

CHAPTER 10

CONTRACT ADMINISTRATION

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- 10 This Chapter is intended as internal guidance to Commonwealth contract administrators and purchasing agencies and shall not be construed as extending rights enforceable by the contractor, nor as otherwise modifying or supplementing the terms of the contract.

General. Contract administration begins after award of the contract. Its purpose is to assure that the contractor’s and agency’s total performance is in accordance with the terms and conditions of the contractual agreement. The integrity of the public purchasing system demands that goods or services be furnished, received, invoiced and paid as specified in the contract. Contract administration includes all actions taken by the state relative to a specific

contract after the award is made. Each agency in its implementing procedures shall ensure that effective contract administration is included. Agencies should assemble and maintain a master listing of all their term contracts to include the initial period and number of renewals. For assistance with contract administration, contact DGS/DPS at 804-225-4045.

After issuance of a contract award document including those awarded by DGS/DPS, the agency is responsible for contract administration to assure that the services or goods are provided in accordance with the terms of the contract. Planning and proactive management of a contract are crucial to effective contract administration. All vendor noncompliance shall be reported on a Procurement Complaint Form and, when warranted, telephonic contact should be made with the DGS/DPS Contract Compliance Section for immediate assistance (see Annex 10-H).

- 10.1 **Planning and Checklist.** Contract administration planning should occur during the preaward phase and be reflected in solicitation and award documents. All purchases should encompass some post-award administrative efforts--with the degree determined by evaluating purchase complexity, value, delivery or performance schedule, commodity or service type, and risks to the agency. A contract checklist or milestone chart should be developed for each contract that requires multiple or scheduled actions by the contractor during the contract period. This checklist or chart is developed directly from the contract by extracting specific requirements, scheduled delivery dates, start-up and a completion date, plus other related items such as performance guarantees (e.g., bonds, certificates of insurance, catalogs, copies of warranties, volume reports, as-built drawings, maintenance manuals, parts lists, maintenance, scheduled testing, etc.). These actions are essential if the contract administrator is to ensure that the contractor fulfills the obligations of the contract. Successful service contract administration usually involves a team approach with specific administrative tasks delegated to end-users or others who can closely monitor contract performance. The anticipated contract administrator or end user and the buyer should work together in establishing administrative requirements or tasks while developing the solicitation.
- 10.2 **Contract Administrator.** The administrator should be the end user of the contract or one who has a vested interest in the procurement who will be responsible for the proper adherence to all contract specifications by the contractor. Contract administration shall be delegated in writing by the using agency designating a specific individual or position, highlighting important aspects of the contract, and distinguishing between the administrator's authority and that which must remain a function of the purchasing office. Specific delegated tasks should be outlined in the designation letter which may include acceptance of goods or services, approval of invoices, scheduling and monitoring of project progress, coordination of the provision of agency or other resources when part of the contract, and favorable or critical feedback to the contractor and buyer. All continuous or term contracts shall be assigned an administrator in writing. (See Annex 10-C). For agency specific term contracts procured on behalf of an agency by DPS, upon award the agency shall designate a contract administrator.
- 10.3 **Procurement Records.** A complete file should be maintained in one place for each purchase transaction, containing all the information necessary to understand the why, who, what, when, where and how of the transaction. Generally, records are open to the public in accordance with the *Virginia Freedom of Information Act* and should be made available for review after the award has been made. See guidance for record review and exemptions in 3.17. A record must be established for a procurement transaction which has reached the solicitation stage. It must contain as a minimum, as applicable, the description of requirements, sources solicited, a copy of the *Virginia Business Opportunities (VBO)* receipt, cancellation notices, the method of evaluation and award, a signed copy of the contract or purchase order, contractor performance reports submitted by the administrator, modifications or change orders, vendor complaint forms, cure letters, usage data such as release orders or obligation registers, and any other actions relating to the procurement.
- 10.4 **Delivery of Goods.** The basic policy of the state is to request bids for goods F.O.B. Destination, which means the quoted price includes shipping costs (see 4.13). Receiving personnel or the contract administrator should have a copy of the purchase order or award document in order to be aware of the type or method of delivery the contractor is required to perform and what is to be delivered. The contractor may be required by the contract to deliver in a specific manner such as one of the following: tailgate only, at dockside only, deliver on pallets, make inside delivery by floor and room number, deliver and install and remove all debris, or deliver at only certain specified hours. Delivery instructions should be made clear in the award documents specifying any conditions or issues impacting delivery such as restrictive loading areas or limited elevator access. Delivery must be made by the date or period specified in the contract or the contractor will be considered to be in default.
- 10.5 **Inspection.** Agencies are responsible for inspecting and accepting goods or services purchased. Inspection is the close and critical examination of goods or services delivered to determine conformance with applicable contract requirements or specifications. It includes the determination that:

- a. Unless otherwise specifically ordered, the delivery consists of new and unused merchandise.
- b. Goods or services of the quality, quantity, grade, or standard specified in the purchase order or contract have been delivered.
- c. The design, construction, ingredients, size, kind, type, make, color, style, etc., of the commodities conform to the requirements of the purchase order or contract and where applicable, to the manufacturer's published specifications.
- d. The packaging and labeling, marking, or other means of identification meet specifications. The commodities comply with specification requirements in all essential respects, are in good condition, and delivery has been made in accordance with the terms and conditions of the purchase order or contract.

10.6 **Acceptance.** Proper notification of the acceptance of goods or services usually involves the requisitioner, the purchasing and accounting departments. Notification of the acceptance of the delivery should be noted on a receiving document such as a packing slip or copy of the purchase order. Timely and proper payment of invoices requires expedient review and acceptance of the delivery against the terms of the purchase. Computerized purchasing systems greatly facilitate this process.

10.7 **Rejection.** Rejection of goods or services is the responsibility of the receiving agency whenever the goods or services do not meet contract requirements. In the event of a partial or total rejection, the agency should take immediate action to notify the contractor as to the reasons for rejection and to request prompt replacement. When a rejection is made, the appropriate purchase officer or contract officer should be notified followed by rendering a Procurement Complaint Form DGS-41-024 (see Annex 10-H and *Vendors Manual*).

10.8 **Restocking Charges.** A restocking charge may be assessed by a contractor for those deliveries rejected by an agency due to no fault of the contractor. The value of these charges should be identified prior to making the decision to return. *Code of Virginia*, § 8.2-710, allows the seller incidental damages after the buyer's breach in connection with return of the goods resulting from the breach.

10.9 **Overshipments/Overruns.** 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 (see 3.5 and 10.12) and shall be provided whenever requested by a supplier to ensure the supplier's eVA transaction fee is accurate or as may be required by internal policy, and as required in 14.6. 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. An agency, however, may for a valid and justified basis accept up to a 10% overrun in printing. Prices for overruns must not exceed the quoted base price per unit or the quoted price for additional copies run at the same time. Whichever price is less will prevail. Prices for underruns will be calculated at the quoted base price per unit. If an agency will not accept underruns or overruns, it must be stated in the specifications.

10.10 **Lost or Damaged Shipments.** It is the agency's responsibility to promptly inspect deliveries for shipping damage at the receiving location. Concealed damage or latent defects should be reported to the carrier and contractor within seven days of receipt and prior to removal from the point of delivery if possible. It is difficult to fix responsibility for deliveries once the agency has moved goods to another location or when the inspection has not been made in a timely manner. 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. The state accepts title only when goods are received regardless of the F.O.B. point. (See *Vendors Manual*, 7.5 for passage of title information).

10.11 **Payment and Invoice Processing.**

- a. **Invoice Processing.** Invoice processing is to be performed in accordance with the rules and regulations set forth by the Department of Accounts. To maintain good vendor relationships and a competitive environment, it is imperative that invoices be processed promptly and in accordance with the contract terms. The *Code of Virginia*, § 2.2-4350A, requires agency's and institutions to pay for the completely delivered goods or services by the required payment date. If no payment date has been established by contract, then payment is due 30 days after receipt of a proper invoice by the agency or its agent responsible under the contract for approval of such invoices for the amount of payment due, or 30 days after the receipt of the goods or services, whichever is later (*Code of Virginia*, § 2.2-4347). When a large purchase requires performance over an extended period of

time, agencies should make arrangements to process partial payments upon receipt of evidence indicating that the goods or services have been received (see *Vendors Manual*, 8.3). Agencies and institutions with separate accounting and purchasing offices are strongly encouraged to develop a Memorandum of Understanding (MOU) between the two offices. These MOUs should establish a clear framework for an effective discrepancy resolution process, so contractor payments are not delayed.

- b. **Charge Cards Payments.** In an effort to streamline invoice and payment processing steps and sharply reduce paperwork, the Department of Accounts (DOA) has established a contract allowing agencies and institutions to use charge cards through two programs, the small purchase charge card (SPCC) and Gold Card. Unlike the typical consumer charge card, this program incorporates the features of corporate charge cards - national concept designed for business applications. Major program benefits include the reduction in the number of invoices processed by Commonwealth agencies and institutions, reduction in internal requisitioning reduced vendor collection costs, and payment to the vendor by the charge card company within as little as three business days. State agencies are required to participate in the SPCC program; participation in the Gold Card program is optional. Agencies, institutions and cardholders must follow all policies and procedures established in the Commonwealth Accounting Policies and Procedures (CAPP) Manual Section 20355 *Purchasing Charge Card*. Information can be obtained by calling DOA at 804-371-4350. Charge card purchases shall be processed through eVA unless the purchase is exempt from processing through eVA in 14.9 b.
- (1) **Small Purchase Charge Card (SPCC).** The SPCC is issued for cardholder use for transactions up to \$5,000 and the cardholder's monthly transaction limit up to \$100,000 for the purchase of small dollar goods and services in accordance with the issuing agencies polices and procedures, Agency Procurement and Surplus Property Manual and Virginia Public Procurement Act.
 - (2) **Gold Card.** Gold Cards are issued for purchase transactions up to \$50,000 for small dollar goods and services and a monthly transaction limit up to \$250,000. The Gold Card program is established to optimize the Commonwealth's participation in eVA and reduce the number of checks issued by the Commonwealth. The Gold Card program is administered through DOA Program Administrator who can be contacted at 804-371-4350. Gold Cards are only issued to full-time classified purchasing/procurement professionals or their staff deemed responsible by the Agency Head. An individual may not hold a SPCC and a Gold Card.
- c. **Zero Overrun.** DGS/DPS encourages agency finance offices to promote a "zero overrun" tolerance policy when dealing with order/invoice price discrepancies. For discrepancies with dollar values below the values cited as requiring issuance of a formal change order, approval to pay the excess amount should be obtained from the buyer prior to payment of the additional amount. Agencies should distinguish the tradeoff between the additional amount charged and the administrative costs required to contest that amount, with action taken accordingly. Considerable attention needs to be directed in this regard to assure that neither the integrity of the bidding process gets compromised, nor the standing of bidders altered.

10.12 **Modifications and Change Orders.** Any request for change affecting price, quality, quantity, delivery or cancellation requires a thorough written explanation by the agency prior to approval. A contractor shall not be notified that a change has been approved until that change has been authorized by the appropriate buyer or contract officer. All change requests should be evaluated for contract validity and a price reasonableness determination of the change shall be made in writing. See 3.5 on when an official change order is required and which form to use to document modifications, changes or cancellation.

10.13 **Contract Renewal and Extension.**

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

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

- b. **Extension.** An agency may extend the term of an existing contract for services to allow completion of any work undertaken but not completed during the original term of the contract. No additional consideration exceeding the contracted price may be paid to the contractor. Also, in exceptional or extenuating circumstances a contract may be extended by mutual consent for a limited period of time, not to exceed six (6) months. This action shall be taken in writing prior to the expiration of the current contract

10.14 **Termination for the Convenience of the Commonwealth.** Occasions may arise when an agency purchase order or agency contract may need to be terminated for the convenience of the Commonwealth. The termination date and the extent of termination must be specified in writing to the contractor. The contractor may submit any termination claim within 120 days after receipt of the notice of termination, or such longer period as the state may allow. The procedures for such action are outlined in paragraph 7.18 of the *Vendors Manual*.

10.15 **Cancellations of Purchase Orders and Contracts.** Cancellation of contracts may only be made in writing by the issuing purchasing office. Any request for cancellation should include an explanation of the basis for the request. 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. See cancellation of contract clause in Appendix B, Section II.

10.16 **Default.** A contractor is considered in default if he or she fails to perform in accordance with the terms and conditions of the contract (e.g., late delivery, nonconformance to specifications). The following factors should be considered prior to taking any action:

- a. The specific reasons for such failure (see *Vendors Manual*, 7.14).
- b. The period of time needed to obtain the goods or services from other sources compared to the time delivery or performance could be accomplished by the delinquent contractor.

If it is determined that a contractor is in default, unless more immediate action is warranted, a Procurement Complaint Form should be issued and distributed followed by a "Notice to Cure" if unacceptable vendor response, resolution, or action is received. A cure letter may also be issued at the same time as the Procurement Complaint Form. Resolution of performance issues should progressively start with the filing of the Procurement Complaint Form. . Nothing in the section is intended to grant contractors a contractual right to such steps being taken in cases of default.

10.17 **Vendor Performance Complaints.** Complaints and/or discrepancies on vendor performance should be reported as they occur using the Procurement Complaint Form, DGS-41-024 (see Annex 10-H). Vendors are required to respond to the agency and send a copy to DGS/DPS. Failure to respond within ten days may result in removal from the Vendors List. These complaint reports are necessary in order for DGS/DPS to develop vendor history, evaluate vendor performance, and, if required, to take appropriate and timely action (see 13.6).

Complaints concerning telecommunication services will be forwarded to the Virginia Information Technologies Agency (VITA), Acquisition Services Division, utilizing the DGS/DPS Procurement Complaint Form, DGS 41-024.

10.18 **Notice to Cure.** A Cure letter is used when a contractor has failed to perform or deliver as substantiated by a Procurement Complaint Form. It provides the contractor a period of time to correct or "cure" the deficiency and places the contractor on notice as to the consequences for failure to take the required corrective action. The notice may be given either orally or in writing advising the contractor that non-delivery or non-conformance is a breach of a contract and, if the deficiency is not corrected within a stated number of days, the Commonwealth will terminate the contract for default and hold the contractor liable for any excess costs. When the notice to cure is given orally, it should be confirmed in writing when warranted, i.e., complex agreements and/or concern about willingness of the contractor to voluntarily comply (see sample Cure letter, Annex 10-I).

10.19 **Termination for Default and Repurchase Costs.** Upon the expiration of the time period stated in the "Notice to Cure," if a satisfactory resolution has not been reached, send the contractor a Termination for Default letter and take repurchase action. This letter states that the contract is being terminated for default and that when the Commonwealth repurchases the goods or services, any additional cost to the Commonwealth will be billed to the contractor (see sample Default letter, Annex 10-J). Normally repurchase should be by competitive means in order to secure a fair and reasonable price. If the repurchase results in increased costs to the Commonwealth, a letter shall be sent to the delinquent contractor demanding payment of the excess costs (see sample request for payment letter,

Annex 10-K). Until the excess repayment costs have been received, the contractor shall be removed from the Vendors Mailing List (see *Vendors Manual*, 7.15). Concurrently with this letter, notify DGS/DPS in writing of the removal. In no case should the Termination for Default letter be held up to obtain repurchase costs since the contractor still has a valid contract until notification. 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.

In some instances a contractor will notify the state that they refuse to or cannot deliver or complete performance on a contract. In those situations, it is not necessary to follow the procedure of using a cure notification. However, a Procurement Complaint Form should be filed to provide a historical file for future determinations of responsibility, etc. Refusals are usually timely, in which repurchase would consist of re-awarding to the next lowest of the current slate of still valid bids allowing the submissions of a combined Default and Request for Payment letter. Occasionally, other contractual failures happen quickly enough to allow this same approach. In those instances, a Procurement Complaint Form (Annex 10-H) is required to substantiate the action before notice of default and repayment cost.

10.20 **Debarment and Reinstatement.** In addition to the above default procedures, concurrent action to have the defaulted contractor debarred shall be initiated by sending a letter to the Director of the Division of Purchases and Supply recommending debarment and providing all the pertinent facts to support that recommendation. Debarment means action taken by the Director 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 in state requirements for specific periods of time. Grounds for debarment of vendors and procedures for disqualification and reinstatement of vendors are contained in paragraph 7.20 of the Commonwealth of Virginia *Vendors Manual*.

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10.21 **Joint and Cooperative Procurement Contract Administration.** Overall administration of multi-user contracts (joint and cooperative procurements) shall remain the responsibility of the state agency or institution granted authority by DPS. Procedures for contract administration by the issuing agency include:

- a. Providing authorized users a complete copy of the contract or a summary of its terms to include, at a minimum: contract period, contractor address and phone number, pricing schedule, ordering procedure, payment terms, shipping terms and any other pertinent information.
- b. Providing a copy of all contract changes to authorized users.
- c. Maintaining a master list of all authorized users.
- d. Instructing users to refer all contract complaints in accordance with paragraph 10.17 with one copy of the Procurement Complaint Form furnished to the issuing agency.
- e. The issuing agency must obtain a volume purchase report from the contractor prior to contract expiration or renewal action. This data can be used to support estimated usage for the next solicitation or when evaluating contractor requested price adjustments.

Participating agencies should fully administer their portion of the contract without direct administration from the issuing agency. Procedures for contract administration by the using agency include:

- a. Notifying the issuing agency of any changes desired in the contract or any problems with performance by the contractor.
- b. If applicable, appointing a contract administrator in writing.
- c. Relaying contract information to the end users or contract administrator.
- d. Providing accounts payable with a pricing/payment schedule.

10.22 **Administration efforts - contract types and pricing arrangements.** The type of contract and pricing arrangement will prescribe the type and extent of required administrative efforts. See 4.3d for use of contract types. The firm

fixed-price contract type is usually less costly to administer. It typically requires proper receiving and verification of the contract price or lump sum amount. The following contract types describe special administrative considerations:

- a. **Requirements-Type Contracts.** Effective administration of open-ended agreements requires that agency purchasing offices maintain a record of the degree of activity against these contracts verifying the activity is within the scope of the contract and is paid in accordance with the contracted price. Contractor performance and contract expenditure activity should always be examined prior to the exercise of any renewal provision or re-solicitation.
- b. **Time and Materials Contracts.** It is essential that billed costs be analyzed (and challenged when appropriate) prior to their approval for payment because there is usually no incentive for contractors to contain costs when using this type of contract. Agencies have an obligation to verify the legitimacy and accuracy of any costs submitted for reimbursement. When a time and materials agreement is used, agencies must request a detailed job estimate and evaluate the reasonableness of its cost elements before authorizing the work to be performed. If it is determined that the estimate is not reasonable or in accordance with the terms of the contract, negotiations or the solicitation of additional estimates should be considered. Invoices should specify the amount and type of labor that is contained in the contract with the associated rates and the material costs so that verification of contract terms and pricing can be accomplished. The material costs should be supported with documentation as required in the contract (i.e., price list or invoiced cost). See 4.3d(3).
- c. **Consultant Services.** When the services of a consultant are utilized, especially when analysis and research are involved and the contractor's performance is to culminate in a written report or other document (i.e., the deliverable), it is imperative that procuring agencies periodically check the contractor's performance and assure that it is progressing to the degree anticipated. Crucial milestone or progress reports may be required to be submitted by the contractor in the solicitation which would assist in post-award administration of the contract. If performance is found not to be up to expectations, the contractor shall be given a "cure" notice with specific guidance on what must be done to adequately meet performance expectations (see 4.22d).
- d. **Revenue Sharing Contracts.** Certain agencies and institutions possess statutory authorization to generate revenue. Service contracts for the management of cash operations (e.g., food services, canteen or bookstore operations, etc.) commonly permit agencies and institutions to share in the revenues these activities generate rather than require any expenditure of funds. Commissions should normally be based as a percentage of gross receipts, and there should be some incentive for the contractor to contain costs. It is imperative that agencies have some ability to verify gross sales under agreements of this type. Consideration should be given to consulting with internal auditors for administrative suggestions and/or requesting an annual audit. In addition, the disposition of any purchased capital equipment at termination, and additions to real property during the term of the agreement should also be addressed in the contract. Agencies are cautioned that any attempts to establish such contracts should include input from their legal advisor to assure compliance with *Code of Virginia*, § 2.2-1802 and Virginia Constitution, Article X, Sect. 7.

Annex 10-A

POST AWARD ADMINISTRATION CHECKLIST

Award contract and post notice of award. (If performance and payment bonds are required, be sure copies have been obtained and validity verified by confirming with surety underwriter prior to issuing the award.)		
List contract on the agency's master contract list or schedule to include period of performance and any renewal option(s) - this will allow for the planning of renewal or rebidding actions.		
Appoint a contract administrator in writing outlining duties and responsibilities and any limitation of authority (see Annex 10-C). Duties may include the following:		
a.	Requirement for periodic evaluation reports of contractor performance and/or progress reports be furnished the purchasing office.	
b.	That maintenance manuals, parts lists and as-built drawing have been obtained prior to authorization of final payment or as required by contract terms.	
c.	A clear understanding of all contractor supplied warranties or bonding commitments.	
d.	The need to advise the purchasing office if changes to the contract, follow-up maintenance, or other services, etc., may be required.	
e.	Acceptance and approval of the receipt of goods and services and documenting the contractor's invoices for approval of payment.	
Be sure the user has encumbered funds to pay for services which overlap fiscal years.		
Provide a copy of the contract and any subsequent changes to accounts payable for invoicing/payment action verification.		
Establish and plot critical contract performance milestones required of contractor (e.g., checklist, progress reports or other written deliverables).		
Compile a tracking report on payments made against the contract.		
If the contract can be renewed be sure that price and all other requirements are based upon conditions of the basic contract.		
If contractor's performance or delivery is unsatisfactory, issue a Procurement Complaint Form, Cure or Termination letter (as appropriate). Sample letters are included in this chapter's annexes. Should action not yield satisfactory results or assistance is needed, contact DGS/DPS's Contract Compliance Section.		

Annex 10-B

CONTRACT ADMINISTRATION “TIPS”

- a. Provide for administration of all service and term contracts/purchase orders. The ones you ignore may cause trouble!
- b. Identify the “stake holders” of the procurement in the presolicitation phase of the procurement or as soon as possible especially for more complicated, multi-tasked or expensive purchases. Consult with these individuals on the assignment and role and responsibilities of the contract administrator.
- c. During the solicitation development phase of the procurement, discuss and plan with the future contract administrator his/her role and projected contract administration actions. Plan for these actions in the solicitation.
- d. Conduct a post-award mobilization meeting with the contractor, contract administrator, buyer, and other appropriate individuals soon after award but prior to performance to review the intent and scope of the contract, contract milestones and deadlines, the administrator and buyer’s role, and contract performance evaluation.
- e. Facsimile or electronic (E-mail, etc.) transmission should be liberally employed to expedite administrative actions.
- f. Remember, time and materials contracts places all risk on the agency and little upon the contractor. Emphasize the need to commit agency personnel to closely monitor contractor activity, verify hours billed on the invoice and insist on supporting documentation for any materials reimbursement requests. Contractors should be required to submit an estimate specifying the amount and type of labor at the contracted rates with an estimate of materials to be used. The contract administrator should review and approve this estimate for price reasonableness, and if necessary, negotiate the amount or type of labor and/or material.
- g. Do not get complacent on approving “routine” invoices for payment; verify the variables as well as the “frequency” of billed tasks. Verify that you in fact, received the service at the contracted price.
- h. Once a contractor is in default, do not postpone the initiation of administrative action and documentation based solely on vendor’s promises to comply.
- i. Remember that when problems arise, there are at least two parties to a contract and the problem could arise from either side or, in typical cases of miscommunication, from both sides.
- j. The Procurement Complaint Form is the only official method of problem notification. If the contractor fails to cure the specific breach of contract and/or has multiple failures, the documentation establishes a basis for corrective action against the contractor. For information, contact DPS Contract Compliance at 804-225-4045.
- k. Consider seeking legal advice/assistance early in the process whenever complex default possibilities could result.

Annex 10-C

SAMPLE DESIGNATION LETTER

Designation and Responsibilities of Contract Administration

TO: Contract Administrator, _____

FROM: Contract Officer, _____

The contract referenced below has been awarded and services or performance may be commenced. You have been assigned as the contract administrator for this contract and are assigned the following responsibilities. A copy of the contract, a performance evaluation report sample, and other related information are attached for your use. Review this information; if you have any questions, please call the contract officer.

Contract Number: _____

Contractor: _____

Project: _____

Period of Contract: _____ to _____

Renewals: _____ successive _____ year options

Contract amount \$ _____

Payment schedule or instructions:

You, as contract administrator, are responsible for: (select or modify)

- Day to day coordination of the delivery of this service (or goods);
- Assurance that services (or goods) are delivered in accordance with the contract terms and conditions;
- Obtaining and approving job estimates and verifying labor hours and classifications if required (time and material contracts);
- Certifying receipt of services (or goods) billed were delivered in accordance with the contract terms and conditions;
- Prompt reporting of delivery failures or contractor performance problems to the Contract Officer;
- Completing and submitting periodic evaluations of contractor performance (evaluation form attached);
- Initiating Procurement Complaint Form if required;
- Assurance that the contract amount is not exceeded without proper authorization from Contract Officer;
- Assurance that the contract terms and conditions are not extended, increased, decreased, or modified in any way without action through the Contract Officer;
- Coordinating contract “start-up” activities with appropriate agency personnel (facilities management, security, etc.)
- Recommending solutions to Contract Officer if performance problems or contract issues persist.

c: Fiscal Officer or Accounts Payable
Others (initiator if different from contract administrator, management, etc.)

Annex 10-D

SAMPLE CONTRACTOR PERFORMANCE EVALUATION REPORT

Contract Number: _____

Contractor: _____

Evaluator/Administrator: _____

Date Submitted: _____

Period of Evaluation From: _____ To: _____

RATE CONTRACTOR'S PERFORMANCE ON A SCALE OF 1 TO 5 (by circling)

- | | | | | | | | |
|----|--|---|---|---|---|---|--------------------------------|
| 1. | Overall Evaluation | | | | | | |
| | Unsatisfactory | 1 | 2 | 3 | 4 | 5 | Satisfactory |
| 2. | Delivery Performance | | | | | | |
| | Late/Early (if problem) | 1 | 2 | 3 | 4 | 5 | On Time |
| 3. | Quality of Goods/Services | | | | | | |
| | Unacceptable | 1 | 2 | 3 | 4 | 5 | Acceptable |
| 4. | Number of Complaints | | | | | | |
| | High | 1 | 2 | 3 | 4 | 5 | Low |
| | Explain any complaints below. | | | | | | |
| 5. | Contractor's Responsiveness to requests to correct deficiencies: | | | | | | |
| | Nonresponsive | 1 | 2 | 3 | 4 | 5 | Takes prompt corrective action |
| 6. | Renew this contract? | | | | | | |
| | YES ___ NO ___ If No, Please explain in comments below. | | | | | | |

Note: Any score of 3 or less must be described in detail below as to what action was taken to remedy the contractor's poor performance and what steps the contractor took to correct the deficiency cited. (Continue on separate sheet if necessary.)

7. COMMENTS: _____

Annex 10-E

COMMONWEALTH OF VIRGINIA
 DEPARTMENT OF GENERAL SERVICES
 DIVISION OF PURCHASES AND SUPPLY
 REQUEST FOR CHANGE OF PURCHASE ORDER AND
CHANGE ORDER

DATE:

1

CHANGE ORDER NO.

2

PURCHASE ORDER NO.

3

CONTRACT NO.

4

REQUISITION NO.

5

YOU ARE HEREBY NOTIFIED THAT THE ORDER LISTED HEREON HAS BEEN CANCELED OR CHANGED AS INDICATED BELOW, AND THAT NO COMMODITIES MAY BE DELIVERED OR ACCEPTED, NOR SHALL ANY INVOICE BE APPROVED FOR PAYMENT EXCEPT AS SPECIFIED. ALL OTHER TERMS REMAIN UNCHANGED

VENDOR

7

DELETIVE

6

TOTAL AMOUNT

ORIGINAL ORDER TOTAL: INCLUDING CHANGE ORDER/S (disregard any payments)

CHANGE ORDER AS FOLLOWS: SHOW DELETIONS AND/OR ADDITIONS ONLY. FULLY EXPLAIN CHANGE:

8

Item NO.	COMM. CODE	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	
9	10	11	12	13	14	15

REASON FOR CHANGE:

16

AMOUNT OF INCREASE/DECREASE SHOW IN CODE AREA

17

NEW TOTAL INCLUDING THIS CHANGE

18

INTRA, INST. CODE:

20

CHECK OF CONTINUATION SHEET ATTACHED

19

AGENCY AUTHORIZED SIGNATURE AND TITLE:

APPROVED BY:

PURCHASE OFFICER, D.P.S., COMMONWEALTH OF VIRGINIA

21

TRANS	AGENCY	GLA	FUND		FFY	PROGRAM			OBJECT	REVENUE SOURCE	AMOUNT				PROJECT		
			FUND	DET		PROG	SUB	ELE			PROJECT	TK	PH				
22																	
COST CODE	FIPS	PSD	AGENCY REFERENCE			INVOICE				DUE DATE			REFERENCE DOC				
			DATE	NUMBER			MM	DD	YY	NUMBER		SX	Y				
DESCRIPTION						CURRENT DOCUMENT		SUBSIDIARY ACCOUNT	MULTI-PURPOSE	CHECK IF EXPENDITURE DISTRIBUTION CONTINUATION							
						NUMBER	SX			SHEETS ARE ATTACHED							

REQUEST FOR CHANGE OF PURCHASE ORDER AND CHANGE ORDER - FORM DGS-41-008

When Used: For use when a change to a DPS awarded purchase is required.

How to Prepare This Form

1. Insert the date that this form was prepared.
2. Insert the change order number. (Number in numerical sequence, i.e., 1, 2, 3, etc.)
3. Insert the purchase order number affected.
4. Insert the contract number if applicable.
5. Insert the requisition number affected.
6. Insert the full name, address and zip code of the delivery point. A post office box number is unacceptable.
7. Insert the name, eVA Vendor ID or DUNS number, mailing address and zip code of vendor.
8. Insert the original order total including any previous changes.
9. Insert the item number from the purchase order which is to be changed.
10. Insert the commodity code number as shown on the purchase order form opposite each deletion or addition.
11. Show deletions and/or additions and describe briefly the commodity affected. If only making a Department of Accounts accounting code correction, "ONLY DOA CODE CORRECTION."
12. Insert the quantity deleted or added.
13. Insert the unit.
14. Insert the unit price.
15. Insert the amount of change. Use minus sign to show a decrease.
16. Explain the reason for change. Please be specific.
17. Insert the amount of increase or decrease and cross out the inappropriate word.
18. Insert the new total.
19. Check if a continuation sheet is used.
20. Signature and the title of an authorized person at the agency.
21. Must be approved and signed by a purchase officer of DGS/DPS or change order is not valid.
22. Insert the necessary coding required by the Department of Accounts for the CARS System. (Note: 064 = increase; 068 = decrease)

Annex 10-F

COMMONWEALTH OF VIRGINIA
AGENCY
PURCHASE ORDER CHANGE

2
eVA Vendor ID or DUNS Number. _____
1

PURCHASE ORDER NUMBER AFFECTED **3**
REQUISITION NO. AFFECTED **4**
CONTRACT NUMBER **5**
DATE **6**

USING AGENCY **7**

HEREBY YOU ARE REQUESTED TO MAKE THE FOLLOWING CHANGE IN PURCHASE ORDER ABOVE DESIGNATED ORIGINAL ORDER TOTAL: INCLUDING CHANGE ORDER/S (DISREGARD ANY PAYMENTS)					TOTAL AMOUNT 8
CHANGE ORDER AS FOLLOWS: SHOW DELETIONS AND/OR ADDITIONS TO FULLY EXPLAIN CHANGE:					
COMM. NO.	DESCRIPTION OF ARTICLES OR SERVICES	QUANTITY	UNIT	UNIT PRICE	
9	10				
REASON FOR CHANGE: 12		AMOUNT OF INCREASE/DECREASE SHOW IN CODE AREA			11
		NEW TOTAL CHANGE ORDER NO.			

INTRA. INST. CODE: **13** CHECK IF CONTINUATION SHEET ATTACHED

AUTHORIZED SIGNATURE AND TITLE **14** BY _____ TITLE _____

TRANS	AGENCY	GLA	FUND		FFY	PROGRAM			OBJECT	REVENUE SOURCE	AMOUNT			PROJECT		
			FUND	DET		PROG	SUB	ELE			PROJECT	TK	PH			
15																
COST CODE	FIPS	PSD	AGENCY REFERENCE			INVOICE			DUE DATE			REFERENCE DOC				
			DATE	NUMBER			MM	DD	YY	NUMBER		SX	Y			
DESCRIPTION						CURRENT DOCUMENT			SUBSIDIARY ACCOUNT	MULTI-PURPOSE	CHECK IF EXPENDITURE DISTRIBUTION CONTINUATION					
						NUMBER	SX	SHEETS ARE ATTACHED								

REQUEST FOR CHANGE OF PURCHASE ORDER AND CHANGE ORDER - FORM DGS-41-011

When Used: For use on all agency- issued purchase orders.

How to Prepare This Form

1. Insert the contractor's name and address.
2. Insert the contractor's assigned number.
3. Insert the assigned number of the Agency Purchase Order being changed.
4. Insert the requisition number assigned by the agency which generated the original Agency Purchase Order.
5. If the Agency Purchase Order is being used to place an order against a term contract, list the contract number; otherwise, leave blank.
6. Insert the date of the Agency Purchase Order Change.
7. Insert the name and address of the agency.
8. Insert the amount of the original Agency Purchase Order.
9. Insert the assigned commodity number.
10. Describe the articles or services.
11. Insert the amount of the change.
12. State the specific reason for the change.
13. This is for agency use.
14. Insert the approved signature.
15. Insert the Agency 3-digit code and estimated amount in appropriate columns; however at agency's option, all CARS II coding may be inserted.

Annex 10-G

(Agency Letterhead)

CONTRACT MODIFICATION AGREEMENT

(For use in modifying an existing contract)

Date:

Contract No.:

Modification No.:

Issued By: COMMONWEALTH OF VIRGINIA,

(Department, Agency, Division)

Contractor:

Commodity:

This Supplemental Agreement is entered into pursuant to the provision of the basic contract.

Description of Modification:

Except for the changes provided herein, all other terms and conditions of this contract remain unchanged and in full force and effect.

NAME OF CONTRACTOR

COMMONWEALTH OF VIRGINIA

By: _____

By: _____

Name and Title (Type or Print)

Date Signed

Name and Title (Type or Print)

Date Signed

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

INSTRUCTIONS FOR COMPLETING THE PROCUREMENT COMPLAINT FORM:

Form Preparation Instructions

Heading: Vendor /Agency information and distribution instructions.

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

Closure: Agency and Order Entry Information

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

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

NOTE:

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

COMMONWEALTH OF VIRGINIA
 Department of General Services
 Division of Purchases and Supply
PROCUREMENT COMPLAINT FORM

FOR DPS USE ONLY	File Date:	Status:	File No:
	Action/Date:		

TO:

Name of Vendor and eVA# / Agency & Agency Code :		
Address:		
City:	State:	Zip Code:

Contact Name:	Title:
Signature:	
Phone No:	

NOTE: VENDOR/AGENCY MUST SUBMIT THEIR WRITTEN REPLY BELOW WITHIN TEN (10) DAYS OF RECEIPT OF THIS REPORT. INDICATE YOUR COUNTERMEASURE/CORRECTIVE ACTION BELOW AND MAIL A COPY TO THE ORIGINATING AGENCY AND A COPY TO THE CONTRACT COMPLIANCE OFFICER, DIVISION OF PURCHASES AND SUPPLY, P.O. BOX 1199, RICHMOND, VA 23218-1199. ATTACH ADDITIONAL SHEETS FOR YOUR RESPONSE IF REQUIRED.

FROM:

Agency/Vendor Name:		
Address:		
City:	State:	Zip Code:

Agency /Vendor Contact :
Phone No:
Buyer/Vendor Signature:

Date:	Agency Code/ Vendor eVA#:	Contract No:	P.O. No:	P.O. Date:	Description:
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NATURE OF COMPLAINT

INVOICE/PAYMENT	DELIVERY	SPECIFICATION/AGREEMENTS	OTHER
<input type="checkbox"/> NON-PAYMENT	<input type="checkbox"/> DELIVERY REFUSED	<input type="checkbox"/> SPECS DELAYED	<input type="checkbox"/> AGENCY DELAYS
<input type="checkbox"/> LATE PAYMENT	<input type="checkbox"/> SHIPPED TO WRONG LOCATION	<input type="checkbox"/> MODIFICATION (NO CHANGE ORDER)	<input type="checkbox"/> UNAUTHORIZED CANCELLATION
<input type="checkbox"/> INCORRECT PAYMENT	<input type="checkbox"/> PARTIAL DELIVERY	<input type="checkbox"/> BID SAMPLE PROBLEMS	<input type="checkbox"/> UNAUTHORIZED PURCHASE FROM NON-CONTRACT VENDOR
<input type="checkbox"/> REFUSED LATE CHARGES	<input type="checkbox"/> TIME OF DELIVERY INAPPROPRIATE	<input type="checkbox"/> DID NOT MEET SPEC.	<input type="checkbox"/> POOR CUSTOMER SERVICE
<input type="checkbox"/> INVOICE PRICE INCORRECT	<input type="checkbox"/> IMPROPER METHOD OF DELIVERY	<input type="checkbox"/> UNAUTHORIZED SUBSTITUTION	<input type="checkbox"/> SHORT/OVER WEIGHT OR COUNT
<input type="checkbox"/> INCORRECT QUANTITY	<input type="checkbox"/> DAMAGED SHIPMENT	<input type="checkbox"/> DAMAGED PRODUCT	<input type="checkbox"/> UNSATISFACTORY INSTALLATION
<input type="checkbox"/> ITEMS DID NOT SHIP	<input type="checkbox"/> LATE/NO DELIVERY	<input type="checkbox"/> LACKS INSPECTION REPORT	<input type="checkbox"/> FAILURE TO IDENTIFY SHIPMENT PER CONTRACT TERMS

OTHER OR FURTHER EXPLANATION: _____

COMMONWEALTH OF VIRGINIA
Department of General Services
Division of Purchases and Supply
PROCUREMENT COMPLAINT FORM

COUNTERMEASURES:

(Agency/Vendor: Be accurate, complete and factual. Indicate manner in which you suggest complaint be settled.)

FOR DFS USE ONLY	File No: _____
	Action/Date:
	Resolved _____
	Removed from Bidder List _____
	Suspension _____
Debarment _____	
Contract Compliance Officer _____	

Annexes 10 -I, 10-J, 10-K, and 10-L:

NOTICE TO USERS

The following four letters are sample Cure, Default, Request for Payment, and Default and Request for Payment letters. Revise them as appropriate. For complex dispute situations, contact your attorney advisor.

Annex 10-I

CURE LETTER (Agency Letterhead)

(May be done orally or in writing.)

Date

Contractor's Name and Address

Subject: Notice of Contract Deficiency and Required Action

Dear _____:

As substantiated by the submission of a Procurement Complaint Form, you have failed to meet the requirement(s), i.e., *(delivery), (specifications), (performance standards), etc. on P.O. (or Contract) _____ dated _____. You are to satisfy this deficiency within _____ days of the date of this letter or be terminated for default and reprocurement action taken under paragraph 7.14 of the *Vendors Manual*. In addition, your firm will no longer be solicited until this matter is satisfactorily resolved.

Sincerely,

Contract Officer/Contract Administrator
Telephone No. (____) _____

c: DGS/DPS Contract Compliance Section

* Choose appropriate condition.

Annex 10-J

**DEFAULT LETTER
(Agency Letterhead)**

Date

Contractor's Name and Address

Subject: Notice of Termination for Default on (Title and Number of the Purchase Order or Contract in Default)

Dear _____:

Reference is made to our submission of a Procurement Complaint Form and * (Notice of Contract Deficiency and Required Action Letter) or (telephone conversation) this date between (Name of Vendor Representative) and (the undersigned) or (Name of DGS/DPS Contract Compliance Officer).

This is to advise that your firm has been placed in default and referenced * (purchase order), (contract) has been terminated for failure to take corrective action within the specified time as referenced above. The Commonwealth will repurchase the specified * (goods), (services). You will be promptly notified of any additional purchase or administrative costs for which you become liable as a result of this default. In addition, your firm will no longer be solicited until this matter is satisfactorily resolved.

Sincerely,

Contract Officer/Contract Administrator
Telephone No. ()

c: DGS/DPS Contract Compliance Section

* Choose appropriate condition.

Note: If this letter is used, follow up with Request for Payment (Annex 10-K) if additional repurchase costs are incurred.

Annex 10-K

**REQUEST FOR PAYMENT LETTER
(Agency Letterhead)**

Date

Contractor's Name and Address

Subject: Repurchase Costs Against (Purchase Order No./Contract No. _____)

Dear _____:

Reference is made to our letter dated _____, subject: Notice of Termination For Default. The specified * (goods), (services) have been repurchased at an additional cost to the Commonwealth of \$ _____. Your firm is indebted to the Commonwealth in the amount of \$ _____ and is requested to submit a check to this office payable to the Treasurer, Commonwealth of Virginia. If the payment is not received within 60 days, we will initiate collection action and proceed with a recommendation of debarment as stated in paragraph 7.20 of the *Vendors Manual*.

Sincerely,

Contract Officer/Contract Administrator
Telephone No. (____) _____

c: DGS/DPS Contract Compliance Section

* Choose appropriate condition.

Annex 10-L

**DEFAULT AND REQUEST FOR PAYMENT LETTER
(Agency Letterhead)**

Date

Contractor's Name and Address

Subject: Notice of Termination for Default on (Title and Number of the Purchase Order or Contract in Default)

Dear _____:

Reference is made to * (your letter dated _____), (our telephone conversation (s) of _____), (Procurement Complaint Form), (Notice of Contract Deficiency and Required Action Letter) concerning your firm's * (refusal), (inability), to honor the terms and conditions on the referenced * (purchase order), (contract) above.

This is to advise that your firm has been placed in default and referenced * (purchase order, (contract) has been terminated for failure to take corrective action within the time specified as referenced above. The specified * (goods), (services) have been repurchased at an additional cost to the Commonwealth of \$ _____. Your firm is indebted to the Commonwealth in the amount of \$ _____ and is requested to submit a check to this office payable to the Treasurer, Commonwealth of Virginia. In addition, your firm will no longer be solicited until this matter is satisfactorily resolved. If payment is not received within 60 days, we will initiate collection action and proceed with a recommendation of debarment as stated in paragraph 7.20 of the *Vendors Manual*.

Sincerely,

Contract Officer/Contract Administrator

Phone (____) _____

c: DGS/DPS Contract Compliance Section

* Choose appropriate condition.

