (COMMERCIAL):** The contractor agrees that the goods or services furnished under any award resulting from this solicitation shall be covered by the most favorable commercial warranties the contractor gives any customer for such goods or services and that the rights and remedies provided therein are in addition to and do not limit those available to the Commonwealth by any other clause of this solicitation and rights and remedies permitted under applicable law. A copy of this warranty should be furnished with the bid/proposal.

*** When Used: Include in solicitations for goods, furnish and install or services when commercial warranty provisions for a particular item or service are acceptable**

65. **CERTIFICATION OF INTERNAL CONTROLS:** The contractor shall have clearly delineated processes and procedures for the internal control of sensitive data and processes, which are any data and processes of which the compromising of confidentiality, integrity, and/or availability could have a material adverse effect on Commonwealth of Virginia interests, the conduct of agency programs, or to the privacy of which individuals are entitled, when such sensitive data or processes are related to the goods and/or services provided pursuant to this agreement.

The contractor shall provide evidence of compliant and ongoing internal control of sensitive data and processes through a standard methodology, such as but without limitation the American Institute of Certified Public Accountant (AICPA) Service Organization Control (SOC) Reports. The evidence of compliance shall be contained in a report describing the effectiveness of the contractor's internal controls. The most recent version of the report shall be provided to the purchasing office upon request. Trade secrets or proprietary information contained within the report shall not be subject to public disclosure under the Virginia Freedom of Information Act; however, the contractor must invoke the protection of Code of Virginia, § 2.2-4342F, in writing, prior to or upon submission of the report, and must identify the data or other materials to be protected and state the reasons why protection is necessary.

If deficiencies in the contractor's internal control processes and procedures are described in the most recent version of the report, the contractor shall automatically submit the report to the purchasing office within a timely manner and shall describe the corrective actions to be put into place by the contractor to remedy the deficiencies. Failure to report and/or repair deficiencies in a timely manner shall be cause for the Commonwealth to make a determination of breach of contract.

The contractor's obligations for certification of internal controls shall survive and continue after completion of this agreement unless the contractor certifies the destruction of the sensitive data at the end of the contract term.

***When Used: For solicitation of a third-party service provider where sensitive data and/or processes are subject to Agency Risk Management and Internal Control Standards (ARMICS) standards or other certification is required to demonstrate adequate internal controls (e.g. outsourcing of financial services, when data is collected on behalf of the agency and/or shared with the contractor, and other significant agency functions).**

APPENDIX B
SECTION II SECTION IV, SPECIAL TERMS AND CONDITIONS,
INFORMATION TECHNOLOGY GOODS AND SERVICES

For the current special terms and conditions for information technology goods and services please visit the VITA SCM site at <https://www.vita.virginia.gov/scm/>.

APPENDIX C
PROCUREMENT INFORMATION MEMORANDUM (PIM)
RECORD OF CHANGES

PIM NUMBER	TOPIC	DATE FILED	INITIALS
98-034	Updates dollar thresholds throughout the manual to include “up to and including”; adds Virginia Grown Foods to competition exceptions list, adds ESO shall be credited towards an agency’s annual SWaM Plan goals, adds guidance on Price Reasonableness determinations; adds EO61 and guidance on usage of the Anti-Discrimination Clause; updates language for faith-based non-discrimination statement; adds requirement to identify method of payment in solicitations, adds new forms named “Public Procurement Ethics, Non-Disclosure, and Conflict of Interest Agreement” form and “Public Procurement Ethics and Conflict of Interest Agreement”; adds guidance on contract renewals and extensions; updates mandatory and optional use of eVA and associated eVA transaction fees; adds requirement to utilize eVA Sourcing and Contracting tool when a contract management tool is required by the agency; removes IT Special Terms and Conditions; updates and adds General and Special Terms and Conditions	06/16/17	