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Commonwealth of Virginia

VENDORS MANUAL

A Vendor's Guide on How to do Business with the Commonwealth of Virginia

Revised
December 1998

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

VENDORS MANUAL
DECEMBER 1998 EDITION

INTRODUCTION

The *Vendors Manual* is published under the authority of 2.2-1111 of the *Code of Virginia*. Its purpose is to set forth rules and regulations applicable to the purchase of nontechnology goods and nonprofessional services by the Commonwealth. The 1998 edition incorporates changes legislated by the General Assembly and also includes a number of editorial changes to improve readability and understanding of the manual. This edition of the *Vendors Manual* is effective December 1, 1998. It supersedes all previous editions. A complete *Vendors Manual* containing all changes and a listing of changes made since publication of this edition may be obtained from the Department of General Services (DGS), Division of Purchases and Supply (DPS) and on the eVA Internet Home Page. https://dgs.virginia.gov/globalassets/business-units/dps/documents/vendorsmanual/vendors-manual_as-of-070118.pdf
Any vendor providing nontechnology goods or nonprofessional services to the Commonwealth should be familiar with the contents of this manual. It generally applies to all state procurements except capital outlay construction (which is subject to the procedures of the *Construction and Professional Services Manual*) and the procurement of professional services as defined by the *Virginia Public Procurement Act* (*VPPA*). Reference made throughout the *Vendors Manual* to the Department of Information Technology (DIT) or the Department of Technology Planning (DTP) is no longer valid, effective 7/1/03. Guidance for information technology procurements is issued by the Virginia Information Technologies Agency (VITA).

Your comments and suggestions for the improvement of state purchasing or this manual are always welcome. Comments should be addressed to:

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CHAPTER 1

AUTHORITY AND RESPONSIBILITY

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

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

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

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

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

1.1 **Authority and Responsibility**.

a. **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. 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*, § 2.2-1111C). DGS/DPS has 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 authority to establish criteria and procedures to obtain economical operation of all state-owned printing facilities (*Code of Virginia*, § 2.2-1113A). Agency heads have the ultimate responsibility to ensure that the acquisition of goods and services does not violate nor circumvent state law, executive orders, appropriations, regulations, or the provisions of this manual.

b. **eVA Internet Home Page**. The Commonwealth's electronic procurement system is eVA. The eVA home page address is eva.virginia.gov. It is organized into vendor, "I SELL TO VIRGINIA" and agency, "I BUY FOR VIRGINIA" and "WHAT VIRGINIA BUYS" user areas with separate links for "Business Opportunities", "Transparency", "Statewide Contracts" and "Resources." The link, "I SELL TO VIRGINIA" is geared toward the vendor community and includes the "Purchasing Rules – the Vendor's Manual" as well as "eVA Vendor Training." "I BUY FOR VIRGINIA" is geared toward the Commonwealth of Virginia public body buyer community. It includes procurement law (the Virginia Public Procurement Act, VPPA) and policy (the Agency Procurement and Surplus Property Manual, APSPM), which sets forth the policies and procedures to be followed by state agencies and institutions in the purchase of non-technology goods and nonprofessional services. There are links to the Virginia Distribution Center (VDC), the Department of General Services and the Division of Purchases and Supply websites as well as links to related websites. The DPS Statewide Contract list is updated as soon as contracts are awarded. Vendors are encouraged to periodically check the eVA and DGS/DPS website for changes and other information.

1.2 **Statutory Exemptions**. Purchasing through DGS/DPS is not mandatory in the following cases; (*Code of Virginia*, § 2.2-1119):

a. Materials, equipment and supplies as are incident to the performance of a contract for labor or for labor and materials;

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

c. Perishable articles, provided that no article except fresh fruit and vegetables, fresh fish, fresh meat, fresh fruit, fresh eggs and fresh milk shall be considered perishable within the meaning of this clause, unless so classified by DGS/DPS; however, the purchase of perishable articles identified above that are Virginia-Grown and not expected to exceed $100,000 may be exempt from the VPPA and the APSPM provided the procurement is accomplished in accordance with §2.2-4343.A.20;

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

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

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

g. Printing of the records of the Supreme Court;

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

i. VCE purchases for supplies, materials, and services for use in and support of its production facilities up to any dollar amount. This exemption does not include purchases of equipment, software, hardware and printing.

1.3 **Administrative Exceptions**. DGS/DPS may delegate purchasing authority or authorize exceptions from its rules and regulations for particular agencies or for specified nontechnology goods, nonprofessional services, and printing. The following general exceptions have been granted:

a. **Purchases under Delegated Authority**. State agencies may purchase within the dollar limits and categories delegated by DGS/DPS without requisitioning through DGS/DPS.

b. **Acquisition of Information Technology and Telecommunications Equipment, Goods, and Services**. Virginia Information Technologies Agency (VITA) has oversight and procurement responsibility for the purchase of information technology goods and services, including telecommunications equipment. Further information on IT goods and services can be found at http://www.vita.virginia.gov.

1.4 **Agency Purchasing Function**. State agencies are authorized to make direct purchases of non-technology goods and printing within the limits delegated by DGS/DPS. Other requirements must be processed through DGS/DPS as applicable. Agencies are authorized to contract for services up to any dollar amount subject to applicable laws, regulations, this manual, and fiscal restraints. Exceptions to this provision are covered in paragraphs 1.6 and 1.7 of this manual. Agency personnel having "official responsibility" for procurement must comply with the *VPPA* and the policies and procedures set forth in the *Agency Procurement and Surplus Property Manual (APSPM)* and this manual.

1.5 **Purchases for Local Governments**. Upon request, DGS/DPS and VDOT may procure nontechnology material, equipment, supplies or services for local governments. Nonprofit educational television entities may also purchase through DGS/DPS. Direct sales may be also be made to organizations as established in §2.2-1122, of the *Code of Virginia*, to include emergency medical services agencies and fire departments established pursuant to *Code of Virginia*, §15.2-955 Fire company as defined in §27-6.01 or volunteer emergency medical services agency as defined in §32.1-111.1 that is recognized by an ordinance to be part of the safety program of a county, city or town;

1.6 **Purchases from Term Contracts - (Mandatory Source)**

a. A state agency may issue an agency purchase order in any amount, except for limitations imposed on specific contracts, for any item or service available on a term contract authorized for use by that agency, which DPS has established. Local governments may purchase from statewide contracts unless the contract is specifically limited to state agencies. If an item is available on a DGS/DPS mandatory contract or from the Virginia Distribution Center, an agency or institution may not establish a contract for the same or similar goods or services or use its local purchasing authority to purchase from another source unless the purchase does not meet the contract minimum order requirement. In an emergency, the use of contract sources may be waived by the applicable purchasing office responsible for administering the term contract. The sale or attempted sale by a vendor to a state agency of goods or services which are required to be ordered from a term contract or from a mandatory source (see paragraph 1.7), may subject a vendor to removal from the Vendors List if that vendor knowingly sells to a state agency goods or services which must be purchased under a term contract or from a mandatory source.

b. VITA establishes contracts for the purchase of information technology goods and services to include computers, software, telecommunications equipment and services for the use of state agencies and institutions.

c. Term Contracts for goods or services are for the sole benefit of the Commonwealth of Virginia, its agencies and institutions and, in some cases, its political subdivisions. The contracts do not apply to government employees or other individuals, and ordering of goods from these contracts by individuals for personal use is prohibited.

1.7 **Purchases from State Agencies or Employment Services Organization Vendors**

a. The *Code of Virginia* requires that certain goods or services be procured, where available, from designated state agencies or employment services organization vendors. These include:

(1) Department of Corrections (*Code of Virginia*, §§ 2.2-1116, 53.1-47, 53.1-48, 53.1-49)

(2) Department for the Blind and Vision Impaired (*Code of Virginia*, §§ 2.2-1117 and 2.2-4344 A1 (a)

b. Goods or services may be procured without competition from employment services organizations (*Code of Virginia*, §§ 2.2-1118 and 2.2-4344 A1 (b).

1.8 Preferences

a. **Virginia and United States Vendors**. Preference is first given to goods, produced in Virginia, then to goods produced in the United States in the event of a tie bid (see 6.5). Whenever the lowest responsive and responsible bidder is a resident of any other state and such state under its laws allows a resident contractor of that state a percentage preference, a like preference shall be allowed to the lowest responsible bidder who is a resident of Virginia and is the next lowest bidder. If the lowest responsive and responsible bidder is a resident of any other state and such state under its laws allows a resident contractor of that state a price-matching preference, a like preference shall be allowed to bidders who are residents of Virginia (*Code of Virginia*, § 2.2-4324B). If the lowest responsive and responsible Virginia bidder is unable to match the price, the preference shall be given to other Virginia bidders in ascending price order. If the lowest bidder is a resident contractor of another state with an absolute preference, the bid shall not be considered. DGS/DPS will post and maintain a listing of preference laws provided by other states on the eVA website. (Absolute preference defined, see Appendix A.)

Procurement of Goods by Manufacturers. When the lowest responsive and responsible bidder is not a resident of Virginia and (i) the bid of any Virginia resident is within 10 percent of that bid, (ii) or the bid is for agricultural products that are produced or processed in Virginia and intended for school nutrition programs, including fresh fruits, vegetables, and dairy products, and is within 20 percent of such bid, the lowest responsive and responsible bidder pursuant to (i) or (ii) shall be granted the option to match the price of the lowest responsive and responsible bidder (Effective until July 1, 2028).

When the lowest responsive and responsible bidder is a resident of a state other than Virginia and such state under its laws allows a resident of that state a percentage preference or price-matching preference for the procurement of goods, a like preference shall be granted to responsive and responsible bidders who are residents of Virginia. The eligible bidder that is a Virginia resident shall be granted the greater of either preference pursuant to this section.

A supplier shall be deemed to be a resident of Virginia if such supplier has been organized pursuant to Virginia law or maintains a principal place of business within Virginia. Federally funded projects or procurements shall be exempt from this section when it conflicts with federal law and regulations and would render the agency or institution from receiving federal funds.

See eva.virginia.gov for a listing of state preference laws.

b. **Recycled Paper and Paper Products**. Agencies are encouraged to promote the use of recycled products. In determining the award of any contract for paper and paper products to be purchased for use by agencies of the Commonwealth, the Department of General Services, or agencies under their delegated purchasing authority, shall procure using competitive sealed bidding and shall award to the lowest responsible bidder offering recycled paper and paper products of a quality suitable for the purpose intended, so long as the bid price is not more than ten percent greater than the bid price of the low responsive and responsible bidder offering a product that does not meet the EPA Recommended Content Standards (*Code of Virginia*, § 2.2-4326).

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

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

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

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

f. **Use of Recycled Goods or Products.** Any person who believes that particular goods or products with recycled content are functionally equivalent to the same goods or products produced from virgin materials may petition the procuring agency or institution to include the recycled goods or products in its procurement process. The petitioner shall submit documentation which establishes that the

goods or products (i) contain recycled content and (ii) can meet the performance standards set forth in the applicable specifications prior to bid/proposal due date. If the procuring agency or institution which receives the petition request determines that the documentation demonstrates that the goods or products with recycled content will meet the performance standards set forth in the applicable specifications, it shall incorporate such goods or products into its procurement process. (See *Code of Virginia* § 2.2-4313.)

g. **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.

h. **Energy-Efficient and Water-Efficient Goods.** If a Commonwealth agency or institution receives two or more bids for products that are Energy Star certified, meet the Federal Energy Management Program (FEMP) designated efficiency requirements, appear on FEMP's Low Standby power Product List, or are Water Sense certified, the agency or institution shall only select among those bids. These classifications may be found on Energy Star's website at: https://www.energy.gov/eere/femp/federal-energy-management-program.

i. **United States Manufactured Solar Photovoltaic Equipment and Facilities**: No state agency shall prohibit or otherwise exclude from use any materials contained in or products associated with solar photovoltaic equipment and facilities that are manufactured in the United States in any request for proposals, procurement agreements or contracts.

1.9 **Open Records**. Procurement proceedings, records, contracts, and orders are public records, open to the inspection of any citizen or any interested person, firm or corporation, in accordance with the *Virginia Freedom of Information Act (Code of Virginia*, § 2.2-3700 et seq.). Cost estimates relating to a proposed procurement transaction prepared by or for a state agency shall not be open to public inspection (*Code of Virginia*, § 2.2-4342B). Bid and proposal records are not available to the public for inspection until after the award except that any bidder, upon request, shall be afforded the opportunity to inspect bid records within a reasonable time after the opening and evaluation of all bids but prior to award, except in the event that the public body decides not to accept any of the bids and to rebid.

Any competitive negotiation offeror, upon request, shall be afforded the opportunity to inspect proposal records within a reasonable time after the evaluation and negotiation of proposals are completed but prior to award, except in the event that the public body decides not to accept any of the proposals and to resolicit.

Despite the preceding restrictions as to when bidders, offerors, and the general public may inspect bid and proposal records, once bids have been publicly opened and their prices announced, the names of the bidders and their bid prices may be disclosed to anyone. Likewise, the identity of offerors submitting proposals in the competitive negotiation process may be disclosed.

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

Any inspection of records shall be subject to reasonable restrictions to ensure the security and integrity of the records (*Code of Virginia*, § 2.2-4342E).

A procuring agency may make reasonable charges for the copying, search time and computer time expended in the supplying of procurement records in response to a public request. The charge shall not exceed the actual cost to the procuring agency of supplying such records. Upon request the procuring agency will furnish in advance an estimate of the charges for supplying procurement records (*Code of Virginia*, § 2.2-3704F).

Trade secrets or proprietary information submitted by a bidder, offeror, or contractor in connection with a procurement transaction shall not be subject to public disclosure under the *Virginia Freedom of Information Act*; however, the bidder or offeror must invoke the protections of the *Code of Virginia*, § 2.2-4342F, prior to or upon submission of the data or other materials, and must identify the data or other materials to be protected and state the reason why protection is necessary. The proprietary or trade secret material submitted must be identified by some distinct method such as highlighting or underlining and must indicate only the specific words, figures, or paragraphs that constitute trade secret or proprietary information. The classification of an entire bid or proposal document, line item prices and/or total bid or proposal prices as proprietary or trade secrets is not acceptable. If, after being given reasonable time, the bidder or offeror refuses to withdraw an entire classification designation, the bid or proposal will be rejected.

1.10 **Cooperative Procurement.**

a. The *Code of Virginia,* § 2.2-4304 authorizes public bodies to participate in, sponsor, conduct, or administer joint procurements to satisfy requirements for goods and non-professional services**.** Any authority, department, division, institution, officer, agency, and other unit of state government, hereinafter called the agency**,** must comply with the following requirements, and all such purchases shall be made through eVA. In addition, joint contracts or arrangements under which any fees, incentives or financial terms, direct or indirect, may be rebated, paid, or credited to Commonwealth using agencies require the approval of DGS/DPS before any order or commitment can be made by the using agency.

b. **Use of Commonwealth Cooperative Contracts**: Agencies desiring to purchase from cooperative contracts for non-telecommunications and non-technology goods and nonprofessional services as set forth in §2.2-4304 may do so without regard to their delegated purchasing authority when all the following conditions are met: (1) no DGS/DPS contract exists for the same or similar goods and services; (2) the contracts were awarded by Commonwealth agencies or institutions; (3) the agency participated in the request for proposal or invitation to bid or the contract original solicitation specified that the procurement was being conducted on behalf of other public bodies; (4) the contracts are posted on the eVA State Contracts listing to assure public visibility of the full terms and pricing of such contracts and any amendments; and (5) the contractors are registered in eVA and agree to the Commonwealth's General Terms and Conditions, any other terms and conditions, and any other considerations for doing business with the Commonwealth.

c. **Use of Non-Commonwealth Cooperative Contracts, including National Cooperatives awarded by other than Commonwealth agencies and institutions:** These cooperatives are not authorized unless approved in writing by DGS/DPS. Authorized cooperative contracts awarded by other than Commonwealth agencies are posted on the eVA State Contracts listing to assure public visibility of the full terms and pricing of such contracts after DGS/DPS determines that the contracts comply with §2.2-4304; that prices are fair and reasonable; that Virginia businesses have been afforded access to participate; that the contractors are registered in eVA; and that contractors agree to the Commonwealth's General Terms and Conditions, any other terms and conditions, and any other considerations for doing business with the Commonwealth.

d. **General Services Administration (GSA) or other U.S. Government Contracts**: As authorized by the United States Congress and consistent with applicable federal regulations, and provided the terms of the contract permit such purchases, § 2.2-4304 of the *Code of Virginia* permits any authority, department, agency, or institution of the Commonwealth to purchase goods and nonprofessional services, other than telecommunications and information technology, from a U.S. General Services Administration contract or a contract awarded by any other agency of the U.S. government, upon approval of the Director of the Division of Purchases and Supply of the Department of General Services for non-technology purchases and the Commonwealth's Chief Information Officer for technology purchases. For non-IT general purchases only one GSA Multiple Award Schedule (MAS) has been approved for state use by Congress, the Security and Protection Large Category (with the exception of SIN 332999S, Safes and Securities Products. And SIN 334118, Personal & Document Identification Systems). Certain law enforcement, drug interdiction, and emergency operations programs have been granted authority by Congress to use any GSA Schedule subject to GSA guidelines as to when they may be used.

CHAPTER 2

PROCUREMENT METHODS

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2.12 Prequalification

2.1 **Policy**.

a. Contracts with nongovernmental sources for the purchase, lease or rental of goods, printing, insurance, nonprofessional services, and construction, shall be awarded after competitive sealed bidding, or competitive negotiation as provided in this manual, unless otherwise authorized by law. Competition shall be sought to the maximum feasible extent. A sufficient number of sources must be solicited for the procurement of goods or services consistent with the method of procurement used. 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, status as a military family, 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)).

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.f, unless the state agency, department or institution issuing the solicitation has made a written determination not to include subparagraph 1.f 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.f. 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.f. 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, status as a military family, 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.

In addition it is the policy of the Commonwealth of Virginia to contribute to the establishment, preservation, and strengthening of small businesses and businesses owned by women and minorities and to encourage their participation in state procurement activities. Towards that end, the Commonwealth encourages firms to provide for the participation of such businesses through partnerships, joint ventures, subcontracts, and other contractual opportunities. In addition, all Commonwealth employees with purchasing responsibility who are involved in procurement decisions for goods and services are expected to notify and give every consideration to using qualified small business including micro business suppliers of procurement opportunities in a manner that is consistent with state and federal laws and regulations and with the provisions set forth in this manual. Whenever the agency or institution engages in a solicitation or request for quotes, it will include businesses selected from the list made available by the Department of Small Business and Supplier Diversity (DSBSD) and eVA web sites, www.sbsd.virginia.gov and eva.virginia.gov. This shall include DSBSD-certified women, minority, service disabled veteran, and military family-owned businesses when they also hold a DSBSD certification as a small business.

b. **Certified Vendors.** For purposes of any particular procurement a vendor shall be considered a Micro Business or Small Business if and only if the vendor holds a certification, as such by the DSBSD by the due date for receipt of bids or proposals for the procurement in question. DSBSD-certified women, minority, service disabled veteran, and military family-owned businesses shall also be considered micro or small businesses for a particular procurement if they hold a DSBSD micro or small business certification on the due date for receipt of bids or proposals for that procurement. The eVA vendor certification data is provided by DSBSD.

c. **Small Business Subcontracting Plan**. In accordance with the Commonwealth's policy of facilitating and maximizing the participation of small businesses, which includes businesses owned by women, minorities, service disabled veterans, and military family-owned business when their businesses have also received DSBSD small business certification, in its purchasing programs, an evaluation criterion for all procurements in excess of $100,000 shall be a Small Business Subcontracting Plan. This requirement is to ensure DSBSD-certified small business participation, which will assist efforts toward

achieving the statewide goal of 42% of the Commonwealth's discretionary spending in combined prime and subcontracts for DSBSD-certified small businesses.

d. **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) that are also DSBSD certified as women, minority, military family and/or service disabled veteran owned businesses.

Award of a contract shall be made in order of the Small Business Enhancement Award Priority as follows:

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/offeror 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. 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/offeror 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. 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. 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.

Awards over $10,000 up to and including $100,000: For purchases over $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/offeror 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. 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. 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
Up to and including $10,000.00
1) Micro Business
2) Small Business
3) Open to all

Small Business Set-Aside Award Priority
Over $10,000 up to and including $100,000
1) Small Business (including micro businesses)
2) Open to all

When setting aside procurements, there must be adequate competition to ensure the Commonwealth continues to obtain fair and reasonable prices and the orders must be placed through eVA. Set-asides do not apply to mandatory sources or non-mandatory sources such as the Virginia Industries for the Blind, Virginia Correctional Enterprises, Employment Services Organizations, as well as purchases made from existing mandatory or optional state contracts, nor does it apply to classifications of goods/services specifically exempted from competitive requirements by DPS.

Bidders and subcontractors must have received their DSBSD certification as a small business by the solicitation due date in order to be considered responsive.

2.2 **Exceptions from Competitive Requirements**. DGS/DPS has determined that competition is normally not practicable or available for the following circumstances:

a. Purchases up to and including $10,000.

b. The following selected categories of goods and services up to and including $100,000:

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

(2) Academic/research consulting services.

(3) Purchases of used equipment including used equipment purchased at a public or online auction.

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

(5) Deleted.

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

(7) Professional Organizational Membership dues.

(8) Writers.

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

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

(11) Contributions and donations made by a university.

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

(13) Utility charges (electric, natural gas, water, and sewer).

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

(15) Accreditation fees and academic testing services.

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

(17) Rare and historic manuscript, printed and photographic materials (e.g. books, ephemera, maps, manuscripts, photographs, and prints) that are one of a kind or exist in very limited supply.

(18) Purchases for testing or evaluation (limited to a one-time purchase of quantities considered necessary for complete and adequate testing).

c. Purchases from the federal government, other states and their agencies or institutions, and public bodies.

d. Deleted.

e. The required purchase of evidentiary records for use by an agency that has statutory authority and are for use in investigative proceedings.

2.3 **Small Purchase Procedures**

a. **Single Quotation** (up to and including $10,000). Where the agencies' or institutions' estimated cost of goods or nonprofessional services is up to and including $10,000, unless exempted, purchases shall be made upon receipt of a minimum of one (1) written or telephone (oral) quotation or Quick Quote may be used, from a DSBSD-certified micro business, if available. An eVA catalog (non-contract) price from a DSBSD-certified micro business, if available, can be considered a quote, provided the agency determines the price to be fair and reasonable. Additional small business sources may also be solicited. If more than one quote is solicited, the award will be made to the lowest responsive and responsible DSBSD-certified micro business bidder, provided the agency determines the price to be fair and reasonable.

b. **Informal Solicitations** (over $10,000 up to and including $100,000).

1. Unsealed Bidding. eVA shall be used to solicit bids or quotes for goods and nonprofessional services over $10,000 up to and including $100,000. Vendors must be registered in eVA in order to respond in eVA. Responses must be submitted in one of the following ways to be considered responsive: electronic submission through eVA or printed paper response form submitted in person, by fax, mailed, or as an attachment to an email received prior to the bid due date and time.

   Bidders shall provide their DSBSD-certified small business (including micro) number on set-aside solicitations. eVA VBO public posting is required if the solicitation exceeds $10,000.

   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 (2.1d). The solicitation shall designate in the title of the solicitation that the procurement is set-aside for micro businesses.

   Procurements over $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 (2.1d). The solicitation shall designate in the title of the solicitation that the procurement is set-aside for small businesses.

   Award should be made to the lowest responsive and responsible bidder in accordance with the Small Business Enhancement Award Priority

2. Unsealed Request for Proposals. Agencies and institutions may obtain required goods or nonprofessional services using the Unsealed Request for Proposal process up to and including $100,000. Offerors shall provide their DSBSD-certified small business (including micro) number on set-aside solicitations. eVA VBO advertising is required. A written determination for the use of competitive negotiation is not required for Unsealed Request for Proposals.

   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. The solicitation shall designate in the title of the solicitation that the procurement is set-aside for micro businesses.

   Procurements over $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. The solicitation shall designate in the title of the solicitation that the procurement is set-aside for small businesses.

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. Award should be made to the highest ranking offeror in accordance with the Small Business Enhancement Award Priority.

2.4 **Sealed (Formal) Bids**. Written sealed bids are required for goods or nonprofessional services when the estimated cost is over $100,000. The solicitation will be publicly posted on the DGS/DPS eVA website (eva.virginia.gov) at least ten days prior to the date set for receipt of bids. This also applies to two-step sealed bidding. Written sealed bids received are held, unopened, until the date and time set in the solicitation, at which time they are publicly opened and the following information is read aloud:

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

Bids will be evaluated and awarded based upon the requirements set forth in the solicitation.

2.5 Combined **Two-Step Sealed Bidding**. Combined two-step competitive sealed bidding is used when it is impractical to initially prepare a definitive purchase description to support an award based on prices. In such instances an IFB is issued 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. There is no negotiation in the combined two-step competitive sealed bid process; however, the agency at its option may request information from bidders to clarify material contained in their technical proposals.

The solicitation describes the agency's requirement in general terms and asks for a technical proposal describing how the bidder intends to meet the agency's requirements and what goods, equipment, and service, as applicable, will be furnished. The solicitation must also specify any mandatory technical data and information to be submitted in the proposal and any optional information desired. It also includes a pricing schedule. The cover sheet should explain the combined twostep procedure. The solicitation shall also provide an option for suppliers to respond electronically in eVA unless an exemption has been granted by the Director of DGS or his designee.

When receiving electronic responses the instructions issued must specify that the technical proposal is uploaded in eVA in the technical envelope and the pricing must be included in the line items. When receiving paper responses, 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" and 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 in accordance with 3.11(g), the solicitation shall include a tiered award clause as specified in Special Term and Condition 2.L. It should indicate if a prebid conference will be conducted and if attendance is mandatory or optional. The proposals are publicly opened, and the names of the firms submitting proposals are announced. The agency then evaluates and selects those proposals which will meet its needs, based on the mandatory criteria specified in the solicitation. The evaluators may request written or oral discussions from bidders to clarify or supplement the material in the proposal. The contents of the technical proposal are not subject to negotiation and must be evaluated as submitted. They are not ranked but are determined to be acceptable or not acceptable for meeting the agency's needs. Only those responsive bidders whose technical proposals were determined to be acceptable will be moved to the next step of price evaluation. The contract is awarded to the lowest responsive and responsible bidder. The award document shall incorporate by reference the terms and conditions of the solicitation, the contractor's technical proposal, and the bid price. Post the appropriate award notice and contract (see 3.19). For late sealed paper bids the envelope shall be date and time stamped, marked "late" and retained unopened in the procurement file.

2.6 **Competitive Negotiation** (Applies to sealed solicitations for other than Professional Services). Competitive negotiation may be used for procurement of goods, services, or insurance (Code of Virginia, § 2.2-4302.2). In competitive negotiation, a written Request For Proposal (RFP) is issued that describes in general terms what is to be procured, the criteria to be used in evaluating the proposal, an indication of whether a numerical scoring system will be used in the evaluation of proposals, the applicable contractual terms and conditions, including any unique capabilities or qualifications required of the contractor. 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. If competitive negotiation is used for a purchase expected to be $100,000 or less, it shall be Set-aside in accordance with the Small Business Enhancement Award Priority, unless exempted.

A notice of the RFP will be publicly posted on the DGS/DPS eVA website (https://eva.virginia.gov/index.html eva.virginia.gov) at least ten days prior to the due date and time and the notice may be published in a newspaper of general circulation in the area in which the contract is to be performed.

Written sealed proposals received are held, unopened, until the date and time set in the solicitation. Public openings are not required.

Selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals, on the basis of the criteria involved in the Request for Proposal, including price if so stated in the Request for Proposal. Negotiations shall then be conducted with each of 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 public body shall select the offeror which, in its opinion, has made the best proposal, and shall award the contract to that offeror. Should the public body determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror.

2.7 **Deleted**

2.8 **Emergency Procurement**. In case of emergency, a contract may be awarded without competitive sealed bidding or competitive negotiation; however, such procurement shall be made with such competition as is practicable under the circumstances. The writing shall document the basis for this determination. All emergency procurement award notices shall be posted on eVA (*Code of Virginia*, § 2.2-4303) and at a minimum state that the procurement has been declared an emergency and must also state that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. Public award notices may be posted at locations in addition to posting on eVA, at the discretion of the entity (public posting notice board, entity website, newspaper, etc.) on the day the decision to award is announced or the award is made, whichever occurred first, or as soon thereafter as is practicable.

2.9 **Sole Source Procurement**.

a. Upon a determination in writing that there is only one source practicably available for that which is to be procured, a contract may be negotiated and awarded to that source without competitive sealed bidding or competitive negotiation. The writing shall document the basis for this determination. All sole source procurement award notices shall be posted on eVA (*Code of Virginia*, § 2.2-4303) and at a minimum state that only one source was determined to be practicably available and must also state that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. Public award notices may be posted at other locations in addition to posting on eVA *VBO*, at the discretion of the entity (public posting notice board, entity website, newspaper, etc.) on the day the decision to award is announced or the award is made, whichever occurred first.

b. **Deleted**

2.10 **Public Auction Sale.**

1. Public Auction Sale: 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).

a. Public auction sale (non-electronic) may be used up to the Agency's delegated authority.

b. Participation in online public auctions is not permitted.

c. Set-aside for DSBSD-certified small businesses unless exempted.

2.11 **Reverse Auction:** 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.).

a. Agencies are authorized to conduct reverse auctions up to the agency's delegated authority using Reverse Auctioning tools in eVA.

b. eVA VBO advertising is required over $10,000.

c. Quick Quote Reverse Auctioning:

i. The reverse auction shall be open for the period of time stated but must be open for at least three (3) business days (24 business hours).
ii. Procurements up to and including $100,000 shall be Set-aside in accordance with the Small Business Enhancement Award Priority, unless exempted.
iii. The closing time may not be extended.
iv. The maximum number of line items allowed for reverse auctioning is six (6). A bid is required for each line. $0.00 is an acceptable line item bid and shall not be deemed to constitute a "no bid" but the bidder will be expected to provide that line item at no cost.
v. Awards shall only be made on grand total basis.
vi. Receipt of Bids – Only eVA registered vendors can participate. Paper responses are not allowed. A bidder must participate electronically.

2.12 **Prequalification**. It is sometimes necessary to qualify potential contractors or test products in advance of any procurement to determine if they meet the state's requirements. The criteria for prequalification will be made public to allow potential suppliers or contractors a fair opportunity to qualify for future recurring requirements. The state will be the sole judge of when prequalification of contractors or products is required. A state public body shall deny prequalification to contractors failing to register and participate in E-Verify. Any employer with more than an average of 50 employees for the previous 12 months entering into a contract in excess of $50,000 with any agency of the Commonwealth to perform work or provide services pursuant to such contract shall register and participate in the E-Verify program to verify information and work authorization of its newly hired employees performing work pursuant to such public contract. (*Code of Virginia*, § 2.2-4317) (*Code of Virginia*, § 2.2-4308.2).

When a service is involved, the capabilities, personal qualifications, equipment, and past performance of potential contractors are examined and evaluated against the established criteria. Those contractors that successfully meet or exceed the criteria are placed on a Qualified Contractors List (QCL) for the type of service involved.

When a Qualified Products List (QPL) is established, interested suppliers are urged to submit their products for qualification. The products are examined and tested for compliance with state requirements. Products that successfully meet the qualification procedure are placed on a QPL for that product.

Whenever qualified products or services are to be procured only bids or proposals offering products or services that have been prequalified and are listed on a QCL or QPL at the time of the bid or proposal opening can be considered.

The listing of a service or product on a QCL or QPL does not mean endorsement by the state or that the state in any way recommends the service or product offered. Also, the listing of a service or product does not release the contractor or supplier from compliance with contract specifications and requirements for the service or product being purchased. Statutory guidance on prequalification of prospective contractors for construction is contained in *Code of Virginia,* § 2.2-4317.

CHAPTER 3

GENERAL REQUIREMENTS OF VENDORS

In this Chapter look for . . .

3.1 Application and Registration
3.2 Changes in Registration
3.3 Visits by Vendors
3.4 Vendor Assistance to State Agencies
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3.6 Prohibited Participation
3.7 Responsible Bidder or Offeror
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3.12 Prohibited Contracts
3.13 Subsequent/Additional Bid/Proposal for the Same Procurement
3.14 Virus-free and Accessible Submittals
3.15 Authorization to Transact Business in the Commonwealth
3.16 E-Verify Program

3.1 **Application and Registration**. Vendors wishing to register as a regular bidder or offeror to do business with agencies and institutions of the Commonwealth must register in eVA. eVA is the electronic procurement system used by state agencies and institutions. To learn about eVA or register in eVA, vendors may go to eva.virginia.gov and click on "I Sell to Virginia" then "Tools", "eVA Supplier Training." The direct link is eva.virginia.gov/supplier-training-materials.html. A registration fee will not apply, however other fees may be applicable. Vendors registered in eVA for the particular commodity or service will receive an e-mail "push" notification of requirements solicited by state agencies and institutions. In addition, many political subdivisions use eVA as their electronic order and delivery system. The information submitted on the registration will be used in determining the types of materials, equipment, supplies, or services for which the vendor will receive solicitations. Each purchasing office reserves the right to verify the vendor's capability prior to making an award. It is the responsibility of each vendor to maintain a current and accurate registration account in eVA. Vendors not registered with DGS/DPS who wish to respond to any of the Commonwealth's solicitations submitting an online electronic bid or proposal using eVA must first register in eVA. Applicants must allow sufficient time for the application to be processed. To be considered for an award, vendors must register in eVA prior to award. A paper registration package can be obtained by calling 1-866-289-7367. All purchase transactions, regardless of funding source, governed by the *VPPA* shall be processed through eVA to eVA registered vendors unless otherwise excluded in 14.9 b of the *APSPM*. Any purchases processed outside eVA will continue to be governed by applicable law and by the non-eVA policies and procedures

contained in this manual and the *Agency Procurement and Surplus Property Manual (APSPM)* in effect at the time of the transaction.

3.2 **Changes in Registration**. It is the vendor's responsibility to keep current the registration information. Any changes in company name or FEIN number can only be made by an authorized eVA customer care representative. Requests should be emailed to evacustomercare@dgs.virginia.gov. All other changes to a vendor's registration account should be made by an authorized company representative.

3.3 **Visits by Vendors**. Visits by vendors or their representatives to purchasing offices are welcomed and encouraged. In order that the staff and vendors may schedule their time productively, an appointment is suggested. Appointments with DPS Statewide Sourcing and Contracting Officers, Lead Statewide Sourcing and Contracting Officers or Deputy Directors of Sourcing and Contracting may be scheduled Monday through Friday on official business days from 9:00 a.m. to 4:00 p.m. (phone 804-786-3842). Other state agencies establish their own hours.

3.4 **Vendor Assistance to State Agencies**. Vendor sales efforts of a consultative or advisory nature are encouraged. They assist agencies in keeping current with the latest state of the art technology and materials and are a valuable source of information. The furnishing of product or service information by a vendor is considered to be normal sales effort and does not entitle the vendor to preferential treatment in the awarding of contracts (see 3.6b). A vendor may offer, without compensation, assistance to agency personnel in developing specifications for a requirement and compete on that requirement. A purchasing office may provide the specifications to competing vendors for comment before issuing the solicitation (see 3.6b).

3.5 **Personal Interest, Donations, and Gifts**. No vendor shall offer any gift, gratuity, favor, or advantage to any state employee who exercises official procurement responsibility, develops procurement requirements, or otherwise influences procurement decisions. State employees may attend vendor-sponsored seminars or trade shows where the buying staffs will benefit from receiving product information and learning of new techniques and trends. If an employee's attendance at such an event is approved by the employee's agency, food, drinks, and give-away items offered to all participants at such functions are considered to be provided to the agency rather than to the employee and may be accepted by state employees attending.

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

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

Political Contributions Prohibited During Procurement Process.

a. Pursuant to *Code of Virginia* § 2.2-3104.01, neither the Governor, his political action committee, or the Governor's Secretaries, if the Secretary is responsible to the Governor for an agency with

jurisdiction over the matters at issue, shall knowingly solicit or accept a contribution, gift, or other item with a value greater than $50 from any bidder, offeror, or private entity, or from an officer or director of such bidder, offeror, or private entity, who has submitted a bid or proposal pursuant to the *Virginia Public Procurement Act* (*Code of Virginia* § 2.2-4300 et seq.) during the period between the submission of the bid/proposal and the award of the contract.

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

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

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

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

3.6 **Prohibited Transactions**.

a. **From Architect or Engineer**.

(1) No building materials, supplies, or equipment for any building or structure constructed by or for a public body shall be sold by or purchased from any person employed as an independent contractor by the public to furnish architectural or engineering services, but not construction, for such building or structure; or from any partnership, association, or corporation in which such architect or engineer has a personal interest as defined in *Code of Virginia,* § 2.2-3101 and § 2.2-4374A.

(2) No building materials, supplies, or equipment for any building or structure constructed by or for a public body shall be sold by or purchased from any person which has provided or is currently

providing design services specifying a sole source for such materials, supplies, or equipment to be used in such building or structure to the independent contractor employed by the public body to furnish architectural or engineering services in which such person has a personal interest as defined in *Code of Virginia*, § 2.2-3101 and § 2.2-4374B.

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

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

b. **Other Contractors**. An independent contractor employed or otherwise paid by a state agency to design a project, develop a scope of work, write specifications, or otherwise define contract requirements is not eligible to compete for or receive the resulting contract, except in cases of emergency, when only one source is practicably available for both the defining of contract requirements and the performance of those requirements or when the public body determines in writing that the exclusion of such vendor would limit the number of potential qualified bidders or offerors in a manner contrary to the best interests of the public body. In addition the contractor may not be a subcontractor or supplier for the entity which is awarded the contract or any of that entity's subcontractors, however far removed. A vendor may offer, without consideration, assistance to agency personnel in developing specifications for a requirement and compete on that requirement; however, it is incumbent upon the agency buying staff to assure vendor provided specifications reflect the procurement needs of the purchasing body rather than being drawn to favor a particular vendor (*Code of Virginia*, § 2.2-4373).

c. **Goods and Services.** Subsequent/Additional Bid/Proposal for the Same Procurement. Submission of a subsequent bid/proposal, unless specifically identified as an amendment to a previously submitted bid/proposal, shall constitute an additional bid/proposal submitted by the same bidder or offeror on the same IFB/RFP. For information on amending or withdrawing bids/proposals, see Section 5.11. The latest date/time stamped bid/proposal will be the only accepted bid/proposal for the solicitation.

d. **Deleted.**

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

a. be a regular dealer, supplier and/or an authorized dealer of the goods or services offered;

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

c. have a satisfactory record of performance, however, conduct described in 7.20 (Causes for Debarment) ordinarily indicates nonresponsiblity. In considering the continued relevance of past conduct, the passage of time (or expiration of a related debarment) by itself should not be relied upon in most cases, but evidence of appropriate remedial actions of proven effectiveness taken subsequent to the conduct should be considered;

d. have a satisfactory record of integrity; and,

e. have the necessary facilities, organization, experience, technical skills, and financial resources to fulfill the terms of the purchase order or contract (See 9.5).

3.8 **Responsive Bidder**. A responsive bidder means a person who has submitted a bid which conforms in all material respects to the Invitation for Bids. Examples of nonresponsiveness include, but are not limited to, failure to sign a bid, failure to return the required bid documents, substitution of terms, deletion of terms and conditions stated in the Invitation for Bids, and failure to offer a product or service that meets the requirements of the Invitation for Bids. A bidder who fails to provide prices for all categories of labor in the pricing schedule of a time and materials service contract is considered non-responsive. This is true whether the price was left blank or the bidder entered a figure of $0. Bidders who provide multiple prices for goods and services where a single price was solicited are also non-responsive.

3.9 **Copyright**. No vendor may copyright any work contracted for by the Commonwealth and produced for the Commonwealth without the prior written consent of the agency or DPS.

3.10 **Ownership of Artwork, Negatives, and Other Submitted Information**

a. All artwork, negatives, dies, overlays, or similar materials used to print a job shall be the property of the Commonwealth and must be returned to the requisitioning agency upon completion.

b. Ownership of all data, materials, and documentation originated and prepared for the state pursuant to a solicitation shall belong exclusively to the state and be subject to public inspection in accordance with the *Virginia Freedom of Information Act*. Information on protecting trade secrets or proprietary information is found in 1.9.

3.11 **Deleted.**

3.12 **Prohibited Contracts.**

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

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

c. The determination of whether a source is a prohibited source shall be made by the Department of Taxation after providing the prohibited source with notice and an opportunity to respond to the

proposed determination. The Department of Taxation shall notify the Department of General Services of its determination.

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

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

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

g. **Subsequent/Additional Bid/Proposal for Same Procurement**. Submission of a subsequent bid/proposal, unless specifically identified as an amendment to a previously submitted bid/proposal, shall constitute an additional bid/proposal submitted by the same bidder or offeror on the same solicitation. (See 5.11 through 5.15 for information on amending or withdrawing bids and *Code of Virginia*, § 2.2-4330 C. for Withdrawal of bid due to error.) The latest date/time stamped bid/proposal will be the only accepted bid/proposal for the solicitation

3.13 **Deleted**

3.14 **Virus-free and Accessible Submittals.** It is the responsibility of the vendor to ensure that any electronic submission transmitted to an agency or institution is virus-free and in a format (e.g. Microsoft Word or Excel, Adobe Acrobat, etc.) that is accessible by that agency or institution. Documents not accessible by the purchasing agency may be cause to determine the bid nonresponsive.

3.15 **Authorization to Transact Business in the Commonwealth.**

a. In accordance with the *Code of Virginia* § 2.2-4311.2, every written contract shall include a provision that a contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 or as otherwise required by law.

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

c. Should a bidder/offeror omit including the SCC number or a statement describing why the bidder/offeror is not required to be so authorized on its bid/proposal, the agency, at its sole option, may allow the bidder/offeror additional time to provide the SCC Identification Number or a statement describing why the bidder/offeror is not required to be so authorized and continue the evaluation. An agency shall not award a contract to a bidder/offeror that fails to comply with § 2.2-4311.2 unless a waiver is granted by the Director of the Department of General Services or his designee.

d. For purposes of compliance with this section, agencies may rely on the accuracy of the bidder's/offeror's statement provided on the SCC Form describing why the bidder/offeror is not required to be so authorized per exclusions listed in Title 13.1 or Title 50 and are not required to validate. Any falsification or misrepresentation contained in the statement submitted by the bidder/offeror pursuant to Title 13.1 or Title 50 may be cause for debarment.

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

3.16 **E-VERIFY PROGRAM:** Pursuant to *Code of Virginia*, §2.2-4308.2, any employer with more than an average of 50 employees for the previous 12 months entering into a contract in excess of $50,000 with any agency of the Commonwealth to perform work or provide services pursuant to such contract shall register and participate in the E-Verify program to verify information and work authorization of its newly hired employees performing work pursuant to such public contract. Any such employer who fails to comply with these provisions shall be debarred from contracting with any agency of the Commonwealth for a period up to one year. Such debarment shall cease upon the employer's registration and participation in the E-Verify program. If requested, the employer shall present a copy of their Maintain Company page from E-Verify to prove that they are enrolled in E-Verify.

CHAPTER 4

SOLICITATIONS

In this Chapter look for . . .

4.1 Selection of Bidders/Offerors
4.2 Response Time
4.3 Prebid or Preproposal Conference
4.4 Receipt of Sealed Bids or Proposals
4.5 Receipt of Unsealed Proposals
4.6 Canceling or Amending a Solicitation
4.7 Combining Responses to Separate Solicitations is Prohibited
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4.12 Insurance
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4.14 Brand Names
4.15 Contractor Registration (License)
4.16 Notice of Pending Procurements

4.1 **Selection of Bidders/Offerors**. All qualified vendors have access to state business. Vendors registered in eVA for the particular commodity or service may automatically receive an e-mail notification of the solicitation. Selection of additional vendors will be at the discretion of the state agency or institution. All Invitations for Bids, Requests for Proposals, sole source award notices, emergency award notices, 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). Addenda are also required to be posted. Any vendor not solicited may request a copy of the solicitation. When a Qualified Products List (QPL) or Qualified Contractors' List (QCL) has been established only those vendors whose products or services have been approved prior to bid or proposal opening will be considered for award.

On occasion, a competitive procurement may be restricted to manufacturers. When this is done, it will be explicitly stated in the solicitation that only bids or proposals bidding or offering that manufacturer's product will be considered.

4.2 **Response Time**. Normally, the time set for return of sealed bids is fourteen (14) to seventeen (17) calendar days after publication of the IFB. The minimum time for receipt of a sealed bid or proposal will not be less than ten calendar days from the date issued. In addition, mandatory conferences or site visits will not be scheduled less than ten calendar days from the date the solicitation is issued and public notice requirements are completed. Vendors should check each solicitation to ascertain its due date.

4.3 **Prebid or Preproposal Conference**. On complex, critical or high value procurements, a solicitation may contain a requirement to attend a prebid or preproposal conference. Attendance at conferences or site visits may be either optional or mandatory. The issuing agency may permit attendance through teleconferencing or videoconferencing. When mandatory attendance is stipulated in the solicitation, evidence of those in attendance must be maintained by the agency and only bids or proposals from those firms represented at the conference or visiting the site will be accepted. Vendors are cautioned that agencies are authorized to establish a cutoff time for late arrivals, after which no one will be permitted access to the conference. Conferences scheduled during a period of suspended state business operations will be rescheduled by the purchasing agency to a date and time which will permit proper notification to all potentially interested participants.

4.4 **Receipt of Sealed Bids or Proposals.**

a. **General**. The solicitation will state that written sealed bids or proposals are to be received by the issuing purchase office prior to the date and hour specified in the solicitation. 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 appropriate times on the next regular business day. A special envelope or label may be furnished with the solicitation. It is imperative that the bid or offer be returned in this envelope. If return in the special envelope is not possible, the signed bid or proposal should be returned in a separate envelope or package, sealed and identified as follows:

From:

_____	_____	_____
Name of Bidder/Offeror	Due Date	Time
_____	_____	
Street or Box Number	IFB or RFP No.	
_____	_____	
City, State, Zip Code	IFB or RFP Title	

Name of Contract/Purchase Officer/Buyer:

_____

The envelope should be addressed as directed in the solicitation.

If the special envelope or label is not used and a bid or proposal is mailed, the bidder or offeror takes the risk that the envelope, even if marked as described above, may be inadvertently opened and the information compromised which may cause the bid or proposal to be disqualified. Bids or proposals may be hand delivered to the designated location in the office issuing the solicitation. No other correspondence or other bids or proposals should be placed in the envelope.

Bidders should be careful when electing to use private courier services to deliver their bids or proposals to the contracting agencies. Many agencies have different addresses for hand delivery versus the point of delivery established for postal delivery. It is solely the responsibility of the

bidders/offerors to ensure that bids or proposals reach the designated address by the specified date and time shown on the solicitation.

b. **Receipt of Bids for Highway and Construction Maintenance Programs**. In procurement solicitations by the Department of Transportation by competitive sealed bidding for highway construction and maintenance contracts, the Department may accept bids in response to an Invitation to Bid at the Department's central office or at district offices or other satellite locations designated in the Invitation to Bid, in accordance with specifications adopted by the Department. An Invitation to Bid may authorize agents of the Department to accept from bidders, on a voluntary basis, a supplemental submission referencing the total bid amount on a form prescribed by the Department. Information contained in any supplemental submission may be made available to the public by the Department after the time for receiving bids has expired and before the public opening and announcement of all sealed bids (*Code of Virginia,* § 2.2-4322).

4.5 **Receipt of Unsealed Proposals**. The RFP for written unsealed proposals will state that they must be received by a date and time specified. Proposal receipt deadlines scheduled during a period of suspended state business operations will be deemed rescheduled for the appropriate times on the next regular business day. Special envelopes generally are not furnished. These proposals may also be hand delivered to the office issuing the solicitation. Unsealed proposal solicitations and responses may be electronic. Unsealed responses shall be received until the time and date specified in the solicitation.

4.6 **Canceling or Amending a Solicitation**. An Invitation to Bid, a Request for Proposal, any other solicitation, or any and all bids or proposals, may be canceled or rejected. The reasons for cancellation or rejection will be made part of the contract file. A public body will not cancel or reject an Invitation to Bid, a Request for Proposal, any other solicitation, bid or proposal pursuant to this section solely to avoid awarding a contract to a particular responsive and responsible bidder or offeror (*Code of Virginia,* § 2.2-4319).

Amendments may be made by the issuance of an addendum prior to the time set for receipt of responses. When an addendum for a sealed solicitation is issued, there must be a minimum of 10 days from the date of the addendum to the due date set for the receipt of bids, or the due date shall be extended.

Acknowledgment of receipt of an addendum must be returned prior to the time set for receipt of bids or proposals, or accompany the bid or proposal. Failure to acknowledge receipt of an addendum may be cause for rejection of the bid or proposal.

4.7 **Combining Responses to Separate Solicitations is Prohibited**. A vendor shall not combine responses to separate IFBs or RFPs into one bid or proposal.

4.8 **Postage**. All bids or proposals should be weighed and the postage verified before mailing. The U.S. Postal Service does not deliver unstamped mail. Postage due mail may be delivered, but the state will not assume the responsibility for paying the amount due and may return or refuse the mail.

4.9 **Facsimile or Electronic Bids or Proposals**. Bids or proposals sent via facsimile or electronically, must meet the requirements for unsealed or sealed responses described below. The timing device used to document the receipt of bids or proposals will be designated by the purchasing agency. The time printed on the top of the facsimile copy will not govern the time of receipt.

a. **Unsealed Proposals**. Facsimile or electronic proposals must be completely received in the office that issued the solicitation prior to the time and date designated for submission. The original copy of the facsimile or electronic transmission may be requested. If requested it must be received within five (5) working days.

b. **Sealed Bids/Sealed Proposals**. Facsimile bids or proposals will be accepted from a third party or an agent of the bidder or offeror for sealed programs provided that the bids or proposals are submitted in sealed envelopes to the purchasing agency. The bidder/offeror is responsible for arranging the third party involvement in sealed bid/proposal programs and for faxing the complete bid/proposal to the third party, not just a summary or the cover sheet. The original bid or proposal and addenda may be requested and, if requested, must be received within five (5) business days. See 5.3 for signature requirements.

4.10 **Late Bids or Proposals**. To be considered, all bids or proposals must be received at the specific office location stipulated by the procuring activity on or before the date and hour designated on the solicitation. Vendors should pay particular attention to ensure that the bid or proposal is properly addressed. The state is not responsible if the bid or proposal does not reach the specific destination by the appointed time. Bids or proposals received after the date and hour designated are automatically excluded from further consideration. For late sealed bids or proposals the envelope shall be date and time stamped, marked "late" and retained unopened in the procurement file. The official time used in the receipt of responses is that time on the clock or automatic time stamp machine in the procuring activity.

4.11 **Bonds**.

a. **Bid Bonds**. Except in cases of emergency, all bids or proposals for non transportation-related construction contracts in excess of $500,000 or transportation-related projects authorized under § 33.2-208 that are in excess of $350,000 and partially or wholly funded by the Commonwealth shall be accompanied by a bid bond from a surety company selected by the bidder that is legally authorized to do business in Virginia, as a guarantee that if the contract is awarded to such bidder, that bidder will enter into the contract for the work specified in the bid. The amount of the bid bond shall not exceed five percent of the amount bid (*Code of Virginia*, §2.2-4336).

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

(2) Nothing in this section shall preclude the state from requiring bid bonds to accompany bids or proposals for construction contracts anticipated to be less than $500,000 for non transportation-related projects or $350,000 for transportation-related projects authorized under §33.2-208 et seq.) and partially or wholly funded by the Commonwealth.

(3) Deleted.

b. **Performance and Payment Bonds**.

(1) Unless otherwise authorized in this section, upon the award of any (i) non transportation-related public construction contract exceeding $500,000 awarded to any prime contractor, (ii) transportation-related projects exceeding $350,000 that are partially or wholly funded by the Commonwealth, the contractor shall furnish to the public body the following bonds (*Code of Virginia*, §2.2-4337):

(a) A performance bond in the sum of the contract amount conditioned upon the faithful performance of the contract in strict conformity with the plans, specifications, and conditions of the contract.

(b) A payment bond in the sum of the contract amount. The bond shall be for the protection of claimants who have and fulfill contracts to supply labor or materials to the prime contractor to whom the contract was awarded, or to any subcontractors, in the furtherance of the work.

(2) Each of the bonds shall be executed by one or more surety companies selected by the contractor that are authorized to do business in Virginia and filed with the purchasing office that awarded the contract or a designated official thereof within 10 days after receipt of the purchase order or notice of award. See 3.3f on bond documentation review and Annex 3-E for guidance on processing and verifying the bonds validity.

(3) Nothing in this section shall preclude the state from requiring payment or performance bonds for construction contracts up to $500,000 for non transportation-related projects or $350,000 for transportation-related projects authorized under *Code of Virginia,* §33.1-12 and partially or wholly funded by the Commonwealth.

(4) Nothing in this section shall preclude the contractor from requiring each subcontractor to furnish a payment bond with surety thereon in the sum of the full amount of the contract with such subcontractor conditioned upon the payment to all persons who have and fulfill contracts which are directly with the subcontractor for performing labor and furnishing materials in the prosecution of the work provided for in the subcontract (*Code of Virginia*, §2.2-4337).

(5) **Deleted.**

(6) **Deleted.**

c. **Bonds on Construction Contracts**. Upon award of a non-transportation-related construction contract exceeding $500,000, the contractor shall furnish a Performance Bond and a Payment Bond, each in the sum of the contract. (*Code of Virginia*, § 2.2-4337). Each bond shall be executed by one or more surety companies that are legally authorized to do business in Virginia. Form CO-10 Commonwealth of Virginia Standard Performance Bond, Form #DGS-30-084, and Form CO-10.1 Commonwealth of Virginia Standard Labor and Material Payment Bond, Form #DGS-30-088, shall be used. (Forms may be downloaded from the DGS/Division of Engineering & Buildings website, https://dgs.virginia.gov/engineering-and-buildings).

4.12 **Insurance**. Whenever work is to be performed on state-owned or leased property or facilities, the contractor shall be required to have Workers' Compensation, Employer's Liability, Commercial General Liability and Automobile Liability, and in certain types of programs Professional Liability/Errors and

Omissions insurance coverage. The Commonwealth of Virginia shall be added as an additional insured to the policy by an endorsement when requiring a Contractor to obtain Commercial General Liability coverage. In some cases, Workers' Compensation Insurance and Employer's Liability Insurance may not be required. Workers' Compensation insurance is required when the contractor has three (3) or more employees. If work is performed by a sole proprietor, the person does not need Workers' Compensation insurance, as they do not have employees. Employer's Liability is required if an employer has employees who are paid a wage or salary. Employer's Liability is not required for persons in business together, e.g., husband and wife, siblings or parents and children, as these persons would be considered owners not employees. For construction contracts, if any subcontractors are involved, subcontractors shall also be required to have workers' compensation insurance in accordance with *Code of Virginia,* § 2.2-4332 and 65.2-800 et seq. Stipulated insurance must be obtained prior to commencing work and be maintained during the entire term of the contract. At a minimum, the contractor must certify to the agency that they possess the appropriate insurance coverage. The agency must verify and document the contractor's insurance coverage and include it in the procurement file. The procuring office may require a certificate of insurance to be furnished prior to commencement of work and at any time during contract performance.

4.13 **Specifications, Questions, and Comments**. It is the intent of the purchasing office to use specifications that encourage competition. Vendors are requested to inform the responsible purchasing office whenever they have comments or questions concerning specifications or solicitation requirements (*Code of Virginia*, § 2.2-4316). Suggestions concerning new products or improvements to specifications are encouraged and will be considered. This information should be provided to the issuing purchase office as early as possible but at least five (5) working days prior to bid or proposal due date to provide time to amend or cancel the solicitation before the scheduled receipt date.

4.14 **Brand Names**. When it is determined to be impractical to develop a generic specification, a brand name may be used to convey the general style, type, character and quality of the article desired. Unless otherwise provided in the solicitation, the name of a certain brand, make, or manufacturer does not restrict bidders or offerors to the specific brand, make, or manufacturer named. Any article which the public body, in its sole discretion, determines to be the equivalent of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended shall be accepted (*Code of Virginia*, § 2.2-4315). The bidder or offeror is responsible to clearly and specifically indicate the product being offered and to provide sufficient descriptive literature, catalog cuts and technical detail to enable the Commonwealth to determine if the product offered meets the requirements of the solicitation. This is required, even if offering the exact brand, make, or manufacturer specified. Normally, in competitive sealed bidding, only the information furnished with the bid will be considered in the evaluation. Failure to furnish adequate data for evaluation purposes may result in declaring a bid nonresponsive. Unless the bidder or offeror clearly indicates in its bid/proposal that the product offered is an "equivalent" product, such bid/proposal will be considered to offer the brand name product referenced in the solicitation.

4.15 **Contractor Registration (License)**. State statutes and regulatory agencies require that some contractors be properly registered and licensed, or hold a permit, prior to performing specific types of services. It is the contractor's responsibility to comply with the rules and regulations issued by state regulatory agencies. An unlicensed vendor submitting a bid or proposal where such license is required is in violation of state law and the bid or proposal will be rejected. A vendor bidding on construction, demolition, repair, or improvements to facilities must be a registered contractor with the Department of Professional and Occupational Regulation in accordance with *Code of Virginia*, Title 54.1, Chapter 11, as follows:

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 the proper license issued by the State Board for Contractors for the type of work involved prior to submitting a bid or proposal (*Code of Virginia*, §§ 54.1-1103 and 54.1-1115). Refer to Code of Virginia, §54.1-1100 for definitions of Class A, Class B and Class C Contractors.

NOTE: The Board shall require a master tradesmen license as a condition of licensure for electrical, plumbing and heating, ventilation and air conditioning contractors.

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.

In addition, all nonresident contractors and subcontractors submitting bids on the above work who are not registered with the Department of Professional and Occupational Regulation shall register with the Department of Labor and Industry under the provisions of *Code of Virginia*, § 40.1-30.

Private Security Services. All solicitations for the installation, service, maintenance, or design of security equipment, security officer service, central station alarm condition monitoring service, and/or private investigator service require that the successful bidder, offeror or approved subcontractor have a Private Security Services Business License issued by the Department of Criminal Justice Services (see *Code of Virginia,* § 9.1-139). This applies regardless of the dollar value of the resulting contract. Assistance may be obtained from the Department of Criminal Justice Services at 804-786-0460.

4.16 **Notice of Pending Procurements**. DGS/DPS publishes the *Virginia Business Opportunities* (*VBO*) on the Internet (eva.virginia.gov) to post all IFBs, RFPs, addenda, and notices of award with state and some local government agencies. The intent of this policy is to broaden vendor participation and help Virginia companies, particularly micro, small, women, minority, and service disabled veteran-owned businesses, to know what bidding opportunities are available in state government. It also carries out the provision of § 2.2-4300C of the *Code of Virginia,* "that all qualified vendors have access to state business and no offeror be arbitrarily or capriciously excluded." Agencies are authorized to waive publication of procurements from mandatory sources and purchases of items exempted by law from competitive procurement. The publication lists pertinent information such as the type of purchase, required location, response date, and point of contact. Public notice of pending procurements may also be published on other appropriate websites or posted at the agency.

CHAPTER 5

SOLICITATION RESPONSES

In this Chapter look for . . .

5.1 Solicitation Forms
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5.3 Signature on Bid or Proposal
5.4 Terms and Conditions
5.5 Pricing and Discounts
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5.1 **Solicitation Forms**. All vendors receiving an Invitation for Bid (IFB) or Request for Proposal (RFP) are expected to return the bid or proposal response in paper form or via electronic submission to the purchasing office that issued the solicitation. If the vendor does not wish to submit a bid or proposal, a "No Bid" or a similar statement should be returned to the issuing office.

5.2 **Vendor Name and Address**. Purchase orders or contracts will be issued only to the firm's name appearing on the bid or proposal form. If orders or payments are to be mailed to an address or addresses other than that shown on the face of the form, the bidder or offeror must so indicate and list the post office box, or street name and number, city, state, and zip code for the addressee as an update to their Vendor Master Profile to reflect this information It is the Vendor's responsibility to ensure all Vendor Master Profile information is accurate and current.

5.3 **Signature on Bid or Proposal**. Facsimile bids or proposals on sealed programs will be accepted from a third party or an agent of the bidder or offeror provided that the bids or offerors are submitted in sealed envelopes (see 4.9). For sealed bid or sealed proposal programs, 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 or submitting the bid or proposal electronically through eVA must be a person authorized by the bidder or offeror to submit through eVA or sign bids or proposals. The person signing must include his or her title, and if requested, must verify his or her authority to bind his or her company in contract. Failure to sign the face of the bid/proposal in the space provided will result in rejection of the

bid/proposal except if the unsigned bid/proposal is accompanied by other signed documents indicating the bidder's/offeror's intent to be bound [see 5.13c(1)(b)].

5.4 **Terms and Conditions**. Terms and Conditions and Instructions to Vendors incorporated by reference in the eVA purchase order are shown in Appendix B, Section I. Solicitations contain general terms and conditions which incorporate the procedures and provisions of this manual as well as all applicable statutory provisions such as the *Virginia Fair Employment Contracting Act* (*Code of Virginia*, §§ 2.2-4200 through 2.2-4201). The General Terms and Conditions that are typically used in agency contracts are found in Appendix B, Section II. These provisions apply to all written solicitations issued by state agencies for procurements that are subject to the DGS/DPS *Agency Procurement and Surplus Property Manual* (*APSPM*) unless changed, deleted, or revised by the legal advisor to the agency or institution. Special conditions may change or rescind the procedures and provisions of this manual, and the solicitation should be read with care prior to submission of a bid or proposal. A bidder or offeror is not permitted to challenge the validity of the terms or conditions of the Invitation for Bids or Request for Proposal (*Code of Virginia,* § 2.2-4360). Modification of, or additions to, the General Terms and Conditions of an IFB or RFP may be cause for rejection of the bid or proposal. No modification of or addition to any provisions of a contract shall be effective unless reduced to writing and signed by the parties to the contract.

5.5 **Pricing and Discounts**. Solicitations normally request net price FOB destination. The net price is the list price less trade or volume discounts offered. Unit prices, extensions, and/or gross total must be shown as requested in the pricing schedule. Prompt payment discounts offered must be clearly shown in the space provided and will be taken if payment is made within the specified time frame, e.g., 2% 20 days. Such discounts will not be a factor in award unless specified in the solicitation. Correct pricing is extremely important, and price should be double checked before submitting a bid or proposal. In the case of errors in the extension of prices, the unit price shall govern.

5.6 **Samples**. Samples of materials or equipment for testing, evaluation, or demonstration purposes, when requested in a solicitation must be furnished at no cost. Each individual sample must be labeled with the bidder's or offeror's name, manufacturer's brand name and number, requisition number or contract program, and item referenced. Samples submitted by the successful bidder or offeror may be held for comparison with goods received. All samples submitted may be subjected to tests and evaluation by either a qualified laboratory or test panel, and the results will be a factor in making the award. Samples not destroyed in testing will be returned, if requested, to the bidder or offeror at his or her expense. Requests for return of samples will be honored upon the completion of testing and evaluation. Samples will be disposed of if not claimed within 60 days after pick-up notification has been given.

5.7 **Alternate Bids**. An alternate bid is a bid submitted in knowing variance from the specifications and must be clearly distinguished as an alternate by the bidder. Frequently, alternate bids incorporate the latest in technology and can result in substantial savings, not only in monetary terms but also in system-wide operational efficiencies. Vendors should contact buying offices with suggested revisions to specifications as soon as possible in the procurement process. An award cannot be made on an alternate bid; however, all bids may be rejected and the requirement resolicited with a revised specification using the features of the alternate.

5.8 **Taxes**.

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

b. **State Sales**. The Commonwealth of Virginia is generally exempt from paying Virginia's sales taxes on purchases of tangible personal property for its use or consumption. Sales tax, however, is paid by the Commonwealth on materials and supplies that are installed and become a part of real property, e.g., glued-down carpet. Contractors are not exempt from paying taxes on these categories, as they are considered to be a cost of doing business and should be considered in pricing when preparing a bid on a state contract. (Virginia Retail Sales and Use Tax Regulations, §§ 630-10-27 and 630-10-45. Also see §§ 58.1-603 and 58.1-604). If further interpretive assistance is required, contact the Department of Taxation, Office of Customer Services, 804-367-8037.

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

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

5.9 **Time of Performance**. A specific date or number of calendar days required for delivery or performance after receipt of order may be stated in the terms and conditions of a solicitation. Otherwise, the date or number of days must be entered by the bidder in the space provided on the solicitation form (see 7.7).

5.10 **Questions Concerning Solicitations**. Questions concerning a solicitation should be directed to the person and phone number listed on the document. Always refer to the identification number and the opening date on the IFB or RFP. Bid tabulations are a matter of public record and are open for inspection to bidders and offerors after evaluations are complete but prior to award (see 1.9).

5.11 **Amending or Withdrawing Bids or Proposals by Vendors**. A bid/proposal may be amended and/or withdrawn by a bidder or offeror if the office issuing the solicitation receives such a request in writing before the due date and hour. The request must be signed by a person authorized to represent the person or firm that submitted the bid/proposal.

5.12 **Alterations To Bids or Proposals**. Prior to submission of a bid or proposal, alterations may be made, but they must be initialed by the person signing the bid or proposal. The proper procedure is to draw a single line through the information to be changed and insert the desired information and initial the change. Erasures, strikeovers, or the use of opaque fluid on bid or proposal forms that affect unit price, quantity, quality, or delivery may result in the rejection of the line item or items involved in the bid or proposal.

5.13 **Mistakes in Bids**.

a. **Correction**. Except as herein provided, no plea or claim of mistake shall be available to a bidder for recovery of any deposit or security required to be paid or posted or as a defense in any legal proceeding for the failure, neglect or refusal of the bidder to (1) execute a contract that has been awarded by the Commonwealth, (2) accept a purchase order issued by the Commonwealth to a bidder in response to a bid submitted by such bidder, or (3) perform in accordance with the terms, specifications and conditions of a contract.

b. **Mistakes Discovered Before Opening**. A bidder may correct mistakes discovered before the time and date set for receipt of bids by withdrawing and replacing or by correcting the bid (see 5.11 and 5.12).

c. **Mistakes Discovered After Opening But Before Award**

(1) **Informality**. An informality is a minor defect or variation of a bid or proposal from the exact requirements of the Invitation for Bids, or the Request for Proposal, which does not affect the price, quality, quantity, or delivery schedule for the goods, services, or construction being procured (*Code of Virginia*, § 2.2-4301). The procuring agency may, in its sole discretion, waive such informalities or permit the bidder/offeror to correct them, whichever procedure is in the best interest of the Commonwealth. Examples include the failure of a bidder/offeror to:

(a) Return the number of signed bids/proposals required by the solicitation.

(b) Sign the face of the bid/proposal in the space provided, but only if the unsigned bid/proposal is accompanied by other signed documents indicating the bidder's/ offeror's intent to be bound.

(c) Acknowledge receipt of an addendum to the solicitation, but only if it is clear from the bid/proposal that the bidder/offeror received the addendum and intended to be bound by its terms, or the addendum involved had a negligible effect on price, quantity, quality, or delivery.

(2) **Judgment Errors**. Bids may not be withdrawn if the mistakes are attributable to errors in judgment, nor may such mistakes be waived or corrected.

(3) **Nonjudgmental Mistakes**

(a) Mistakes Where the Intended Correct Bid is Evident. If the mistake and the intended correct bid are clearly evident in the bid document, the bid shall be corrected to the intended correct bid and may not be withdrawn. Examples of mistakes that may be clearly evident in the bid

document are typographical errors, errors in extending unit prices, transposition errors, and arithmetical errors.

(b) Mistakes Where the Intended Correct Bid is Not Evident. A bidder may be permitted to withdraw a low bid if a mistake is clearly evident from the bid documents submitted by the bidder and/or a comparison with other bids.

d. **Mistakes Discovered After Award**. Bids containing mistakes shall not be corrected or withdrawn after award of a contract or issuance of a purchase order. No plea or claim of mistake in a bid or resulting contract shall be available as a defense in any legal proceeding brought upon a contract or purchase order awarded to a bidder as a result of the breach or nonperformance of such contract or purchase order (see 7.14).

e. **Construction**. A bidder for a public construction contract, other than a contract for construction or maintenance of public highways, may withdraw his or her bid from consideration if the bid price was substantially lower than the other bids due solely to a mistake therein, provided the bid was submitted in good faith, and the mistake was a clerical mistake as opposed to a judgmental mistake, and was actually because of an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of original work papers, documents, and materials used in the preparation of the bid sought to be withdrawn. The bidder shall submit to the public body or designated official his or her original work papers, documents, and materials used in the preparation of the bid within one day after the date fixed for submission of bids. The work papers shall be delivered by the bidder in person or by registered mail at or prior to the time fixed for the opening of bids. Such work papers, documents and materials may be considered as trade secrets or proprietary information subject to the conditions of the *Code of Virginia*, § 2.2-4342F. The bids shall be opened one day following the time fixed by the public body for the submission of bids. Thereafter, the bidder shall have two hours after the opening of bids within which to claim in writing any mistake as defined herein and withdraw his or her bid. The contract shall not be awarded by the public body until the two-hour period has elapsed. Such mistake shall be proved only from the original work papers, documents and materials delivered as required herein [(*Code of Virginia*, § 2.2-4330A (ii)].

5.14 **Withdrawal of Bids**. If the lowest apparent responsive bid is 25% or more lower than the next low bid, the buyer may contact the bidder to confirm the bid price. If the bidder is able to verify, to the satisfaction of the purchasing office, that it was a nonjudgmental mistake, the bid may be withdrawn.

a. If a bid is withdrawn, the lowest remaining bid shall be deemed to be the apparent low bid.

b. No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid was submitted.

c. If the public body denies the request for withdrawal of a bid under the provisions of this section, it shall notify the bidder in writing stating the reasons for its decision and award the contract to such bidder at the bid price, provided such bidder is a responsive and responsible bidder.

d. No bid may be withdrawn when the result would be the awarding of the contract on another bid of the same bidder or of another bidder in which the ownership of the withdrawing bidder is more than five percent.

5.15 **Denial of Withdrawal of Bid**. If the state denies the withdrawal of a bid under the provisions of paragraph 5.14, it shall notify the bidder in writing stating the reasons for its decision and award the contract to such bidder at the bid price, provided such bidder is a responsible and responsive bidder (*Code of Virginia*, § 2.2-4330 F). The decision denying withdrawal of a bid shall be final and conclusive unless the bidder appeals the decision within ten days after receipt of the decision by invoking the appeals procedure in Chapter 9 or by instituting legal action as provided in the *Code of Virginia*, § 2.2-4364.

CHAPTER 6

EVALUATION AND AWARD

In this Chapter look for . . .

6. General
6.1 Evaluation of Bids and Proposals
6.2 Acceptance Period
6.3 Notice of Intent to Award and Notice of Award
6.4 Multiple Awards and Split Awards
6.5 Tie Bids
6.6 Deleted
6.7 Negotiation with the Lowest Responsible Bidder

6. **General**. Factors other than price are considered in selecting the successful bidder/offeror. A determination must be made by the purchasing office as to whether the bidder/offeror is responsive to the requirements of the solicitation and whether or not they are a responsible bidder or offeror capable of furnishing the goods or services solicited (see sections 3.7 and 3.8). Any bidder who, despite being the apparent low bidder, is determined not to be a responsible bidder shall be notified in writing in accordance with section 9.5 of this manual. The state reserves the right to request samples of materials or equipment or further information prior to award even if not specifically required in the terms and conditions. Failure to provide requested material or information in a timely manner may be considered valid justification for rejection of the bid.

6.1 Evaluation of Bids or Proposals

a. Evaluation of Bids. Bids are evaluated and an award should be made to the lowest responsive and responsible bidder in accordance with the Small Business Enhancement Award Priority. The state reserves the right to reject any and all bids in whole or in part and to waive any informality in the bid. In the case of errors in the extension of prices, the unit price will govern (see 5.5).

b. Evaluation of Proposals - Goods and Nonprofessional Services. Proposals are evaluated by the buyer, contracting officer, or an evaluation team, on the basis of the criteria set forth in the RFP. Proposals deemed to be fully qualified and best suited are selected on the basis of the factors stated in the RFP. As an option, evaluators may request presentations or discussions with offerors, as necessary, to clarify material in the offerors' proposals, to help determine those fully qualified and best suited. Offerors who fail to submit required documentation or meet mandatory requirements, in such time, for evaluation purposes may be eliminated from further consideration. Negotiations are then conducted with two or more of the selected offerors. Price is considered, but need not be the sole determining factor. After negotiations have been completed, the purchasing office shall select the offeror (or offerors, if multiple awards are provided for in the RFP), which in its opinion has made the best proposal, and an award should be made to the highest ranking offeror in accordance with the

Small Business Enhancement Award Priority. Offerors and subcontractors must have received their DSBSD certification as a small business by the closing date of the RFP in order to receive points for the solicitation's evaluation criteria. If so provided in the RFP, after negotiations have been held, offerors are given the opportunity to submit best and final offers. The state is not required to furnish a statement of the reasons why a particular proposal was not deemed the most advantageous (*Code of Virginia*, § 2.2-4359D). Should the purchasing office determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than others under consideration, a contract may be negotiated and awarded to that offeror.

c. The Commonwealth in its sole discretion may choose not to make an award to a bidder or offeror who is in litigation with the Commonwealth at the time of bid/proposal evaluation.

6.2 **Acceptance Period**. Bids are valid for a minimum of thirty (30) days unless a longer period of time is specified in the solicitation or in the bid response. If an award decision has not been made at the end of the stipulated days, the bid may be withdrawn at the written request of the bidder. If the bid is not withdrawn at that time, it remains in effect until an award is made or the bids are rejected.

6.3 **Notice of Intent to Award and Notice of Award**. When the evaluation is complete, the office that issued the solicitation will announce its decision by posting either a Notice of Intent to Award or Notice of Award on the DGS/DPS eVA web site. Notices may also be posted in their public notice posting area or other designated location as stated in the solicitation document. A copy of the notice will be mailed to any bidder submitting a self-addressed, stamped envelope for this purpose with the bid/proposal. A low bidder determined not to be a responsible bidder will be notified in writing (see 9.5). A Notice of Award will be posted for 10 days if a Notice of Intent to Award is not issued.

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

6.5 **Tie Bids**

a. **Virginia and United States Products**. In the case of a tie bid, preference shall be first given to goods produced in Virginia, then to goods produced in the United States, if such a choice is available; otherwise, the tie shall be decided by lot, (*Code of Virginia*, § 2.2-4324). At the option of the office issuing the IFB, all bids may be rejected and the program rebid. Tie bids are reported to the Antitrust Unit of the Virginia Attorney General's Office (see also 1.8).

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

6.6 **Deleted**.

6.7 **Negotiation with the Lowest Responsible Bidder**. Unless canceled or rejected, a responsive bid from the lowest responsible bidder shall be accepted as submitted except that if the bid exceeds available funds, the state may negotiate with the apparent low bidder to obtain a contract price within available funds; however, such negotiation may be undertaken only under conditions and procedures described in writing and approved by the public body prior to issuance of the Invitation to Bid and summarized therein (*Code of Virginia*, § 2.2-4318).

CHAPTER 7

PERFORMANCE

In this Chapter look for . . .

7.1 Purchase Order, Authority and Shipment
7.2 New/Used/Altered
7.3 Packaging
7.4 Substitutions
7.5 Loss or Damage in Transit
7.6 Freight
7.7 Delivery
7.8 Receipt of Shipments
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7.11 Assignment of Contract
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7.13 Complaints
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7.17 Contract/Purchase Order Modification Restrictions
7.18 Termination for Convenience of the Commonwealth
7.19 Claims
7.20 Debarment
7.21 Ineligibility or Disqualification of Manufacturer
7.22 Debarment Period
7.23 Debarment Notification and Appeal Procedure
7.24 Suspension

7.1 **Purchase Order, Authority and Shipment**. A purchase order is a document used by a state agency or institution to execute a purchase transaction with a vendor. The order number should be shown on all bills of lading, packing slips, back orders, invoices, etc. The receipt of a purchase order authorizes shipment (for requirements-type contracts, the receipt of a notice of award establishing a contract does not authorize shipment). Contractors who accept and deliver an order without a written purchase order or other properly executed Commonwealth contract form do so at their own risk.

7.2 **New/Used/Altered**. All supplies and equipment furnished must be new and in first class condition unless the solicitation and contract award specified used items. Demonstration, previously rented or reconditioned items are not considered new. No equipment is acceptable if serial numbers or any other manufacturers' identifying labels or marks have been removed, obliterated, or changed.

7.3 **Packaging**. Unless otherwise specified in the solicitation, new standard commercial packing and shipping containers shall be used. Shipping containers should be legibly marked or labeled on the outside with the commodity description and number, size, quantity, contract number, and agency purchase order number or purchase order number. A packing slip or invoice should accompany all shipments and should reference the purchase order number. Failure to do so may result in delayed payment processing.

7.4 **Substitutions**. Substitution is defined as delivery of an item that does not conform to the specifications of the purchase order or contract. Substitutions on purchase orders require the prior approval of the purchasing office issuing the award. Any item delivered not meeting specifications may be returned to the contractor at the contractor's expense. When an item is returned, the contractor must make immediate replacement with acceptable merchandise or be considered in default.

7.5 **Loss or Damage in Transit**. Delivery by a contractor to a common carrier does not constitute delivery to state agencies or political subdivisions. Any claim for loss or damage incurred during delivery shall be between the contractor and the carrier. The state accepts title only when goods are received regardless of the F.O.B. point. The receiving agency will note all apparent damages in transit on the freight bill and notify the contractor. Discovery of concealed damage or loss will be reported by the receiving agency to the carrier and the contractor within seven days of receipt and prior to removal from the point of delivery if possible. The contractor shall make immediate replacement of the damaged or lost merchandise or be in default of the contract. It shall be the contractor's responsibility to file a claim against the carrier. If damage is to a small quantity, with the approval of the agency, the contractor may deduct the amount of damage or loss from his or her invoice to the agency in lieu of replacement.

7.6 **Freight**. By signing an IFB the bidder certifies that the bid price(s) offered for F.O.B. destination include only the actual freight charges at the lowest and best rate and is based upon the actual weight of the goods to be shipped. Freight charges are, therefore, established for each individual purchase. If a requirement is bid F.O.B. origin, the contractor shall prepay the charges and add the amount to the invoice. A copy of the freight bill should be attached to all invoices that include freight charges. In a solicitation specifying F.O.B. origin the state will consider freight cost in the evaluation of bids.

7.7 **Delivery**. Delivery must be made by the date or period specified in the purchase order or contract or the contractor will be in default. The receiving sections of most state agencies are open during normal working hours, Monday through Friday, except on official holidays. If a contractor cannot make delivery as specified under an existing purchase order or contract, the contractor must immediately notify the ordering agency. The contractor may offer a new delivery date; however, if it is not acceptable to the agency and delivery cannot be made as originally specified, the contractor will be in default (see 7.14).

7.8 **Receipt of Shipments**.

a. **General**. Shipments will be checked against the agency's copy of the ordering document to assure quantities, units, etc., match. Over shipments may be rejected and returned at the contractor's expense. Required grading certificates, USDA stamps, or any other proofs of quality must precede or accompany the shipment. Contractors should ensure that they have been given a specific delivery location and obtain a signed receipt for goods delivered.

b. **Printing Overruns, Underruns**. The State is not required to accept overruns provided “no overruns” is specified in the solicitation. However, an agency may, at its discretion, accept up to a ten percent

overrun. The additional overrun price quoted shall not exceed the base lot price quoted for the equivalent incremental quantity. Whichever price is less will prevail. An agency may at its discretion accept an underrun, provided that credit is allowed the agency at the full base price per unit for the quantity of the underrun.

7.9 **Overshipments**. An agency should not accept goods in excess of those specified on the purchase order or contract unless it is recognized as a custom of that industry (e.g. printing, cable, fabric), is so stated in the bid, and is accepted by the buyer. Increases or decreases exceeding $500 shall be provided for by a change order and shall be provided whenever requested by a supplier to ensure the supplier's eVA transaction fee is accurate. Change orders for increases or decreases up to $500 shall be prepared if requested by the supplier (see 8.9). In the event that an overshipment is not recognized until after receipt and not provided for in the award, the agency must notify the contractor that the overshipment will not be accepted and, unless the overshipment is picked up by the contractor, it will be returned at the contractor's expense.

7.10 **Inspection**. All materials, equipment, supplies, and services are subject to inspection and testing. Items or services that do not meet specifications may be rejected. Failure to reject upon receipt, however, does not relieve the contractor of liability for latent or hidden defects subsequently revealed when goods are put to use or tested. If latent defects are found, the contractor is responsible for replacing the defective goods within the delivery time originally stated in the solicitation and is liable for any resulting expenses incurred by the state.

7.11 **Assignment of Contract**. A contract shall not be assignable by the vendor in whole or in part without the written consent of the state purchasing office issuing the contract.

7.12 **Contract Renewal or Extension**. A term contract may contain a renewal clause describing the conditions under which it may be renewed. All renewals must be fully executed in writing prior to the expiration of the current contract term. Term contracts for goods or nonprofessional services may not be renewed without a renewal clause, except that in exceptional or extenuating circumstances a contract may be extended by mutual consent for a limited period of time to allow for completion of work in progress. This action shall be in writing prior to the expiration of the current contract.

7.13 **Complaints**.

a. Contracts. The following chart lists the agency that will handle certain types of procurement complaints:

Type of Complaint	**Agency**
Goods and Non-professional Services	DGS/Division of Purchasing and Supply
Technology (IT)	Virginia Information Technologies Agency (VITA) Purchasing
Construction awarded under Division of Engineering and Buildings and certain professional services	DGS/Division of Engineering & Buildings

b. Solicitation. Any issues concerning solicitations or non-contractual issues should be addressed with the issuing agency.

c. Existing Contracts. Any differences between the provisions of the contract and subsequent performance will be reported by the ordering agency to the contractor on a Procurement Complaint Form (PCF). Vendors are required to respond to the agency within 10 calendar days. A copy of the complaint form should be sent to DGS/DPS via email (procurementcomplaint@dgs.virginia.gov). A vendor's failure to respond may affect future business with the Commonwealth.

Vendors may also use this form to communicate any non-compliance issues with the contract or ordering agency. The PCF is available to vendors at eva.virginia.gov by clicking on "I Sell to Virginia." Agencies are required to respond to the vendor within 10 calendar days and to send a copy to DGS/DPS (procurmentcomplaint@dgs.virginia.gov).

7.14 **Termination for Default**. In case of default by a contractor for failure to deliver or perform in accordance with the contract specifications or terms and conditions, the state may terminate the contract and/or procure the articles or services from other sources and hold the defaulting contractor responsible for any resulting additional purchase and administrative costs. The state will normally repurchase from the next low bidder or purchase competitively by resolicitation. If the repurchase results in increased costs to the Commonwealth, a letter will be sent to the defaulted contractor requiring payment within a specified time frame for additional costs. If repayment has not been made by the end of the specified period of time, subsequent collection action shall be taken in accordance with the Office of Attorney General's Collection Procedure Guidelines and , debar proceedings may be instigated (see 7.20p). Contractors shall not be liable for any excess cost if the failure to perform arises out of any act of war, order of legal authority, strikes, act of God, or other unavoidable causes not attributed to their fault or negligence. Failure of a contractor's source to deliver is generally not considered to be an unavoidable cause. The burden of proof rests with the contractor.

7.15 **Cancellation of Purchase Orders and Contracts**. Cancellation of purchase orders will be made in writing by the purchasing office that issued the order. Orders or contracts may be canceled without a contractor's consent as provided in 7.14, Termination for Default, or 7.18, Termination for Convenience of the Commonwealth. A contractor may request cancellation, and the state will grant relief if the contractor is prevented from specific performance, including timely delivery, by an act of war, order of legal authority, act of God, or other unavoidable causes not attributed to the contractor's fault or negligence. Failure of a contractor's source to deliver is generally not considered to be an unavoidable cause. The burden of proof for need of such relief rests with the contractor. The state reserves the right to cancel all contracts with any contractor who fails to perform for any one contract.

7.16 **Purchase Order Changes**. A purchase order change is used to correct errors, to add or delete small quantities of goods, or to make other minor adjustments in the original 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. 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; However, a contract or purchase order may not be modified or renewed unless provided for in the original contract or solicitation.

Change orders may also be used to cancel an order (see 7.14 & 7.15). A contractor who deviates from the requirements of a purchase order or contract prior to receipt of an authorized change order does so at its own risk (see 7.17).

7.17 **Contract/Purchase Order Modification Restrictions**. No contract or purchase order may 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. A public contract may include provisions for modification of the contract during performance, but no fixed price contract may be increased by more than 25 percent of the original amount of the contract or $50,000, whichever is greater, without the advance written approval of the Governor or his designee. By executive order this is the Director of General Services. In no event may the amount of any contract, without adequate consideration, be increased for any purpose, including, but not limited to, relief of a bidder or offeror from the consequences of an error in its bid or offer (*Code of Virginia*, § 2.2-4309A). 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 or her designee. Contract renewals or modifications must be in writing under the signature of the buyer/contract officer responsible for the purchase.

7.18 **Termination for Convenience of the Commonwealth**. A purchase order or contract may be terminated for the convenience of the Commonwealth by delivering to the contractor a notice of termination specifying the extent to which performance under the purchase order or contract is terminated, and the date of termination. After receipt of a notice of termination, the contractor must stop all work or deliveries under the purchase order or contract on the date and to the extent specified.

If the purchase order or contract is for commercial items sold in substantial quantities to the general public and no specific identifiable inventories were maintained exclusively for the Commonwealth's use, no claims will be accepted by the Commonwealth. Payment will be made for items shipped or services provided prior to receipt of the termination notice, unless otherwise specified in the contract.

If the purchase order or contract is for items being produced exclusively for the use of the Commonwealth, and raw materials or services must be secured by the contractor from other sources, the contractor shall order no additional materials or services except as may be necessary for completion of any portion of the work which was not terminated. The state may direct the delivery of the fabricated or non-fabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of the work, or direct the contractor to sell the same, subject to the state's approval as to price. The contractor may, with the approval of the state, retain the same, and apply a credit to the claim. The contractor must complete performance on any part of the purchase order or contract not terminated.

The contractor must submit any termination claim within 120 days after receipt of the notice of termination, or such longer period as the state for good cause may allow. This claim will be in a form and with certifications prescribed by the purchasing office that issued the purchase order. The claim will be reviewed and forwarded with appropriate recommendations to the requisitioning agency and/or the appropriate assistant attorney general for disposition in accordance with the *Code of Virginia*, § 2.2-514. Termination for convenience claims will be considered for only actual expenses incurred up to the time of termination.

7.19 **Claims**. Written notice of the contractor's intention to file a claim whether for money or other relief, must be given at the time of the occurrence or beginning of the work upon which the claim is based. Contractual claims whether for money or other relief shall be submitted in writing no later than sixty days after final payment. Nothing herein shall preclude a contract from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of claims shall not delay payment of amounts agreed due in the final payment.

A contractor may not institute legal action prior to receipt of the purchasing office's decision on the claim unless that office fails to render such decision within thirty (30) days. The decision of the purchasing office shall be final and conclusive unless the contractor, within six months of the date of the final decision on the claim, institutes legal action as provided in the *Code of Virginia*, § 2.2-4364.

7.20 **Debarment**. Debarment as used in this section means action taken by the Director of the Division of Purchases and Supply (DPS) to exclude individuals or firms from contracting with state agencies for particular types of goods or nonprofessional services for specified periods of time. Debarment does not relieve the contractor of responsibility for existing obligations.

The purpose of debarment is to protect the Commonwealth from risks associated with awarding contracts to persons or firms having exhibited an inability or unwillingness to fulfill contractual requirements, and to protect state interests and the integrity of the state's procurement process by preventing individuals or firms who have displayed improper conduct from participating on Commonwealth requirements for specific periods of time.

Causes for Debarment. An individual or firm may be debarred for any of the following reasons:

a. Breach (including anticipatory breach) of contract with a state agency. As examples of Breach, failure of the vendor to comply with provisions 1. or 2. of the Commonwealth's "ANTI-DISCRIMINATION" clause, or failure to comply with a Most Favored Customer Clause included in its contract. For default action see 7.14.

b. Sale or attempted sale to a state agency of the same or similar goods or services which are available under an existing mandatory DGS/DPS state contract, when the contractor knew or had reason to know that the goods or services are required to be purchased under the contract, unless such sale or attempted sale occurs in response to an IFB, RFP, or unsealed solicitation that specifies such goods or services.

c. Stating an unwillingness or inability to honor a binding bid. A mere request to withdraw a bid, which does not otherwise state an unwillingness or inability to perform, is not a cause for debarment.

d. Asserting facts related to procurement matters without having reasonable grounds at that time to believe that the facts are true. Examples include but are not limited to: falsifying or misrepresenting manufacturer's specifications in order to appear responsive to a solicitation; or asserting, without reasonable belief in its accuracy, information in support of an invoice, claim, protest, contract amendment, qualification application, or administrative or judicial appeal document. It is not necessary for the presentation to actually affect a decision, and it is not a defense that the recipient of the communication knew or should have known the true facts.

e. Conferring or offering to confer any gift, gratuity, favor, or advantage, present or future, upon any employee of a state agency who exercises any "official responsibility" for a "procurement transaction" as those terms are defined in the *Code of Virginia*, § 2.2-4368. It is not necessary that the offer be accepted by the employee, or that the offer is made with intent to influence the employee in an official act. Extending to any state employee exercising official responsibility for a procurement transaction any discount or privilege not available to all state employees is considered to be offering an advantage.

f. Failing to disclose a condition constituting a conflict of interest by any officer, director, owner, or partner of the vendor in a contract or purchase order awarded by DPS or any other agency of the state (*Code of Virginia*, § 2.2-3106).

g. Any cause indicating that the individual or firm lacks the moral and business integrity and reliability that will assure good faith performance.

h. A determination by the Director of DPS that a vendor has used abusive or obscene language or a threatening manner toward state purchasing personnel during the performance of their duties or as a result of the performance of their duties.

i. Sale, under nonemergency conditions, of building materials, supplies, or equipment for any building or structure constructed by or for the Commonwealth by an independent contractor employed to furnish architectural or engineering services, but not construction for such building or structure or from any partnership, association or corporation in which such architect or engineer has a personal interest *(Code of Virginia*, § 2.2-3101 and § 2.2-4374).

j. Sale, under nonemergency conditions, of building materials, supplies or equipment for any building or structure constructed by or for the Commonwealth by any person who has provided or is currently providing design services specifying a sole source for such materials, supplies or equipment to be used in such building or structure to the independent contractor employed by the Commonwealth to furnish architectural or engineering services in which such person has a personal interest as defined in *Code of Virginia*, § 2.2-3101.

k. Sale of goods or services to the Commonwealth when such sale is prohibited by any debarment then in effect.

l. Consent of the firm or individual being debarred.

m. Conviction of any criminal offense involving public contracting. Examples include, but are not limited to, bribery (*Code of Virginia*, § 18.2-447) and knowingly making a false statement in regard to collusion on a solicitation (*Code of Virginia*, § 18.2-498.4). Conviction for any of the above of any officer, director, owner, partner, agent, or related business entity of a vendor shall constitute grounds for the removal of the vendor.

n. Court judgment finding a violation of either federal or state antitrust laws.

o. Conviction of any offenses indicating a lack of moral or business integrity.

p. Failure to pay reprocurement costs pursuant to a contract termination for default.

q. Failure to comply with the provisions of the E-Verify program (*Code of Virginia*, §2.2-4308.2).

r. Failure to pay Vendor Transaction Fees invoiced by the Commonwealth of Virginia Department of General Services.

s. Creating or using an entity for the purpose of circumventing a debarment decision against another individual or firm.

t. Effective January 1, 2021; failure of an employer, or any officer or agent of the employer, to properly classify an individual as an employee in accordance with §58.1-1900 of the *Code of Virginia*.

It is not necessary that there be a judicial determination of violations contained in subparagraphs a. through l. and p. for debarment to occur.

If the debarring official finds that the cause for debarment reflects on the contractor's traits or tendencies only with regard to certain goods or services, the debarment may apply only to such goods or services. Otherwise the debarment shall apply to all goods and services within the purview of the debarring agency (DPS).

7.21 **Ineligibility or Disqualification of Manufacturer**. Should any manufacturer commit any of the acts described in paragraph 7.20, bids offering material, equipment, or supplies manufactured by that firm may be rejected even though the bid is submitted by a vendor in good standing.

7.22 **Debarment Period**. Debarment shall be for a period of ninety (90) days to three (3) years, at the discretion of the debarring official, except as follows. The debarment for subparagraphs m., n., and o. of paragraph 7.20 shall be for a period of three (3) years. The debarment for subparagraph p. of paragraph 7.20 shall be for a period of one year or until the reprocurement costs are paid or until the contract breach is resolved, whichever is longer. EFFECTIVE 12/1/13, the debarment for subparagraph q. of paragraph 7.20 shall be for a period up to one year; such debarment shall cease upon the employer's registration and participation in the E-Verify program (*Code of Virginia*, §2.2-4308.2). The debarment for subparagraph r. shall be for a period of one (1) to three (3) years or until the Vendor Transaction Fees are paid, whichever is longer. Debarment shall commence upon notification, or if later, upon expiration of any existing debarments.

Notwithstanding the prescribed duration of the debarment, solely at the discretion and at the instance of the Director of DPS a debarment may be lifted or suspended at any time if the Director of DPS determines it is in the best interest of the Commonwealth. The Director of DPS may require a debarred individual or firm to provide information in writing regarding actions taken to remedy the reason for debarment or prevent recurrence of the situation that caused the debarment action to be taken and otherwise indicating that lifting or suspension of the debarment would be in the best interest of the Commonwealth. Examples of actions that the Director may take into consideration include, but are not limited to:

a. Repayment by a debarred contractor of additional costs resulting from a default action for which the contractor had previously failed to reimburse the Commonwealth and was debarred.

b. Repayment by a debarred contractor of Vendor Transaction Fees.

c. Disassociation with individuals or firms that were responsible for the debarment.

7.23 **Debarment Notification and Appeal Procedure**. Please see Chapter 9, Section 3.

7.24 **Suspension**. Suspension is a type of ineligibility based upon adequate evidence that a vendor has committed any of the grounds for debarment as listed in this manual under paragraph 7.20. In the event that an indictment against a vendor or its principles exists for any of the reasons listed in this manual, paragraphs 7.20 m., n., or o., the indictment shall constitute adequate evidence for suspension. The period of suspension shall not exceed one year unless requested by the Office of the Attorney General. The process for suspension will be governed by the same procedures used for debarment/ineligibility.

Adequate evidence means information sufficient to support the reasonable belief that a particular act or omission has occurred.

CHAPTER 8

CHARGES AND COLLECTIONS

In this Chapter look for . . .

8.1 Separate Agency Records
8.2 Charge Cards for Small Purchases
8.3 Billings and Invoices
8.4 Partial Payments
8.5 Contractor Payment Assistance
8.6 Prompt Payment of Bills
8.7 Payment Requirements: All Contracts
8.8 Payment by Electronic Funds Transfer
8.9 eVA Transaction Fees

8.1 **Separate Agency Records**. Except when state agencies and institutions use charge cards for small purchases of goods and services, contractors must make separate accounts or charges for each agency since the agencies are individually responsible for payment. The name and address of the requisitioning agency is shown on each purchase order, delivery order, or agency purchase order.

8.2 **Charge Card Payments**. In an effort to streamline invoice and payment processing steps and sharply reduce paperwork, the Department of Accounts (DOA) has established a contract allowing agencies and institutions to use charge cards through two programs, the Small Purchase Charge Card (SPCC) and Gold Card. Unlike the typical consumer charge card, this program incorporates the features of corporate charge cards—national concept designed for business applications. Major program benefits include the reduction in the number of invoices submitted to Commonwealth agencies and institutions, reduction in internal requisitioning and purchase order processing steps, reduced vendor collections costs and payment to the vendor by the charge card company within as little as three business days. As a cost cutting endeavor, vendors are strongly encouraged to participate. Information can be obtained by calling DOA at 804225-3038, by emailing cca@doa.virginia.gov, or by faxing at 804-371-8587.

a. **Deleted.**

b. **Deleted.**

8.3 **Billings and Invoices**. The invoices must be submitted to the state agency concerned. Prompt payment discounts will be taken if offered and payment is made within the prescribed time frame. Time will be computed from the date of delivery or performance or from the date a valid invoice is received, whichever is later. Invoices should reference the purchase order or contract number and be in accordance with the terms of such.

8.4 **Partial Payments**. Agencies may initiate partial payments when portions of the goods have been received in good condition and have been properly invoiced by the contractor and partial payment is authorized by the governing contract.

8.5 **Contractor Payment Assistance**. Requests for assistance regarding payment from a state agency should be addressed to the agency concerned. In the event a contractor, after contacting a state agency, has an unresolved payment problem in regard to a contract or purchase order, the contractor may contact the DGS/DPS Supplier Relationship Manger via email at ProcurementComplaint@dgs.virginia.gov or the appropriate agency contracting office for assistance.

8.6 **Prompt Payment of Bills** (*Code of Virginia*, §§ 2.2-4347 through 2.2-4354).

a. Every state agency that acquires goods or services or conducts any other type of contractual business with nongovernmental, privately owned enterprises shall promptly pay for the completely delivered goods or services by the required payment date. Payment is deemed to have been made when offset proceedings have been instituted, as authorized under the Virginia Debt Collection Act (*Code of Virginia*, § 2.2-4800 et seq.).

b. Definitions - As used in this paragraph, unless the context clearly shows otherwise, the term or phrase:

(1) "Debtor" means any individual, business, or group having a delinquent debt or account with any state agency whose obligation has not been satisfied or set aside by court order or discharged in bankruptcy.

(2) "Contractor" means the entity that has a direct contract with any "state agency" as defined herein.

(3) "Payment date" means either (a) the date on which payment is due under the terms of a contract for provision of goods or services, or (b) if such date has not been established by contract, thirty days after receipt of a proper invoice by the state agency or its agent for the amount of payment due, or thirty days after receipt of the goods or services, whichever is later.

(4) "State agency" means any authority, board, department, instrumentality, institution, agency or other unit of state government.

(5) "Subcontractor" means any entity that has a contract to supply labor or materials to the contractor to whom the contract was awarded or to any subcontractor in the performance of the work provided for in such contract.

c. Separate payment dates - Separate payment dates may be specified for contracts under which goods or services are provided in a series of partial deliveries or executions to the extent that such contract provides for separate payment for such partial delivery or execution.

d. Defect or impropriety in the invoice or goods and/or services received - In instances where there is a defect or impropriety in an invoice or in the goods or services received, the state agency shall notify the supplier of the defect or impropriety, if the defect or impropriety would prevent payment by the payment date. The notice shall be sent within fifteen days after receipt of the invoice or the goods or services. (*Code of Virginia* § 2.2-4351)

d. e. Interest penalty; exceptions - Interest shall accrue, at the rate determined pursuant to paragraph f., on all amounts owed by a state agency to a contractor which remain unpaid after seven days following the payment date, except where a contract provides for a different rate of interest, or for the payment of interest in a different manner. Vendors should use the following formula to verify and compute interest charges:

$$\frac{\textit{Payment Amount x Interest Rate x Number of Days Late}}{365}$$

f. The rate of interest charged a state agency pursuant to paragraph e. shall be the base rate on corporate loans (prime rate) at large United States money center commercial banks as reported daily in *The Wall Street Journal*. Whenever a split prime rate is published, the lower of the two rates is to be used. However, in no event shall the rate of interest charged exceed the rate of interest established pursuant to *Code of Virginia*, § 2.2-4355.

g. Notwithstanding paragraph e., no interest penalty shall be charged when payment is delayed because of a disagreement between a state agency and a contractor regarding the quantity, quality or time of delivery of goods or services or the accuracy of any invoice received for such goods or services. The exception from interest penalty provided by this paragraph shall apply only to that portion of a delayed payment which is actually the subject of such a disagreement and applies only for the duration of such disagreement.

h. Notwithstanding paragraph e., no interest penalty shall be paid to any debtor on any payment, or portion thereof, withheld pursuant to the Comptroller's Debt Set-off Program, as authorized by the Virginia Debt Collection Act (*Code of Virginia*, §§ 2.2-4800 through 2.2-4809), commencing with the date the payment is withheld. If, as a result of an error, a payment or portion thereof is withheld, and it is determined that at the time of set-off no debt was owed to the Commonwealth, then interest shall accrue at the rate determined pursuant to paragraph f. of this section on amounts withheld which remain unpaid after seven days following the payment date.

i. Date of postmark deemed to be date payment is made - In those cases where payment is made by mail, the date of postmark shall be deemed to be the date payment is made. Generally speaking, all checks released by the Department of Accounts will be on the 30th day following delivery and receipt of a proper invoice.

j. Notwithstanding the provisions of paragraph e., the provisions of *Code of Virginia*, § 2.2-4333, relating to retainage on construction contracts shall remain valid.

k. Utility tariffs prescribed by the State Corporation Commission are exempt from the provisions of 8.6.

l. Contractors submitting invoices for interest due from a state agency should include, as a minimum, the following data:

(1) Original purchase order number or contract number;

(2) Envelope bearing postmark of the date payment was made. Where the envelope is not available, interest will be computed from the second business day after date of issue of the check;

(3) Original invoice number and date;

(4) Date of publication of the issue of *The Wall Street Journal* upon which the interest rate is based.

m. The payment date for items in disagreement shall be 30 days after the resolution of such disagreement.

8.7 **Payment Requirements: All Contracts**. All contracts awarded by state Agencies and Institutions require the following action to be taken by contractors:

a. Within seven days after receipt of amounts paid for work performed by the subcontractor under that contract:

(1) pay the subcontractor for the proportionate share of the total payment received from the agency attributable to the work performed by the subcontractor under that contract; or

(2) notify the agency and subcontractor, in writing, of his intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.

(3) A subcontractor may contact the contracting agency concerning non-payment and non-notification by the prime contractor. The agency will submit a Procurement Complaint Form to the prime contractor and the DGS/DPS Supplier Relationship Manager. The subcontractor has to show proof that it has not been paid by providing supportive document.

b. If an individual contractor, provide social security number in order to receive payment.

c. If a proprietorship, partnership or corporation, provide federal employer identification number.

d. Pay interest to subcontractors on all amounts owed by the contractor that remain unpaid after seven days following receipt by the contractor of payment from the state agency for work performed by the subcontractor under that contract, except for amounts withheld as allowed in paragraph 8.7a(2) above.

e. Interest shall accrue at the rate of one percent per month.

f. To include in each of its subcontracts a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor.

g. All prime contractors shall report subcontracting activities in accordance with Appendix B., Special Terms and Conditions, Section II. 36. The contractor shall furnish monthly to the purchasing office, all applicable information for each subcontractor listed on the Small Business Subcontracting Plan via the Subcontractor payment tool available through the contractor’s eVA account.

NOTE: A contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of a state agency or institution of the Commonwealth. A contract modification may not be

made for the purpose of providing reimbursement for such interest charge. A cost reimbursement claim may not include any amount for reimbursement for such interest charge.

8.8 **Payment by Electronic Funds Transfer**. The Commonwealth of Virginia disburses payments to vendors via paper checks. In addition, payments can be made to selected vendors with large transaction volume through the Commonwealth's Financial Disbursement System using Electronic Data Interchange (EDI) and its connectivity to the Automated Clearing House (ACH) network. Vendors who qualify for EDI through the Commonwealth's Financial Disbursement System will be paid in accordance with the Prompt Payment Act of Virginia which requires payment within 30 days of invoice or receipt of goods or services date, or by the terms and conditions established under contractual agreements with individual state agencies. Each party shall bear the respective fees and other charges assessed by its designated bank(s) and third-party service providers for financial EDI payments. For additional information relating to benefits of using EDI and the eligibility criteria, contact the Department of Accounts Hotline at 804-692-0473 or https://www.doa.virginia.gov/reference.shtml#edi.

8.9 **eVA Transaction Fees**.

a. Change Orders/Adjustments: The purchasing office is required to issue an eVA change order whenever the agency approves a change. A supplier, however, may request that an agency issue an eVA change order for any amount to ensure the supplier's eVA transaction fee is accurate. Suppliers should contact the purchasing office that issued the eVA purchase order to request such a change. Suppliers may contact eVA Billing Customer Care at 1-866-289-7367, Option 2 or eVACustomerCare@dgs.virginia.gov if additional assistance is required.

b. Refunds: Supplier credit balances that are reflected on eVA fee invoices are refundable upon validation of the credit balance by eVA Billing Customer Care. To request refund of a credit balance, the vendor must contact eVA Billing Customer Care at 1-866-289-7367, Option 2 or eVACustomerCare@dgs.virginia.gov

CHAPTER 9

PROTESTS AND APPEALS

In this Chapter look for . . .

9. General
9.1 Deleted
9.2 Deleted
9.3 Appeal of Ineligibility or Disqualification Determination or Debarment
9.4 Appeal of a Denial of Bid Withdrawal
9.5 Appeal of Nonresponsibility Determination
9.6 Protest of Award or Decision to Award
9.7 Deleted.
9.8 Exhaustion of Administrative Procedures.
9.9 Effect of the Appeal on Procurement Proceedings
9.10 Time and Place of Hearings
9.11 Deleted
9.12 Hearing Procedures
9.13 Deleted
9.14 Administrative Support
9.15 Board's Decision
9.16 Judicial Review
9.17 Alternative Dispute Resolution

9. **General**. The *Virginia Public Procurement Act (VPPA)* provides that a public body may establish administrative procedures for hearing procurement protests and appeals. It is not intended that the administrative appeals procedures set forth in § 2.2-4365 supplant or interfere with the informal resolution of disputes between the procuring agency and the contractor. Informal resolution of complaints in lieu of appealing is encouraged. With the abolishment of the DGS/DPS Procurement Appeals Board, Purchasing Agencies are permitted to establish their own Procurement Appeals Board. Information in this chapter regarding appeals proceedings, Hearings, Procurement Boards and/or ADR is intended solely as guidance and not as a requirement.

9.1 **Deleted.**

9.2 **Deleted.**

9.3 **Appeal of Ineligibility or Disqualification Determination or Debarment** (*Code of Virginia*, § 2.2-4357). Any bidder, offeror or contractor refused permission to participate, or disqualified from participation, in public contracts shall be notified in writing. Prior to the issuance of a written determination of disqualification or ineligibility, the public body shall (i) notify the bidder in writing of

the results of the evaluation, (ii) disclose the factual support for the determination, and (iii) allow the bidder an opportunity to inspect any documents that relate to the determination, if so requested by the bidder within five business days after receipt of the notice.

Within ten business days after receipt of the notice, the bidder may submit rebuttal information challenging the evaluation. The public body shall issue its written determination of disqualification or ineligibility based on all information in the possession of the public body, including any rebuttal information, within five business days of the date the public body received such rebuttal information.

If the evaluation reveals that the bidder, offeror or contractor should be allowed permission to participate in the public contract, the public body shall cancel the proposed disqualification action. If the evaluation reveals that the bidder should be refused permission to participate, or disqualified from participation, in the public contract, the public body shall so notify the bidder, offeror or contractor. The notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within ten days after receipt of the notice by invoking administrative procedures meeting the standards of § 2.2-4365, if available, or in the alternative by instituting legal action as provided in § 2.2-4364.

If, upon appeal, it is determined that the action taken was arbitrary or capricious, or not in accordance with the Constitution of Virginia, applicable state law or regulations, the sole relief shall be restoration of eligibility.

9.4 **Appeal of a Denial of Bid Withdrawal**. (*Code of Virginia*, § 2.2-4358). A decision denying withdrawal of bid under the provision of § 2.2-4330 shall be final and conclusive unless the bidder appeals the decision within ten days after receipt of the decision by invoking administrative procedures meeting the standards of § 2.2-4365, if available, or in the alternative by instituting legal action as provided in § 2.2-4364. If, upon appeal, it is determined that the decision refusing withdrawal of the bid was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid, the sole relief shall be withdrawal of the bid.

If no bid bond was posted, a bidder refused withdrawal of a bid under the provisions of § 2.2-4330, prior to appealing, shall deliver to the public body a certified check or cash bond in the amount of the difference between the bid sought to be withdrawn and the next low bid. Such security shall be released only upon a final determination that the bidder was entitled to withdraw the bid.

The security shall be forfeited to the Commonwealth if the final decision is adverse to the appealing bidder who then fails to accept and enter into the contract or to appeal to a circuit court. In the event the bidder appeals to a circuit court and that court issues a decision adverse to the bidder, the security shall be forfeited.

9.5 **Appeal of Nonresponsibility Determination**. (*Code of Virginia*, § 2.2-4359)**.** A bidder found nonresponsible for a particular procurement by the purchasing agency will be notified in writing of the results of the evaluation and disclose the factual support for the determination. If requested by the bidder within five business days after receipt of the notice, the bidder shall have an opportunity to inspect any documents which relate to the determination. Within ten business days after receipt of the notice, the bidder may submit rebuttal information challenging the evaluation. Within five business days of receipt

of the rebuttal information, the purchasing agency shall issue its written determination of responsibility based on all information, with return receipt requested, stating the basis for the determination.

A determination of nonresponsibility will be final unless the bidder appeals the decision within ten days after receipt of the notice by invoking administrative procedures meeting the standards of § 2.2-4365, if available, or in the alternative by instituting legal action as provided in § 2.2-4364. This shall not apply to procurements involving the prequalification of bidders and the rights of any potential bidders under such prequalification to appeal a decision that such bidders are not responsible.

If, upon appeal pursuant to § 2.2-4364 or § 2.2-4365, it is determined that the decision of the public body was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid, and the award of the contract in question has not been made, the sole relief shall be a finding that the bidder is a responsible bidder for the contract in question or directed award as provided in subsection A of § 2.2-4364 or both.

If the award of the contract has been made but performance on the contract has not begun, relief shall be as set forth in § 2.2-4360.

If action is brought in the appropriate circuit court challenging the determination of nonresponsibility and is found by the court to be a responsible bidder, the court may direct the public body to award the contract, forthwith, to such bidder in accordance with the requirements of *Code of Virginia,* § 2.2-4364 and the Invitation to Bid.

9.6 **Protest of Award or Decision to Award**. (*Code of Virginia*, § 2.2-4360). Any bidder or offeror submitting a bid or proposal in response to a solicitation may protest the award or decision to award a contract by submitting such protest in writing (to include electronic and facsimile submissions) to the head of the purchasing office which issued the solicitation no later than ten days after public notice of the award or announcement of the decision to award is made 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 potential bidder or offeror on a contract negotiated on an emergency or sole source 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 days after posting or publication of the notice of such contract as provided in paragraphs 2.8 and 2.9. The written protest must be received in the purchasing office not 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. The protest shall include the specific basis for the protest and the relief sought. The head of the purchasing office concerned will issue a decision in writing within ten days stating the reasons for the action taken. This decision shall be final unless the bidder or offeror appeals within ten days of receipt of the written decision by invoking administrative procedures meeting the standards of § 2.2-4365, if available, or in the alternative by instituting legal action as provided in the *Code of Virginia*, § 2.2-4364. 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 which are subject to inspection, then the time within which the protest must be submitted shall expire ten days after those records are available for inspection by such bidder or offeror, or at such later time as provided in the *Code of Virginia*, § 2.2-4360. No protest shall lie for a claim that the selected bidder or offeror is not a responsible bidder or offeror. A bidder or offeror shall not challenge the validity of the terms or conditions of the Invitation for Bids or Request for Proposal.

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 public body 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 public body 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.

Where a public body, an official designated by that public body, 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 or on an act in violation of Article 6 (§ 2.2-4367 et seq.), the public body, designated official or appeals board may enjoin the award of the contract to a particular bidder.

9.7 **Deleted.**

9.8 **Exhaustion of Administrative Procedures.** A bidder, offeror or contractor need not utilize administrative procedures meeting the standards of § 2.2-4365, if available, but if those procedures are invoked by the bidder, offeror or contractor, the procedures shall be exhausted prior to instituting legal action concerning the same procurement transaction unless the public body agrees otherwise (*Code of Virginia*, § 2.2-4364F).

9.9 **Effect of the Appeal on Procurement Proceedings**.

a. Pending final determination of a protest or appeal, the validity of a contract awarded and accepted in good faith in accordance with Chapter 43, Title 2.2 of the *Code of Virginia* shall not be affected by the fact that a protest or appeal has been filed (*Code of Virginia*, § 2.2-4361).

b. An award need not be delayed for the period allowed a bidder or offeror to protest or appeal, but in the event of a timely protest or appeal as provided in § 2.2-4360, or the filing of a timely legal action as provided in § 2.2-4364, no further action to award the contract will be taken unless there is a written determination by the purchasing agency that award of the contract is necessary to protect the public interest or unless the bid or offer would expire (*Code of Virginia*, § 2.2-4362). When such a written determination is made, copies shall be sent to all parties to a protest or appeal, and in the case of an appeal, to any applicable procurement appeals board.

9.10 **Time and Place of Hearings**. The parties will be given at least a ten day notice of the time and place of the appeal hearing. Appeals may be heard earlier upon the consent of all parties.

9.11 **Deleted.**

9.12 **Hearing Procedures**. Hearings before procurement appeals boards are not trials and will not be conducted as such. The Administrative Process Act does not apply to these hearings (*Code of Virginia*, § 2.2-4001). The hearings will be informal, and each party will be given a reasonable period of time to state their position. Any party may be represented by legal counsel at the hearing. Rules of evidence do not apply, except that the board may exclude evidence which is irrelevant or redundant and may limit testimony and argument as necessary to reasonably expedite the proceedings.

Witnesses may be called to testify, but the board does not have subpoena power, and an oath will not be administered.

The board may ask questions at any time but may not question any of the parties in closed session. The board's chairperson may limit the number of witnesses and may permit or control the discussion to the extent that the board, in its opinion, determines that the discussion will contribute to the identification and resolution of the issues.

Hearings will be open to the public, but the board shall adjourn the hearing to deliberate and reach its decision in private.

Hearings will usually proceed in the following order subject to the desires of the board:

a. The appealing party will state its reasons for appealing and the desired relief. Points of contention between the vendor and the public body will be limited to those points raised to the public body by the vendor in its letter of protest.

b. The appealing party will present its witnesses and evidence. The board and other parties will be able to ask questions of each witness.

c. Other parties may present their responses, the relief they desire, if any, and their witnesses and other evidence in the order determined by the board. Questions may be asked of their witnesses by the board or other parties to the appeal.

d. When all evidence and final arguments of the parties have been presented, the board shall deliberate in private session.

The hearings will be electronically recorded and the recordings retained for sixty days. If judicial review of the board's decision is instituted, the recording will be retained until the judicial review has been completed. Any party may provide a court reporter at its own expense. If a court reporter is used, transcripts of the hearing shall be given to the board at no expense upon its request. The board may make such a transcript a part of its record. If the board determines the transcript to be inaccurate or incomplete, it shall note for the record any inaccuracies or incomplete transcription of the hearing.

9.13 **Deleted**.

9.14 **Administrative Support**. The public body will furnish administrative support required including but not limited to arranging for a board hearing room, electronic recording facilities and supplies, and the preparation and mailing of hearing materials.

9.15 **Board's Decision**. The board hearing the appeal will issue a written decision within ten business days of the hearing date except when it must await a transcript of the hearing, in which case it will issue a written decision within ten business days of receiving the transcript. The board's decision will include a brief statement of the relevant facts, as the board determined them to be true, which caused it to make its decision. This will be called the "Findings of Fact." The board will then state its decision, giving in such detail as it considers necessary the reasons for its decision. The decision will be signed by the chairperson or designee.

9.16 **Judicial Review**. Any party to a hearing before the board will be entitled to institute judicial review if such action is brought within thirty days after receipt of the board's written decision or within thirty days of attempted postal delivery of the board's written decision to the last mailing address provided to the board by the party.

The findings of fact by the board will be final and conclusive and will not be set aside by a Court unless fraudulent, arbitrary or capricious, or so grossly erroneous as to imply bad faith. No determination on an issue of law will be final if appropriate legal action is instituted in a timely manner (*Code of Virginia*, § 2.2-4365).

9.17 **Alternative Dispute Resolution (ADR)**

a. Alternative Dispute Resolution is designed to increase the opportunity for relatively inexpensive and expeditious resolution of contract disputes resulting in a contractual claim. If an agency's final decision denying a contractual claim is challenged, the contractor and the agency are encouraged to resolve the dispute through the informal ADR process described below. However, participating in the ADR process does not relieve the contractor from complying with the filing deadlines for claims listed in 7.19, and does not imply that the agency's previously-issued decision is suspended or no longer final.

b. The contractor requesting ADR shall give written notice to the agency purchasing office identifying the portions of the agency's decision that are in dispute and requesting that ADR be used. If the agency agrees to ADR, the agency and contractor shall each appoint a representative to participate in ADR on its behalf. Each party's representative shall be a senior manager who is not an attorney and who was not previously involved in the dispute. Each party shall furnish to the other party all non-privileged documents and information with respect to the dispute that either party believes to be appropriate and germane. The representatives may then negotiate in an effort to resolve the dispute without the need for legal counsel. The use of a facilitator to accelerate the resolution process is encouraged.

c. No obligation to negotiate or continue negotiating shall be inferred from this paragraph 9.17 or from the parties' agreement to use ADR, and each party shall remain free to discontinue ADR at any time. No agreement shall be deemed to arise from any communication during the ADR process, unless the agreement is reduced to writing and signed by duly-authorized representatives of both parties. Any settlement or compromise of claim must be approved by the Agency's counsel at the Office of the Attorney General.

d. Any compensation and expenses paid to the facilitator shall be shared equally by the two parties. In no event shall either party be entitled to reimbursement from the other party for any other cost incurred or effort expended as a result of the ADR process.

APPENDIX A

DEFINITIONS

Absolute Preference: An absolute preference is one in which a state will only consider bids from resident contractors residing within that state.

Administrative Lead Time: Administrative lead time is that period of time from initiation of the requirement by the user to issuance of an award.

Affiliate: Affiliate means an individual or business that controls, is controlled by, or is under common control with another individual or business. A person controls an entity if the person owns, directly or indirectly, more than 10 percent of the voting securities of the entity. For the purposes of this definition "voting security" means a security that (i) confers upon the holder the right to vote for the election of members of the board of directors or similar governing body of the business or (ii) is convertible into, or entitles the holder to receive, upon its exercise, a security that confers such a right to vote. A general partnership interest shall be deemed to be a voting security.

Agency: For the purpose of this manual, agency means any department, authority, board, post, commission, division, institution, or office of the Commonwealth.

Agency Purchase Order (APO): An Agency Purchase Order is a form used by an agency to order goods, services and printing available on a State or term contract, or to procure goods or services from non-contract sources within its delegated purchase authority.

Alternative Dispute Resolution (ADR): any procedure used voluntarily to resolve issues in controversy without the need to resort to litigation. These procedures include, but are not limited to, mediation, fact-finding, and arbitration.

Appeal: Action taken by a bidder, offeror (actual or prospective) or by a contractor to seek a hearing before a disinterested person or panel or in an appropriate circuit court challenging a decision in accordance with Sections 2.2-4364 or 2.2-4365 of the *Virginia Public Procurement Act*.

Bartering: The act of exchanging one good or service for another, without the exchange of money.

Benchmark: A standard or point of reference used in measuring or judging quality, value, performance, price, etc.

Best and Final Offer (BAFO): The last offer provided by an offeror in response to a Request for Proposals and all further negotiation ceases. When the provision for receiving best and final offers is included in an RFP, offerors are given the opportunity to submit a best and final offer after negotiations have been held. After the best and final offers are submitted, no further negotiations shall be conducted with any of the offerors and the decision to award is based on rescoring of the best and final offers.

Best Value: The overall combination of quality, price, and various elements of required services that in total are optimal relative to a public body's needs, as predetermined in a solicitation. Best value concepts may be applied when procuring goods and nonprofessional services, but not construction or professional services. The criteria, factors, and basis for the consideration of best value and the process for the consideration of best value shall be as stated in the procurement solicitation (*Code of Virginia*, § 2.2-4301).

Best Value Acquisition (BVA): A process used to acquire goods and nonprofessional services in which best value concepts will be applied. The best value award is based on evaluation criteria as stated in the solicitation with consideration of price of the goods and nonprofessional services that offer the greatest benefit(s) in meeting the needs of the public body.

Bid: A competitively priced offer made by an intended seller, usually in reply to an Invitation for Bids (IFB). A price offer made at a public auction.

Bid Bond: An insurance agreement in which a third party agrees to be liable to pay a certain amount of money in the event a selected bidder fails to accept the contract as bid.

Bidder: One who submits a competitively priced offer in response to an Invitation for Bids (IFB).

Blanket Purchase Agreement (BPA): An arrangement under which a purchaser contracts with a vendor to provide for a purchaser's frequent, repetitive, small-order requirements for an item(s) or a service, on an as-required and over-the-counter basis. Properly prepared, such an arrangement sets a limit on the period of time it is valid and the maximum amount of money which may be spent at one time, or within a specified period, and specifically identifies those persons authorized to order or accept goods. The BPA may also contain other terms and conditions, such as the discount or the specific price list that applies to purchases made under the agreement and what items and services are included (or excluded) under the agreement.

Boiler Plate: General Terms and Conditions.

Broker: A person or agent acting as an independent manufacturer's or distributor's representative dealing in products or goods normally sold through the brokerage process in which there is a previously established relationship with the supplier before the bid is submitted.

Business: Business means any type of corporation, partnership, limited liability company, association, or sole proprietorship operated for profit.

Charge Card: In the context of this manual, the state-approved Small Purchase Charge Card (SPCC), used for small purchases (cardholder's transaction limit or less) of frequent, over-the-counter, Maintenance, Repair, and Operating (MRO) items used in the daily operations of any state activity, and for placing orders up to the cardholder's transaction limit against term contracts.

Claim: A written assertion or demand, by one of the parties to a contract, which seeks, as a contractual right, payment of money, adjustment of contract terms, or other relief, for injury, loss, or damage arising under or relating to the contract.

Collusion: A secret agreement or cooperation between two or more parties to accomplish a fraudulent, deceitful, or unlawful purpose.

Collusive Bidding: An unethical and illegal practice in which suppliers act in collusion to fix their bids in a collectively advantageous manner.

Commodity Code: A system of symbols (alpha, numeric or other) used to represent words to describe a commodity, e.g., Class 410 Furniture, Hospital - Specialized, Item 36, Incubators, Infant (41036); 904 Services, Client, Item 02, Ambulance Service (90402), to facilitate data sort capabilities of purchased goods/services for the purpose of analysis.

Competitive Bidding: The offer of firm bids by individuals or firms competing for a contract, privilege, or right to supply specified services or goods.

Competitive Negotiation: A method for purchasing goods and services, usually of a complex and technical nature whereby qualified individuals or firms are solicited by means of a Request for Proposals (RFP). Negotiations are conducted with selected offerors and the best proposal, as judged against criteria contained in the Request for Proposals, is accepted and an award issued.

Competitive Sealed Bid: A bid submitted in a sealed envelope to prevent disclosure of its contents before the deadline set for the receipt of all bids. Competitive sealed bidding shall not be used to contract for professional services.

Confirming Purchase Order: A purchase order issued after the fact by a procuring agency to a vendor for goods or services ordered orally or by some other informal means. The order should be marked "CONFIRMING ORDER. DO NOT DUPLICATE".

Consideration: Something of value given for a promise to make the promise binding. Consideration is one of the essential elements of a contract.

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

Construction Management Contract: A contract in which a party is retained by the owner to coordinate and administer contracts for construction services for the benefit of the owner, and may also include, if provided in the contract, the furnishing of construction services to the owner.

Consulting Services: Advice or assistance of a purely advisory nature provided for a predetermined fee to an agency by an outside individual, firm, or organization under contract to that agency.

Consumer Price Index (CPI): The Consumer Price Index is a measure of the average change in prices over time in a fixed market basket of goods and services. Two CPIs are published: 1) the CPI for All Urban Consumers (CPI-U) which covers about 80% of the total populations and 2) the CPI for Urban Wage Earners and Clerical Workers (CPI-W) which covers 32% of the total population. The CPI is based upon prices of food, clothing, shelter, transportation, medical care, and other goods and services that people buy for day-to-day living.

Contract: When used as a noun in this Manual, contract refers to an agreement enforceable by law, between two or more competent parties, to do or not to do something, not prohibited by law, for a consideration. A contract shall include the specifications, descriptions or scope of work, general terms and conditions, special terms and conditions, negotiated terms, the established catalog including detailed line item descriptions and the price list, renewal schedule and all other requirements contained in the solicitation together with all written modifications and the vendor's response. As a verb, contract has its usual legal sense, signifying the making of an agreement for consideration.

Contract Administration: The management of all facets of a contract to assure the Contractor's total performance is in accordance with the contractual commitments and that the obligations of the Contractor under the terms and conditions of the contract are fulfilled.

Contract Management: The management of the organization's contracts and contract-related activities which may include accounting, administration, auditing, grants management, law, negotiation, logistics, price-structure compensation, delegation of purchasing authority, program management, termination and other business activities.

Contract, Cost-Plus-A-Fixed-Fee: A cost-reimbursement type contract that provides for the payment of a fixed fee to the contractor. The fixed fee, once negotiated, does not vary with the actual cost but may be adjusted as a result of any subsequent changes in the scope of work or services to be performed under the contract.

Contract, Cost-Plus-A-Percentage-Of-Cost: A form of contract which provides for a fee or profit at a specified percentage of the contractor's actual cost of accomplishing the work.

Contract, Design-Build: A contract between a public body and another party in which the party contracting with the public body agrees to both design and build the structure, roadway or other item specified in the contract.

Contract, Fixed Price: A contract that provides for a firm unit or total price to be established at the time of order placement or contract award. The contractor bears the full risk for profit or loss.

Contract, Fixed Price, Incentive: A fixed price is agreed upon with a target cost/profit, a ceiling price, and a profit formula. Below target, the contractor and state share savings. Above ceiling, the contractor must assume all costs.

Contract, Fixed-Price with Escalation/De-escalation: A fixed price type of contract that provides for the upward and downward revision of the stated contract price upon the occurrence of certain contingencies (such as fluctuations in material costs and labor rates) specifically defined in the contract.

Contract, Requirements Type: A form of contract covering long-term requirements used when the total quantity required cannot be definitely fixed, but can be stated as an estimate or within maximum and minimum limits, with deliveries on demand. Such contracts are usually for one year or more in duration.

Contract, Service: A contract for work to be performed by an independent contractor wherein the service rendered does not consist primarily of the acquisition of equipment or materials, or the rental of equipment, materials and supplies.

Contract, Time and Material: A contract providing for the procurement of supplies or services on the basis of direct labor hours at specified fixed hourly rates (which include direct and indirect labor, overhead, and profit) and material at cost, or at some bid percentage discount from manufacturer's catalog or list prices.

Contract Officer, Purchase Officer, Buyer: A State employee whose primary assignment is purchasing goods or services.

Contractor: An individual or firm that has entered into an agreement to provide goods or services to the Commonwealth.

Cooperative Procurement: A procurement by a public body with one or more other public bodies, for the purpose of combining requirements for the purchase of like goods and/or services in order to increase efficiency and/or reduce administrative expenses. Usually one public body is lead and other public bodies can purchase from the contract.

CORPRINT: Department of Corrections, Industrial Enterprises, Printing Facilities.

Cure Notice: A notice, either oral or in writing, that informs the Contractor that he or she is in default and states what the Contractor has to do to correct the deficiency. If the notice is oral it shall be confirmed in writing.

Debarment: An action taken by the Director of the Division of Purchases and Supply (DPS), or designee (debarring officials), within the scope of their procurement authority, to exclude individuals or firms from contracting with state agencies for particular goods or nonprofessional services for specified periods of time (*Code of Virginia,* § 2.2-4321).

Default: Failure to comply with the terms and conditions of a contract.

Design Specification: A purchase specification setting forth the essential characteristics that an item bid must possess to be considered for award.

Disadvantaged Business: A small business concern which is at least 51 percent owned by one or more socially and economically disadvantaged individuals, or, in the case of any corporation, partnership or limited liability company or other entity, at least 51 percent of the equity ownership interest in which is owned by one or more socially and economically disadvantaged individuals and whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

Dispute: disagreement between parties to a contract over performance or other contract term requiring administrative action to resolve. See protest, alternative dispute resolution.

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.

Division of Purchases and Supply (DPS): The Division of Purchases and Supply is a division of the Department of General Services. DGS/DPS is the State's centralized purchasing agency for materials, equipment, supplies, nonprofessional service and printing. DGS/DPS prescribes the rules and regulations for the purchase of materials, supplies, equipment, nonprofessional services, and printing (*Code of Virginia,* § 2.2-1109 et al).

Drug-free Workplace: A site for the performance of work done in connection with a specific contract awarded to a contractor in accordance with the *VPPA*, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of a contract.

Emergency: An occurrence of a serious and urgent nature that demands immediate action.

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.

Ethics: Pertaining to or relative to moral action, conduct, motive or character; as ethical emotion; professionally right or befitting; conforming to professional standards of conduct. The *Virginia Public Procurement Act (VPPA)* covers "Ethics in Public Contracting" (*Code of Virginia,* §§ 2.2-4367 through 2.2-4377).

Evaluation of Bids: The process of examining a bid after opening to determine the bidder's responsibility, responsiveness to requirements, and other characteristics of the bid relating to selection for award.

E-Verify Program: The electronic verification of work authorization program to verify the work authorization status of newly hired employees under the Immigration Reform and Control Act of 1986 (P.L. 99-603).

Expedite: The act of contacting a supplier or carrier with the goal of *speeding up* the delivery date (see also Follow-Up).

Fair Market Value: The price that is agreed upon by buyers and sellers in the open market who are familiar with market conditions and not under any compulsion to buy or sell, provided the price is substantiated by specific data. There may be more than one way to ascertain fair market value, including determining the lowest price at which private, commercial sources have recently sold or offered substantially similar goods/services to the purchasing agency or to other public or private entities.

Follow-Up: An activity that monitors the status of a purchase to ensure that specified delivery schedules are met.

Force Majeure: An irresistible or extraordinary force, natural event, or effect that cannot be reasonably anticipated or foreseen, prevented, or controlled. An act of God.

General Terms and Conditions: Standard clauses and requirements incorporated into all solicitations (IFB/RFP) and resulting contracts which are derived from laws, or administrative procedures of the government agency. (Also called "Boiler Plate.")

Goods: Material, equipment, supplies, printing, and automated data processing hardware and software (*Code of Virginia,* § 2.2-4301).

Grant (or Grant-in-Aid): For the purposes of this manual, these are fund transfers made by one party to another (e.g., Federal to state or local government) for the procurement of goods and/or services, that may be undertaken for the purpose of a public interest, benefit, or undertaking, as specified under the terms of the agency granting the use of funds.

Hazardous Material: A substance or material which has been determined by the U. S. Secretary of Transportation to be capable of posing an unreasonable risk to health, safety, and property when transported in commerce.

Informality: A minor defect or variation of the bid or proposal from the exact requirements of the Invitation for Bids or the Request for Proposals, which does not affect the price, quality, quantity, or delivery schedule for the goods, services or construction being procured (*Code of Virginia,* § 2.2-4301).

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

Inspection: Examination and testing of goods and services to determine whether the goods and services furnished conform to contract requirements.

Invitation for Bids (IFB): A document, containing or incorporating by reference the specifications or scope of work and all contractual terms and conditions, that is used to solicit written bids for a specific requirement for goods or nonprofessional services. This type of solicitation is also referred to as an Invitation to Bid.

Joint Procurement: A procurement by a public body with one or more other public bodies, for the purpose of combining requirements for the purchase of like goods and/or services in order to increase efficiency and/or reduce administrative expenses. All authorized parties are involved in the procurement process and only those parties can participate in jointly purchasing from the contract. No other public bodies can purchase from the contracts as joint purchasers.

Late Bid or Proposal: A bid or proposal which is received at the place designated in the Invitation for Bids or Request for Proposals after the deadline established by the solicitation.

Latent Defect: A deficiency or imperfection that impairs worth or utility that cannot be readily detected from visual examination of a product. Examples would be the use of non-specification materials in manufacture, or missing internal parts such as a gasket, gear, or electrical circuit, etc.

Logistics: The process of planning, implementing, and controlling the efficient, effective flow and storage of goods, services, and related information from point of origin to point of consumption for the purpose of conforming to customer requirements.

Life-Cycle Costing: A cost-analysis tool which incorporates not only the purchase price of a piece of equipment, but all operating and related costs over the life of the item, including maintenance, down time, energy costs, etc., as well as salvage value.

Liquidated Damages: A sum stated in a contract to be paid as ascertained damages for failure to perform in accordance with the contract. The damage figure stipulated must be a reasonable estimate of the probable loss to the agency, and not calculated simply to impose a penalty on the contractor.

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.

Micro Business: "Micro business" means a business that has been designated in accordance with Regulations governing Certification by the Virginia Department of Small Business and Supplier Diversity (DSBSD). Designation requirements can be found at www.sbsd.virginia.gov.

Military Family: "Military Family" means a member of the uniformed forces as defined in 10 U.S.C. § 101(a)(5), of the United States or a reserve component thereof named under 10 U.S.C. § 1010, a veteran ad defined in 38 U.S. C. 10 U.S.C. § 10(2), or a dependent as defined in 50 U.S.C. 10 U.S.C. § 3911.4

Military FamilyOwned Business: "Military FamilyOwned Business" means that is at least 51 percent owned by one or more persons within the definition of "military family" or , in the case of a corporation, partnership, or limited liability company or other entity, in which at least 51 percent of the equity ownership interest in the corporation, partnership, or limited liability company or other entity is owned by one or more individuals who are persons within the definition of "military family" and both the management and daily business operations are controlled by one or more individuals who are persons within the definition of "military family"

Minority Individual: "Minority" means an individual who is a citizen of the Unites States or a non-citizen who is in full compliance with United States immigration law and who satisfies one or more of the following definitions:

"African American" means a person having origins in any of the original peoples of Africa and who is regarded as such by the community of which this person claims to be a part.

"Asian American" means a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands, including but not limited to Japan, China, Vietnam, Samoa, Laos, Cambodia, Taiwan, Northern Marinas, the Philippines, a U.S. territory of the Pacific, India, Pakistan, Bangladesh, or Sri Lanka and who is regarded as such by the community of which this person claims to be part.

"Hispanic American" means a person having origins in any of the Spanish-speaking peoples of Mexico, South or Central America, or the Caribbean Islands or other Spanish or Portuguese cultures and who is regarded as such by the community of which this person claims to be a part.

"Native American" means a person having origins in any of the original peoples of North America and who is regarded as such by the community of which this person claims to be a part or who is recognized by a tribal organization.

Minority-Owned Business: "Minority-owned business" means a business that has been certified in accordance with Regulations governing Certification by the Virginia Department of Small Business and Supplier Diversity (DSBSD). Certification requirements can be found at www.sbsd.virginia.gov.

Multiple Awards: The award of multiple contracts for goods or services, meeting the same specifications, resulting from one solicitation. When a Multiple Award clause is included in an Invitation for Bids/Request for Proposals, awards may be made to more than one bidder/offeror (*Code of Virginia,* § 2.2-4301). This is appropriate in situations where the award of a single contract would be impractical and awards are limited to the least number of suppliers necessary for a workable contract program.

Must, Shall: As used in specifications or requirements of a Request for Proposals (RFP), the terms "must" and "shall" identify requirements whose absence will have a major negative impact on the suitability of the proposed solution. Items labeled as "should" or "may" are highly desirable, although their absence will not have a large impact and would be useful, but are not necessary.

Negotiation: A bargaining process between two or more parties, each with its own viewpoints and objectives, seeking to reach an agreement, or settlement of, a matter of common concern, on terms that are mutually beneficial and satisfactory to both.

Non-Competitive Negotiation: The process of arriving at an agreement through discussion and compromise, when only one source is practicably available.

Nonprofessional Services: Any services not specifically identified as professional services in the definition of professional services (*Code of Virginia*, § 2.2-4301).

Notice of Award: A Notice of Award serves as the public notice of award for a competitive bid or competitive negotiation.

Notice of Intent to Award: The Notice of Intent to Award is a written notice, or bid tabulation sheet publicly displayed, prior to award, that shows the selection of a vendor for the award of a specific contract or purchase order. This decision may be changed prior to the actual award of a contract or purchase order.

Offeror: A person who makes an offer in response to a Request for Proposals.

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.

Order/Ship Time (OST): Order/Ship Time is the time after award required by suppliers to fill an order and ship by designated means (truck, rail, or air) to the delivery point.

Payment Bond, For Labor and Material: A bond required of a contractor to assure fulfillment of the contractor's obligation to pay all persons supplying labor or materials in the performance of the work provided for in the contract.

Performance Bond: A contract of guarantee executed in the full sum of the contract amount subsequent to award by a successful bidder to protect the government from loss due to his/her inability to complete the contract in accordance with its terms and conditions.

Performance Specification: A specification setting forth performance requirements that have been determined to be necessary for the item involved to perform and last as required.

Potential Bidder or Offeror: A person who, at the time an agency awards or proposes to award a contract, is engaged in the sale or lease of goods, or the sale of services, insurance or construction of the type to be procured under such contract, and who at such time is eligible and qualified in all respects to perform that contract, and who would have been eligible and qualified to submit a bid or proposal had the contract been procured through competitive sealed bidding or competitive negotiation (*Code of Virginia,* § 2.2-4301).

Pre-bid or Pre-proposal Conference: Meeting held with prospective bidders or offerors prior to submission of bids or proposals, to review, discuss, and clarify technical considerations, specifications, and standards relative to the proposed procurement.

Prequalification: A procedure to prequalify products or vendors and limit consideration of bids or proposals to only those products or vendors which have been prequalified.

Printing: The process or business of producing printed material by means of a printing press, copier or similar means or all copies of a publication produced by such means.

Procurement: The procedures for obtaining goods or services, including all activities from the planning steps and preparation and processing of a requisition, through receipt and acceptance of delivery and processing of a final invoice for payment.

Professional Organization: Generally defined as a group of professional individuals in a like occupation charged with educating, certifying or lobbying for its members.

Professional Services: Shall mean work performed by an independent contractor within the scope of the practice of accounting, actuarial services, architecture, geology, land surveying, landscape architecture, dentistry, law, medicine, optometry, pharmacy, or professional engineering. "Professional Services" also includes services of any (i) economist procured by the State Corporation Commission and (ii) and licensed investment advisor, financial advisor, or insurance broker procured by the Department of the Treasury (*Code of Virginia,* § 2.2-4301).

Proposal: An offer made by one party to another as a basis for negotiations, prior to the creation of a contract.

Proprietary Specification: A specification that restricts the acceptable product(s) or service(s) to that of one or more manufacturer(s) or vendor(s). A common example would be the use of a "brand name" specification that would exclude consideration of proposed "equals." Although all sole source specifications are proprietary, all proprietary specifications are not sole source. Proprietary items may be available from several distributors through competitive bidding.

Protest: A written complaint about an administrative action or decision brought by a bidder or offeror to the appropriate administrative section with the intention of receiving a remedial result.

Public Bid Opening: The process of opening and reading bids at the time and place specified in the Invitation for Bids and in the presence of anyone who wishes to attend.

Public Body: In the context of this manual, any state-funded agency that is required to follow the provisions of the *Code of Virginia* and the *Virginia Public Procurement Act (VPPA*), unless exempted, in the course of their procurement activities.

Public Telecommunications Services: Public telecommunications are non-commercial educational or cultural radio and television programs and related instructional or informational material that may be transmitted by means of electronic communications (see also "Telecommunications Services").

Purchase Order: A document used by DGS/DPS to execute a purchase transaction with a vendor. It serves as notice to a vendor that an award has been made and that performance can be initiated under the terms and conditions of the contract.

Purchasing Agency: A state agency or institution purchasing goods or services.

Qualified Contractors List (QCL): A list of contractors whose capability to provide a service has been evaluated and approved based on written prequalification procedures.

Qualified Products List (QPL): A list of products that have been tested and approved based on written prequalification procedures.

Regular Dealer: A person or firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles, or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and sold to the public in the usual course of business.

Request for Information (RFI): An informal document issued when an agency is not aware of the products available in the market which may satisfy its requirements. The use of an RFI does not require a purchase requisition, however a RFI may result in the development of a requisition, or the issuance of an IFB or RFP after an agency determines the types of products that are available which will satisfy its requirements. An RFI cannot be made into an agreement.

Request for Proposals (RFP): All documents, whether attached or incorporated by reference, utilized for soliciting proposals; the RFP procedure requires negotiation with offerors (to include prices) as distinguished from competitive bidding when using an Invitation for Bids.

Responsible Bidder or Offeror: A person or firm who has the capability, in all respects, to perform fully the contract requirements and the moral and business integrity and reliability which will assure good faith performance, and who has been prequalified, if required (*Code of Virginia*, § 2.2-4301).

Responsive Bidder: A person or firm who has submitted a bid which conforms in all material respects to the Invitation for Bids (*Code of Virginia*, § 2.2-4301).

Restocking Charge: Charges incurred by a purchasing agency for any material goods that are returned to a vendor or seller and are associated with the normal cost and expense that must be incurred by the vendor for accepting the return of an item to inventory (see section 10.8).

Reverse auctioning: Means a procurement method wherein bidders are invited to bid on specified goods or nonprofessional services through real-time electronic bidding, with the award being made to the lowest responsive and responsible bidder. During the bidding process, bidders' prices are revealed and bidders shall have the opportunity to modify their bid prices for the duration of the time period established for bid opening. The purchase of goods or nonprofessional services, but not construction or professional services, may be made by reverse auctioning.

Sealed Bid: A bid which has been submitted in a sealed envelope to prevent its contents from being revealed or known before the deadline for the submission and opening of all bids.

Services: Services are any activities performed by an independent contractor wherein the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials and supplies (*Code of Virginia*, § 2.2-4301).

Service Disabled Veteran Owned Business: means a business that is at least 51 percent owned by one or more service disabled veterans or, in the case of a corporation, partnership, or limited liability company or other entity, at least 51 percent of the equity ownership interest in the corporation, partnership, or limited liability company or other entity is owned by one or more individuals who are service disabled veterans and both the management and daily business operations are controlled by one or more individuals who are service disabled veterans.

Service Disabled Veteran Owned Small Business (SDVOSB): Means a DSBSD-Certified Small Business owned by a DVS-Certified Service Disabled Veteran, when they have also obtained Service Disabled Veteran-owned "status" by the DSBSD in the SWaM vendor database. This is not a separate DSBSD certification, but rather a designation of those DSBSD-certified Small Business that are owned by DVS-Certified Service Disabled Veterans. Veterans wishing to apply for service disabled status must first seek eligibility certification from the Dept. of Veteran Services.
https://www.dvs.virginia.gov/benefits-services/service-disabled-owned-business-designation
Set-asides: Reserving a procurement transaction exclusively for a specific group. The purpose of Small business set-asides is to award certain contracts exclusively to small businesses.

Shall, Must: As used in specifications or requirements of a Request for Proposals (RFP), the terms "must" and "shall" identify requirements whose absence will have a major negative impact on the suitability of the proposed solution. Items labeled as "should" or "may" are highly desirable, although their absence will not have a large impact and would be useful, but are not necessary.

Should, May: As used in a Request for Proposals (RFPs), the terms "should" or "may" are highly desirable, although their absence will not have a large impact and would be useful, but are not necessary.

Single Source: A single response to a competitive solicitation wherein competition was available but only one response was received (see paragraph 2.4i).

Small Business: "Small business" means a business that has been certified in accordance with Regulations governing Certification by the Virginia Department of Small Business and Supplier Diversity (DSBSD). Certification requirements can be found at www.sbsd.virginia.gov.

Small Business Subcontracting Plan: A completed form in which bidders or offerors provide their: 1) DSBSD-certified small business certification status, or 2) small business utilization plan in response to a specific solicitation.

Software: All applications software, whether packaged or requiring development, and all systems software such as assemblers, compilers, CPU performance measurement systems, database management systems, file back-up and recovery, job accounting, operating systems, programming aids and development systems and soft-merge utilities.

Sole Source: A product or service which is practicably available only from one source.

Solicitation: An Invitation for Bids (IFB), a Request for Proposals (RFP), Quick Quote, Faxback Request, telephone calls, or any other document issued by the state to obtain bids or proposals for the purpose of entering into a contract.

Special Terms and Conditions: Special clauses pertaining to a specific procurement which may supplement or in some cases supersede one or more general terms and conditions, e.g., Award Clause.

Specification: A description of the technical requirements for a material, product, or service that includes the criteria for determining whether these requirements are met. A specification may describe the performance parameters which a supplier has to meet, or it may provide a complete design disclosure of the work or job to be done. Specifications for service contracts normally take the form of a statement of work.

Sponsorship: Any monetary or non-monetary benefit exceeding nominal value and received by a Commonwealth public body from a non-Commonwealth entity not excluding funding from vendors in support of conferences or other events.

Spot Purchase: A one-time purchase made in the open market. If it is under the small purchase threshold, it will be made in accordance with the applicable small purchase procedures. If it is over the small purchase threshold, it will be made by competitive sealed bidding or by an exception thereto authorized by law.

Subcontractor: Subcontractor means any entity that has a contract to supply labor or materials to the contractor to whom the contract was awarded or to any subcontractor in the performance of the work provided for in such contract.

Surplus Property: Property which is in excess of the needs of an agency and which is not required for its foreseeable need. The property may be used or new, but possess some usefulness for the purpose for which it was intended or for some other purpose. It includes scrap, which is material that is damaged, defective, or deteriorated to the extent that it has no value except for its basic material content. Surplus Property must be disposed of in accordance with *Code of Virginia*, § 2.2-1124.

SWaM: The acronym SWaM, includes small businesses, women-owned businesses and minority-owned businesses that have been certified in accordance with Regulations governing Certification by the Virginia Department of Small Business and Supplier Diversity (DSBSD). Certification requirements can be found at www.sbsd.virginia.gov. Refer to individual definitions contained in this Appendix.

Technical Proposal: An unpriced proposal which sets forth in detail that which a vendor proposes to furnish in response to a solicitation.

Technical Specifications: Specifications that establish the material and performance requirements of goods and services.

Telecommunications Equipment: Defined as, but not limited to: channel service units, data compression units, line drivers, bridges, routers, and Asynchronous Transfer Mode switches (ATM), multiplexors and modems. Also, private branch exchanges (PBX), Integrated Services Digital Network (ISDN) terminal equipment, voice mail units, automatic call distribution (ACD), voice processing units and key systems. Video communications products such as: coders, multi-point conferencing units and inverse multiplexors.

Telecommunications Services: These services include, but are not limited to; data communication services, such as point-to-point and multipoint circuits, Internet, Frame Relay SMDS, ATM, and dial up lines, and voice communications services such as Centrex, business/private lines and WATS lines including 800 services, tie and access lines, long distance services, voice mail, pay phones, wireless communications and cellular services (see also "Public Telecommunications Services").

Term Contracting: A technique by which a source of supply is established for a specific period of time. Term contracts are established based on indefinite quantities to be ordered "as needed," although such contracts can specify definite quantities with deliveries extended over the contract period. Also see Contract, Requirements Type.

Termination For Convenience: The termination by a Commonwealth purchasing office, at its discretion, of the performance of work in whole or in part and makes settlement of the contractor's claims in accordance with appropriate policy and procedures.

Termination For Default: Action taken by a purchasing office to order a contractor to cease work under the contract, in whole or in part, because of the contractor's failure to perform in accordance with the contract's terms and conditions.

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 shall apply. If the total value is over $100,000, a decision must be made to use competitive sealed bidding or competitive negotiations. Also see emergency and sole source procurements if applicable.

Unsealed Bid: An unsealed written offer conveyed by U. S. Mail, commercial courier service, facsimile, e-mail, Quick Quote, or other means. The bids are normally opened and recorded as received.

Used Equipment: Equipment which has been previously owned and used and is offered "where is" "as is." It does not include demonstration, factory rebuilt or remanufactured equipment marketed through normal distribution outlets.

Value Analysis: A systematic and objective evaluation of the value of a good or service, focusing on an analysis of function relative to the cost of manufacturing or providing the item or service. Value analysis provides insight into the inherent worth of the final good or service, possibly altering specification and quality requirements that could reduce costs without impairing functional suitability.

Vendor: One who sells goods or services.

Virginia-Grown Food Products: Farm, agricultural, and aquaculture food products grown, harvested, raised or caught in Virginia that are identified by, and meet all the quality standards of, the Virginia Department of Agriculture and Consumer Services.

***Virginia Public Procurement Act*:** Chapter 43 of Title 2.2, *Code of Virginia*, which enunciates the public policies pertaining to governmental procurement from nongovernmental sources.

Will: As used in an Invitation for Bids or Request for Proposals, the word "will" is normally used to convey an obligation incurred by the agency or owner.

Women-Owned Business: "Women-owned business" means a business that has been certified in accordance with Regulations governing Certification by the Virginia Department of Small Business and Supplier Diversity (DSBSD). Certification requirements can be found at https://www.sbsd.virginia.gov.

Written; writing; writings; in writing: The words "written," "writing," "writings," and "in writing" shall include any representation of words, letters, symbols, numbers, or figures, whether (i) printed or inscribed on a tangible medium or (ii) stored in an electronic or other medium and retrievable in a perceivable form and whether an electronic signature authorized by Chapter 42.1 (§et seq.) of Title 59.1 is or is not affixed (*Code of Virginia*, § 1-13.32).

APPENDIX B
Section I

Terms and Conditions & Instructions To Vendors

These terms and conditions are incorporated by reference in the eVA purchase order. These terms and conditions apply to purchases between the agency or institution and the contractor, unless otherwise modified in writing on the face of the PO.

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

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

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

4. A separate invoice for this purchase order or for each shipment thereon shall be rendered immediately following shipment. All copies shall be forwarded direct to agency at invoice address shown.

5. State sales and use tax certificate of exemption, form st-12 will be issued upon request, if you do not have same on file.

6. Deliveries against this order must be free of excise or transportation taxes, excise tax exemption registration no. 54-73-0076k may be used when required.

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

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

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

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

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

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

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

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

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

16. eVA Transaction Fee: eVA transaction fee invoices are issued by the Commonwealth of Virginia Department of General Services. A copy of the eVA transaction fee schedule is available on the eVA website, eva.virginia.gov.
-July 2010

REQUIRED GENERAL TERMS AND CONDITIONS GOODS AND NONPROFESSIONAL SERVICES

Section II

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EE. FORCED AND INDENTURED CHILD LABOR

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 the agency. For service contracts clauses, Q, R, and S are normally not applicable and may be omitted. For goods contracts, clause T may be omitted.

A. **VENDORS MANUAL:** This solicitation is subject to the provisions of the Commonwealth of Virginia *Vendors Manual* and any changes or revisions thereto, which are hereby incorporated into this contract in their entirety. The process for filing a complaint about this solicitation is in section 7.13 of the *Vendors Manual*. (Note section 7.13 does not apply to protests of awards or formal contractual claims.) The procedure for filing contractual claims is in section 7.19 of the *Vendors Manual*. A copy of the manual is normally

available for review at the purchasing office and is accessible on the Internet at eva.virginia.com under "I Sell To Virginia".

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, sexual orientation, gender identity 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 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. If the contractor employs more than five employees, the contractor shall (i) provide annual training on the contractor's sexual harassment policy to all supervisors and employees providing services in the Commonwealth, except such supervisors or employees that are required to complete sexual harassment training provided by the Department of Human Resource Management, and (ii) post the contractor's sexual harassment policy in (a) a conspicuous public place in each building located in

the Commonwealth that the contractor owns or leases for business purposes and (b) the contractor's employee handbook.

e. 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.

f. In accordance with Executive Order 61 (2017) and Executive Order 9 (2026), 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 or expression, 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.

D. **ETHICS IN PUBLIC CONTRACTING:** By submitting their (bids/proposals), (bidders/offerors) certify that their (bids/proposals) are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other (bidder/offeror), supplier, manufacturer or subcontractor in connection with their (bid/proposal), and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

E. **IMMIGRATION REFORM AND CONTROL ACT OF 1986:** 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.

G. **ANTITRUST:** By entering into a contract, the contractor conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Commonwealth of Virginia under said contract.

H. **MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS FOR IFBs AND RFPs:**

1. (For Invitation For Bids): Failure to submit a bid on the official state form provided for that purpose shall be a cause for rejection of the bid. Modification of or additions to any portion of the Invitation for Bids may be cause for rejection of the bid; however, the Commonwealth reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a bid as nonresponsive. As a precondition to its acceptance, the Commonwealth may, in its sole discretion, request that the bidder withdraw or modify nonresponsive portions of a bid which do not affect quality, quantity, price, or delivery. No modification of or addition to the provisions of the contract shall be effective unless reduced to writing and signed by the parties.

2. (For Request For Proposals): Failure to submit a proposal on the official state form provided for that purpose may be a cause for rejection of the proposal. Modification of or additions to the General Terms and Conditions of the solicitation may be cause for rejection of the proposal; however, the Commonwealth reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a proposal.

I. **CLARIFICATION OF TERMS:** If any prospective (bidder/offeror) has questions about the specifications or other solicitation documents, the prospective (bidder/offeror) should contact the buyer whose name appears on the face of the solicitation no later than five working days before the due date. Any revisions to the solicitation will be made only by addendum issued by the buyer.

J. **PAYMENT:**

1. To Prime Contractor:

   a. Invoices for items ordered, delivered and accepted shall be submitted by the contractor directly to the
   payment address shown on the purchase order/contract. All invoices shall show the state contract number and/or purchase order number; social security number (for individual contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations).

   b. Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.

   c. All goods or services provided under this contract or purchase order, that are to be paid for with public funds, shall be billed by the contractor at the contract price, regardless of which public agency is being billed.

   d. The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or 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.

K. **PRECEDENCE OF TERMS:** The following General Terms and Conditions *VENDORS MANUAL,* APPLICABLE LAWS AND COURTS, ANTI-DISCRIMINATION, ETHICS IN PUBLIC CONTRACTING, IMMIGRATION REFORM AND CONTROL ACT OF 1986, DEBARMENT STATUS, ANTITRUST, MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS, CLARIFICATION OF TERMS, PAYMENT shall apply in all instances. In the event there is a conflict between any of the other General Terms and Conditions and any Special Terms and Conditions in this solicitation, the Special Terms and Conditions shall apply.

L. **QUALIFICATIONS OF (BIDDERS/OFFERORS):** The Commonwealth may make such reasonable investigations as deemed proper and necessary to determine the ability of the (bidder/offeror) to perform the

services/furnish the goods and the (bidder/offeror) shall furnish to the Commonwealth all such information and data for this purpose as may be requested. The Commonwealth reserves the right to inspect (bidder's/offeror's) physical facilities prior to award to satisfy questions regarding the (bidder's/offeror's) capabilities. The Commonwealth further reserves the right to reject any (bid/proposal) if the evidence submitted by, or investigations of, such (bidder/offeror) fails to satisfy the Commonwealth that such (bidder/offeror) is properly qualified to carry out the obligations of the contract and to provide the services and/or furnish the goods contemplated therein.

M. **TESTING AND INSPECTION:** The Commonwealth reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.

N. **ASSIGNMENT OF CONTRACT:** A contract shall not be assignable by the contractor in whole or in part without the written consent of the Commonwealth.

O. **CHANGES TO THE CONTRACT:** Changes can be made to the contract in any of the following ways:

1. The parties may agree in writing to modify the terms, conditions, or scope of the contract. Any additional goods or services to be provided shall be of a sort that is ancillary to the contract goods or services, or within the same broad product or service categories as were included in the contract award. Any increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.

2. The Purchasing Agency may order changes within the general scope of the contract at any time by written notice to the contractor. Changes within the scope of the contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The contractor shall comply with the notice upon receipt, unless the contractor intends to claim an adjustment to compensation, schedule, or other contractual impact that would be caused by complying with such notice, in which case the contractor shall, in writing, promptly notify the Purchasing Agency of the adjustment to be sought, and before proceeding to comply with the notice, shall await the Purchasing Agency's written decision affirming, modifying, or revoking the prior written notice. If the Purchasing Agency decides to issue a notice that requires an adjustment to compensation, the contractor shall be compensated for any additional costs incurred as the result of such order and shall give the Purchasing Agency a credit for any savings. Said compensation shall be determined by one of the following methods:

   a. By mutual agreement between the parties in writing; or

   b. By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the contractor accounts for the number of units of work performed, subject to the Purchasing Agency's right to audit the contractor's records and/or to determine the correct number of units independently; or

   c. By ordering the contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The contractor shall present the Purchasing Agency with all vouchers and records of expenses incurred and savings realized. The Purchasing Agency shall have the right to audit the records of

the contractor as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the Purchasing Agency within thirty (30) days from the date of receipt of the written order from the Purchasing Agency. If the parties fail to agree on an amount of adjustment, the question of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the procedures for resolving disputes provided by the Disputes Clause of this contract or, if there is none, in accordance with the disputes provisions of the Commonwealth of Virginia *Vendors Manual*. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this contract shall excuse the contractor from promptly complying with the changes ordered by the Purchasing Agency or with the performance of the contract generally.

P. **DEFAULT:** In case of failure to deliver goods or services in accordance with the contract terms and conditions, the Commonwealth may terminate this agreement after verbal or written notice without penalty. Upon termination the Commonwealth may procure the goods and services contracted for from other sources and hold the contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the Commonwealth may have.

Q. **TAXES:** Sales to the Commonwealth of Virginia are normally exempt from State sales tax. State sales and use tax certificates of exemption, Form ST-12, will be issued upon request. Deliveries against this contract shall usually be free of Federal excise and transportation taxes. The Commonwealth's excise tax exemption registration number is 54-73-0076K.

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.

R. **USE OF BRAND NAMES:** Unless otherwise provided in this solicitation, the name of a certain brand, make or manufacturer does not restrict (bidders/offerors) to the specific brand, make or manufacturer named, but conveys the general style, type, character, and quality of the article desired. Any article which the public body, in its sole discretion, determines to be the equivalent of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. The (bidder/offeror) is responsible to clearly and specifically identify the product being offered and to provide sufficient descriptive literature, catalog cuts and technical detail to enable the Commonwealth to determine if the product offered meets the requirements of the solicitation. This is required even if offering the exact brand, make or manufacturer specified. Normally in competitive sealed bidding only the information furnished with the bid will be considered in the evaluation. Failure to furnish adequate data for evaluation purposes may result in declaring a bid nonresponsive. Unless the (bidder/offeror) clearly indicates in its (bid/proposal) that the product offered is an equivalent product, such (bid/proposal) will be considered to offer the brand name product referenced in the solicitation.

S. **TRANSPORTATION AND PACKAGING:** By submitting their (bids/proposals), all (bidders/offerors) certify and warrant that the price offered for FOB destination includes only the actual freight rate costs at the lowest and best rate and is based upon the actual weight of the goods to be shipped. Except as otherwise specified herein, standard commercial packaging, packing and shipping containers shall be used. All shipping containers shall be legibly marked or labeled on the outside with purchase order number, commodity description, and quantity.

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 coverages during the entire term of the contract and that all coverage will be provided by 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 shall be added as an additional insured to the policy by an endorsement.

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	**Limits**
Accounting	$1,000,000 per occurrence, $3,000,000 aggregate
Architecture	$2,000,000 per occurrence, $6,000,000 aggregate
Asbestos Design, Inspection or Abatement Contractors	$1,000,000 per occurrence, $3,000,000 aggregate
Health Care Practitioner (to include Dentists, Licensed Dental Hygienists, Optometrists, Registered or Licensed Practical Nurses, Pharmacists, Physicians, Podiatrists, Chiropractors, Physical Therapists, Physical Therapist Assistants, Clinical Psychologists, Clinical Social Workers, Professional Counselors, Hospitals, or Health Maintenance Organizations.) https://law.lis.virginia.gov/vacode/title8.01/chapter21.1/section8.01-581.15/	*Code of Virginia* § 8.01-581.15
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

U. **ANNOUNCEMENT OF AWARD:** Upon the award or the announcement of the decision to award a contract as a result of this solicitation, the purchasing agency will publicly post such notice in eVA (eva.virginia.gov) for a minimum of 10 days.

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.

W. **NONDISCRIMINATION OF CONTRACTORS**: A bidder, offeror, or contractor shall not be discriminated against in the solicitation or award of this contract because of race, religion, color, sex, national origin, age, disability, sexual orientation, gender identity or expression, political affiliation, veteran status, status as a service disabled veteran, or status as a military family, faith-based organizational status, or other basis prohibited by state law relating to discrimination in employment or because the bidder or offeror employs ex-offenders unless the state agency, department or institution has made a written determination that employing ex-offenders on the specific contract is not in its best interest. If the award of this contract is made to a faith-based organization and an individual, who applies for or receives goods, services, or disbursements provided pursuant to this contract objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the public body shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursements from an alternative provider.

X. **eVA BUSINESS-TO-GOVERNMENT VENDOR REGISTRATION, CONTRACTS, AND ORDERS:**
The eVA Internet electronic procurement solution, web site portal eva.virginia.gov, streamlines and automates government purchasing activities in the Commonwealth. The eVA portal is the gateway for vendors to conduct business with state agencies and public bodies. All vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet e-procurement solution by completing the free eVA Vendor Registration. All bidders or offerors must register in eVA and pay the Vendor Transaction Fees specified below; failure to register will result in the bid/proposal being rejected.

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

a. For orders issued July 1, 2014, and after, the Vendor Transaction Fee is:

(i) DSBSD-certified Small Businesses: 1%, capped at $500 per order.
(ii) Businesses that are not DSBSD-certified Small Businesses: 1%, capped at $1,500 per order.

b. Refer to Special Term and Condition "eVA Orders and Contracts" to identify the number of purchase orders that will be issued as a result of this solicitation/contract with the eVA transaction fee specified above assessed for each order.

For orders issued prior to July 1, 2014, the vendor transaction fees can be found at eva.virginia.gov.

The specified vendor transaction fee will be invoiced, by the Commonwealth of Virginia Department of General Services, typically within 60 days of the order issue date. Any adjustments (increases/decreases) will be handled through purchase order changes.

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.

Z. **SET-ASIDES**. This solicitation is set-aside for award to DSBSD-certified micro or small business participation only when designated "Micro Business Set-Aside Award Priority" or "Small Business Set-Aside Award Priority" accordingly in the solicitation. DSBSD-certified micro or small businesses shall include DSBSD-certified women, minority and service disabled veteran owned businesses when they have also received the DSBSD small business certification. For purposes of award, bidders/offerors shall be deemed small business if and only if they are certified as such by DSBSD on the due date for receipt of bids/proposals

AA. **BID PRICE CURRENCY**. Unless stated otherwise in the solicitation, bidders/offerors shall state bid/offer prices in US dollars.

BB. **AUTHORIZATION TO CONDUCT BUSINESS IN THE COMMONWEALTH**: A contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the *Code of Virginia* or as otherwise required by law. Any business entity described above that enters into a contract with a public body pursuant to the *Virginia Public Procurement Act* shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the contract. A public body may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.

CC. CIVILITY IN STATE WORKPLACES: The contractor shall take all reasonable steps to ensure that no individual, while performing work on behalf of the contractor or any subcontractor in connection with this agreement (each, a "Contract Worker"), shall engage in 1) harassment (including sexual harassment), bullying, cyber-bullying, or threatening or violent conduct, or 2) discriminatory behavior on the basis of race, sex, color, national origin, religious belief, sexual orientation, gender identity or expression, age, political affiliation, veteran status, or disability.

The contractor shall provide each Contract Worker with a copy of this Section and will require Contract Workers to participate in agency training on civility in the State workplace if contractor's (and any subcontractor's) regular mandatory training programs do not already encompass equivalent or greater

expectations. Upon request, the contractor shall provide documentation that each Contract Worker has received such training.

For purposes of this Section, "State workplace" includes any location, permanent or temporary, where a Commonwealth employee performs any work-related duty or is representing his or her agency, as well as surrounding perimeters, parking lots, outside meeting locations, and means of travel to and from these locations. Communications are deemed to occur in a State workplace if the Contract Worker reasonably should know that the phone number, email, or other method of communication is associated with a State workplace or is associated with a person who is a State employee.

The Commonwealth of Virginia may require, at its sole discretion, the removal and replacement of any Contract Worker who the Commonwealth reasonably believes to have violated this Section.

This Section creates obligations solely on the part of the contractor. Employees or other third parties may benefit incidentally from this Section and from training materials or other communications distributed on this topic , but the Parties to this agreement intend this Section to be enforceable solely by the Commonwealth and not by employees or other third parties.

DD. **CONTRACT EXTENSIONS:** In the event that the original term and all renewals of this contract expire prior to the award for a new contract for similar goods and/or services, the Commonwealth of Virginia may, with written consent of the Contractor, extend this contract for such a period as may be necessary to afford the Commonwealth of Virginia a continuous supply of the identified goods and/or services.

EE. **Forced and Indentured Child Labor:** Applicable in all solicitations and contracts over $10,000:

During the performance of this contract the use of forced or indentured child labor is prohibited. Any Prime Contractor shall include such prohibition in every subcontract that exceeds $10,000 and shall be binding upon each subcontractor or vendor.

For the purposes of this section, *"forced or indentured child labor"* means all work or service exacted from any person younger than 18 years of age under the menace of any penalty for the nonperformance of such work or service and for which such person does not offer himself voluntarily or performed by any person younger than 18 years of age pursuant to a contract the enforcement of which can be accomplished by process or penalties.

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