

CHAPTER 3

GENERAL PROCUREMENT POLICIES

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- 3. **General.** The policies contained in this chapter are applicable to the procurement of goods and nonprofessional services and have been developed to clarify and implement the various provisions of the *Code of Virginia*. Annex 3-A provides a flowchart depicting the methods of procurement and when each method should be used. Annex 3-B contains a summary of procurement policies.

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

- a. **Adequate Competition.** A sufficient number of sources must be solicited for the procurement of goods or services consistent with the method of procurement used (see Chapters 5, 6, 7, and 9 for further discussion). The *Vendors Manual*, 4.1 offers further information on the Selection of Bidders or Offerors.
- b. **Return Envelopes/Labels.** Return envelopes or labels indicating the date and the time responses are due should be furnished with the solicitation for sealed bids or sealed proposals. If return envelopes are not furnished, instructions for identifying and addressing bids or proposals shall be included with the solicitation.
- c. **Amending a Solicitation.** If it is necessary to amend a solicitation, prepare, post, and send an addendum to all potential bidders or offerors who received a copy of the solicitation or who attended a prebid or preproposal conference. Signed acknowledgment of addenda must be returned to the purchasing office prior to the date and time of the opening or with the bid or proposal. Failure to return the addendum may be grounds for declaring the bid nonresponsive [see *Vendors Manual*, 5.13c (1)(c)]. When an addendum 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/proposals. If there are not 10 days from the date of the addendum to the due date set for receipt of bids/proposals, then the due date shall be extended to meet the minimum 10 days' notice. (See Annex 6-F for example addendum).
- d. **Canceling a Solicitation.** An Invitation for Bids, a Request for Proposal, any other solicitation, or any and all bids or proposals, may be canceled or rejected. When canceling a written solicitation not created in eVA, all vendors who have been issued a solicitation must be notified, and the notice must be publicly posted. When canceling a Quick Quote solicitation in eVA, the purchasing office is not required to notify vendors of the cancellation. When canceling an eProcurement solicitation in eVA, the cancellation shall be made through eProcurement which will update the posting on VBO Buyer. All premium vendors registered for the commodity code used for the solicitation will be automatically notified. Other vendors may view the status of the solicitation in the VBO to see that the solicitation has been cancelled. If the solicitation was posted on the VBO, the solicitation must be cancelled by the issuing purchasing office using VBO Buyer in order to notify vendors of the cancelled solicitation. The reason for cancellation shall be made a part of the contract file. A public body shall not cancel or reject an Invitation for Bids, a Request for Proposal, any other solicitation, bid or proposal solely to avoid awarding a contract to a particular responsive and responsible bidder or offeror (*Code of Virginia*, § 2.2-4319). Personnel responsible for opening bids or proposals must be notified of the cancellation to prevent responses from being inadvertently opened. Return sealed bids or proposals on canceled programs unopened if hard copy bids or proposals were received. If a program is canceled after receipt and opening of bids or proposals, original documents will remain a part of the procurement transaction file. Bidders or Offerors should be notified in writing that the program has been canceled and that duplicate proposals, if provided, will be destroyed unless the Offeror requests their return.
- e. **Receipt of Bids or Proposals.** Bids or proposals should be received at one central location. A clock, publicly displayed, or an electronic date/time stamp machine should be used to establish receipt times. When bids or proposals are received, the bids or proposals shall be date stamped and the time noted or stamped on the envelope showing the time of receipt. The bid or proposal receipt time deadline must strictly comply with the date and time stated in the solicitation. The purchasing officer shall be responsible for deciding when the receipt deadline has arrived and should announce wording to the effect that, "Bids/Proposals for solicitation number ___ are now closed. No further bids/proposals will be treated as timely." It is the responsibility of the bidder or offeror to have the bid or proposal at the specified location by the appointed time. Bid or proposal receipt deadlines and public openings scheduled during a period of suspended state business operations will be deemed rescheduled for processing at the same time on the next regular business day. Nothing in this paragraph limits the agency's ability to entertain, during competitive negotiation, new or different content to a timely-submitted proposal.

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

- bidders' names;
- unit prices or lot prices, as may be applicable;

- discount terms offered, if discount terms are to be considered in making the award (see 4.7); and
- brand names and model numbers, if requested by the attendees.

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

Sealed Proposals. Public openings are not required by law for proposals submitted under competitive negotiation, but doing so avoids the appearance of impropriety. If a public opening of proposals is conducted, only the names of the firms submitting proposals shall be disclosed. Questions on the proposals of other offerors should not be answered until after evaluation and negotiations are complete and an award decision has been made.

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

f. **Facsimile Bids or Proposals.**

(1) **Unsealed Bids/Unsealed Proposals.** Facsimile bids or proposals may be accepted when using small purchase procedures requesting unsealed bids or unsealed proposals. Facsimile bids or proposals must be completely received in the office that issued the unsealed solicitation prior to the date and time specified for receipt. The original copy of the facsimile transmission may be requested. If requested it must be received within five (5) business days (see Annex 5-I for sample Fax Back form).

(2) **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 prior to the date and time specified for receipt. 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.

NOTE: Agency personnel, including end users, should not be involved in accepting facsimile bids/proposals on the bidder’s/offeror’s behalf and offering to place the bid/proposal in a sealed envelope.

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

h. **Withdrawal/Amending/Altering/Mistakes in Bids.** Sections 5.11 through 5.15 of the *Vendors Manual* provide policies and procedures for these areas. Consistent and impartial application of these policies and procedures is essential to the maintenance of bidder understanding and faith in the integrity of the state procurement system. In regard to mistakes in bid, if the lowest apparent responsive bid is 25% or more lower than the next low bid, the bidder should be contacted to confirm the bid price. This does not relieve a bidder from the responsibility for the submission of a correct bid. If the bidder then alleges a mistake in bid and can verify to the purchasing office’s satisfaction that it was a nonjudgmental mistake, the bid may be withdrawn.

i. **Bid Evaluation.** As soon as practical after the opening, the bids should be evaluated and an award made to the lowest responsive and responsible bidder. Any bidder who, despite being the apparent low bidder, is determined not to be a responsible bidder shall be notified in writing (*Code of Virginia*, § 2.2-4359). (See 11.2c.)

j. **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. Buying offices may not accept alternate bids; however, they may reject all bids and rebid the requirement with a revised specification incorporating features of the alternate.

- k. **Single Response to a Solicitation.** There are occasions when only one bid or proposal is received for a solicitation, even though multiple sources are solicited. When considered to have a significant budgetary impact and competitive sources are known to exist, the buyer should investigate to determine why other bidders or offerors did not respond and make a determination whether to award or to reject the bid or proposal and resolicit. If it is determined to make the award based on a single response, the buyer must make a written determination that the price is fair and reasonable (see 4.10).

3.2 **Bonds**

- a. **Bid Bonds.** Except in cases of emergency, all bids or proposals for nontransportation-related construction contracts in excess of \$500,000 or transportation-related projects authorized under § 33.1-12 that are in excess of \$250,000 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 \$250,000 for transportation-related projects authorized under § 33.1-12 and partially or wholly funded by the Commonwealth.
 - (3) For nontransportation-related construction contracts in excess of \$100,000 but less than \$500,000, where bond requirements are waived, prospective contractors must be prequalified for each individual project in accordance with *Code of Virginia*, § 2.2-4317.
- b. **Performance and Payment Bonds.**
 - (1) Unless otherwise authorized in this section, upon the award of any (i) public construction contract exceeding \$500,000 awarded to any prime contractor, (ii) construction contracts exceeding \$500,000 awarded to any prime contractor requiring the performance of labor or the furnishing of materials for buildings, structures or other improvements to real property owned by a public body; or (iii) transportation-related projects exceeding \$350,000 that are partially or wholly funded by the Commonwealth, the contractor shall furnish to the public body the following bonds (*Code of Virginia*, § 2.2-4337):
 - (a) A performance bond in the sum of the contract amount conditioned upon the faithful performance of the contract in strict conformity with the plans, specifications, and conditions of the contract. For transportation-related projects authorized under § 33.1-12, such bond shall be in a form and amount satisfactory to the public body.
 - (b) A payment bond in the sum of the contract amount. The bond shall be for the protection of claimants who have and fulfill contracts to supply labor or materials to the prime contractor to whom the contract was awarded, or to any subcontractors, in the furtherance of the work. For transportation-related projects authorized under § 33.1-12 and partially or wholly funded by the Commonwealth, such bond shall be in a form and amount satisfactory to the public body. “Labor or materials” shall include public utility services and reasonable rentals of equipment, but only for periods when the equipment rented is actually used at the site.
 - (2) Each of the bonds shall be executed by one or more surety companies selected by the contractor that are authorized to do business in Virginia and filed with the purchasing office that awarded the contract or a designated official thereof within 10 days after receipt of the purchase order or notice of award. See 3.2f on bond documentation review and Annex 3-E for guidance on processing and verifying the bonds validity.

- (3) Nothing in this section shall preclude the state from requiring payment or performance bonds for construction contracts up to \$500,000 for non transportation-related projects or \$350,000 for transportation-related projects authorized under *Code of Virginia*, § 33.1-12 and partially or wholly funded by the Commonwealth.
 - (4) Nothing in this section shall preclude the contractor from requiring each subcontractor to furnish a payment bond with surety thereon in the sum of the full amount of the contract with such subcontractor conditioned upon the payment to all persons who have and fulfill contracts which are directly with the subcontractor for performing labor and furnishing materials in the prosecution of the work provided for in the subcontract (*Code of Virginia*, § 2.2-4337).
 - (5) For nontransportation-related construction contracts in excess of \$100,000 up to \$500,000, where bond requirements are waived, prospective contractors must be prequalified for each individual project in accordance with *Code of Virginia*, § 2.2-4317.
 - (6) The performance and payment bond requirements for transportation-related projects that are valued in excess of \$250,000 but less than \$350,000 may only be waived by a public body if the bidder provides evidence, satisfactory to the public body, that a surety company has declined an application from the contractor for a performance or payment bond (*Code of Virginia*, § 2.2-4337).
- 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, <http://deb.dgs.virginia.gov>).
 - d. **Bonds on Other Than Construction Contracts.** State agencies may require bid, payment, or performance bonds for contracts for goods or services if provided in the Invitation for Bids or Request for Proposal. (See Annexes 3-G, 3-H, and 3-I)
 - e. **Alternative Forms of Security.** A certified check, a cashier's check, or cash escrow may be accepted in lieu of a bid, payment, or performance bond. (*Code of Virginia*, § 2.2-4338). If approved by the Attorney General, a bidder may furnish a personal bond, property bond, or bank or savings and loan association's letter of credit on certain designated funds in the face amount required for the bid, payment, or performance bond. Approval shall be granted only upon a determination that the alternative form of security proffered affords protection to the public body equivalent to a corporate surety's bond. The Virginia Department of Transportation is exempt from the requirements of this provision.
 - f. **Bond Documentation Review.** Any procurement exceeding \$100,000, which specifies the issuance of bid, performance, and payment surety bonds, may necessitate the purchasing authority review of surety bond documentation in the absence of legal assistance to ensure the bond's validity (see checklist, Annex 3-E).

3.3 **Computer Equipment Performance Specifications.** Should any agency or institution elect to procure personal computers and related peripheral equipment pursuant to any type of blanket purchasing arrangement under which public bodies, as defined in § 2.2-4301, may purchase such goods from any vendor following competitive procurement but without the conduct of an individual procurement by or for the using agency or institution, it shall establish, with the cooperation of the Virginia Information Technologies Agency (VITA), performance-based specifications for the selection of equipment. Such performance-based specifications shall include (i) vendor stability, service, and support; (ii) appropriate specifications regarding a vendor's warranties, network compatibility, performance, and when available, mean time between failure ratings; and (iii) a vendor's formal quality assurance program drafted in accordance with nationally or internationally recognized standards. No certification, however, by a private organization that the personal computer meets such national or international standards shall be required. Any equipment which meets such specifications shall be added to the solicitation for the blanket purchase arrangement at the request of any potential bidder (*Code of Virginia*, § 2.2-1121).

No contract award(s), that allow users to choose from more than one contractor to obtain personal computers and related peripheral equipment resulting from a blanket purchase arrangement, may be issued by any agency or institution of the Commonwealth, under its procurement authority, without meeting this requirement. For the purposes of this Code section, the term "blanket purchasing arrangement" is defined as a written solicitation that

will result in the award of a Contract, Requirements Type as defined in Appendix A, and which award would permit the user to choose from more than one contractor.

The requirements of § 2.2-1121 are not applicable to the following:

- a. solicitations for one time individual procurement of personal computers and related peripheral equipment;
- b. blanket purchase arrangements which will result in a contract award to a single contractor;
- c. orders issued against contracts awarded prior to July 1, 1996; or
- d. the exercise of other options under contracts awarded prior to July 1, 1996, such as extensions, change order options and the like.

Assistance from the Virginia Information Technologies Agency (VITA) may be obtained by contacting the Technology Acquisitions Manager at 804-371-5948.

3.4 Contractor License Requirements.

- a. **Contractor Licensing and Registration.** State statutes and regulatory agencies require that some contractors be properly registered and licensed, or hold a permit, prior to performing specific types of services. Those services include but are not limited to the following:

<u>Service</u>	<u>Regulatory Agency</u>
Construction-Type (See Chap.4.24)	Department of Professional & Occupational Regulation
Pesticide Application Fertilizer Application	Department of Agriculture & Consumer Services
Asbestos Service, Fire Alarm System Installation	Department of Professional & Occupational Regulation
Private Security Services Locksmith Services Security Alarm System Installation	Department of Criminal Justice Services
Treatment, Storage, Handling, Transportation, or Disposal of Hazardous Waste or Hazardous Radioactive Material	Department of Environmental Quality

It is the contractor's responsibility to comply with the rules and regulations issued by state regulatory agencies. The following statement should appear on solicitations for services regulated by the various agencies of the Commonwealth:

By my signature on this solicitation, I certify that this firm/individual is properly licensed for providing the goods/services specified.

License # _____ Type _____

- b. **Construction, Removal, Repair or Improvement.** If a procurement of \$1,000 or more involves construction, removal, repair or improvement of any building or structure permanently annexed to real property or any other improvement to such real property, the contractor must possess one of the following licenses issued by the State Board for Contractors for the type of work involved (*Code of Virginia*, §§ 54.1-1103 and 54.1-1115):

Contractor License A - If the contract is \$120,000 or more or if the contractor does \$750,000 or more business within a 12-month period.

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

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Contractor License C – Over \$1,000, but less than \$10,000 or if the contractor does less than \$150,000 in business in a 12-month period. Note: The Board shall require a master tradesmen license as a condition of licensure for electrical, plumbing and heating, ventilation and air conditioning contractors.

An unlicensed vendor submitting a bid or proposal where such license is required is nonresponsive and is in violation of state law. Any buyer who knowingly receives or considers a response from an unlicensed vendor when a license is required is in violation of state law (*Code of Virginia*, § 54.1-1115). Contractors must be licensed in the proper classification and specialty to perform the work required by the solicitation. If there is any question as to whether a licensed contractor is required for a specific procurement, call the State Board for Contractors at 804-367-8511 for policy interpretation.

- c. **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 or offeror or approved subcontractor to 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. A sample clause for use in the solicitation can be found in Appendix B.

3.5 **Contract/Purchase Order Modification Restrictions.** A contract or purchase order may not be modified or renewed unless provided for in the original contract or solicitation. No additional consideration or increase in contract price may be paid to the contractor because of renewal unless specifically authorized under the original contract. The issuance of a change order or contract modification is required when the purchasing office has issued an agency purchase order or contract or eVA order and the approved change exceeds \$500. This limitation applies to cumulative change orders in a contract or purchase order. The DPS Purchase Order Change (Annex 10-E), Agency Purchase Order Change (Annex 10-F), and Contract Modification Agreement (Annex 10-G); are the recommended forms to be used for all modifications to contracts and purchase orders awarded outside of eVA. Use the eVA Change Order functionality to make changes to orders issued in eVA (see 14.6).

- a. **Cumulative Modifications up to \$50,000** - Cumulative contract modifications up to \$50,000 shall not exceed 25% of the original contract price without advance written approval of the agency head or his/her designee (see also *Vendors Manual*, 7.17 for exception).
- b. **Cumulative Modifications Over \$50,000** - 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% of the original amount of the contract or \$50,000, whichever is greater, without the advance written approval of the Governor or his designee (*Code of Virginia*, § 2.2-4309A). By executive order this is the Director of the Department of General Services. Requests to exceed the 25% increase shall be submitted to the Deputy Director of DPS at 804-225-3707. This limitation applies to the aggregate change orders in a contract. 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 (see 10.12).

For example:

Original contract = \$300,000

Cumulative modification limit = \$75,000 (25% of \$300,000 or \$50,000 whichever is greater).

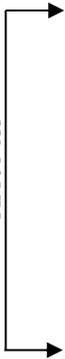
If the contract was modified by \$40,000 during the original term, additional cumulative modifications cannot exceed \$35,000 over the life of the contract, including all renewals, without the approval of the Director of the Department of General Services or his designee.

3.6 **Contract Pricing Arrangements.** Contracts may be awarded on a fixed price or cost reimbursement basis or on any other basis that is not prohibited. For a discussion of contract types, see 4.3d. No public contract shall be awarded on the basis of cost plus a percentage of cost except: in the case of an emergency affecting the public health, safety or welfare; when a policy or contract for insurance or prepaid coverage has a premium computed on the basis of claims paid or incurred, plus the insurance carrier's administrative costs and retention stated in whole or part as a percentage of such claims; or in other instances allowed by *Code of Virginia*, § 2.2-4331.

Joint and Cooperative Procurement. Subject to the requirements set forth below, state agencies may participate in, sponsor, conduct, or administer a joint procurement in conjunction with one or more other public agencies or

institutions to satisfy requirements for goods, services or construction,. Subject to the requirements set forth below, state agencies may purchase from another public body's contract even if it did not participate in the RFP or IFB, if the RFP or IFB specified that the procurement was a cooperative procurement being conducted on behalf of other public bodies provisions listed in *Code of Virginia*, § 2.2-4304B.

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, cooperative 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.

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- a. **Sponsoring a Joint Procurement:** No state agency or institution may sponsor, conduct or administer a joint procurement without advance approval from the Director of the Division of Purchases and Supply. If a state agency or institution seeks to assess any administrative fees that are to be paid directly or indirectly by using agencies for their participation in the cooperative agreement, the lead agency shall submit documentation sufficient to show that fees do not exceed each using agency's fair share of the total administrative costs. An agency or institution initiating a procurement and desiring to allow its use by other public bodies must include the ADDITIONAL USERS clause found at Appendix B, Section II, and shall serve as the lead agency (contracts manager) and shall administer the program in accordance with Chapter 10 of this manual. Vendor complaints and disputes will be managed by the ordering entity, but the lead agency should be provided copies of any such complaints or disputes. The Procurement Exemption Request form located in Annex 13-D must be used to request approval to sponsor cooperative contracts.
 - 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 *Code of Virginia*, §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. The Procurement Exemption Request form located in Annex 13-D should be used to request approval to buy from cooperative contracts awarded by Commonwealth agencies that are not posted on eVA.
 - 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 *Code of Virginia*, §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. The Procurement Exemption Request form located in Annex 13-D should be used to request approval to buy from cooperative contracts awarded by other than Commonwealth agencies that are not posted on eVA.
 - d. **Sponsoring Agencies and Non-Commonwealth Entities:** Agencies and Non-Commonwealth entities sponsoring cooperative contracts should visit the eVA State Contracts page in eVA for specific information on how to make cooperative contracts available to agencies.
 - e. **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 Schedule has been approved for use by Congress, Schedule 84. 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.

3.8 **Documentation of Files.** 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 (see 10.3).

3.9 **Federal Grants.** Federal granting agencies typically require state agencies and institutions to include specific terms and conditions in contracts funded in whole or in part by federal grants. The state agency must coordinate with the Federal granting agency to ensure that applicable federal grant terms and conditions are included in such contracts. If federal grant or contract funds contain conditions that are in conflict with the *VPPA*, the state agency must request and obtain a written determination from the Governor that the acceptance of the grant or contract funds is in the public interest. Such determination shall state the specific provision(s) of the *VPPA* in conflict with the conditions of the grant or contract (*Code of Virginia*, § 2.2-4343.B). Guidance on purchases funded in whole or in part by the American Recovery and Reinvestment Act of 2009 (ARRA) will be posted on the eVA website, eva.virginia.gov and is incorporated by reference.

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

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

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

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- and minority-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. For purposes of compliance with this section, agencies may rely on the accuracy of the certified vendors listed on the DSBSD and eVA website. The eVA vendor certification data is provided by DSBSD.

c. **Contract Sizing/Assessing Bundled Contracts.** The size of a proposed procurement can limit the potential participation by small business vendors. The following rule is designed to address that issue, while preserving the cost-savings and other benefits that the Commonwealth has achieved through bundling contracts and other procurement initiatives.

For goods provided under statewide or regionally bundled contracts for which there are qualified DSBSD-certified small businesses, but with respect to which the size of such contract appears to limit DSBSD-certified small businesses from bidding or being awarded such contracts, the contracting agency or institution shall seek to reduce the size of the contracts to increase the pool of potential bidders/offerors to include DSBSD-certified small businesses. If the effect of reducing the size of such contracts is to cause a meaningful increase in price, a significant degradation in terms and conditions, a significant decrease in administrative efficiency or non-compliance with applicable federal contracting requirements or funding conditions, then the contracting agency or institution shall not be obligated to reduce the contract size.

d. **Consultation with the Department of Small Business and Supplier Diversity (DSBSD).** Each contracting agency or institution, in consultation with DSBSD and DGS where practical, shall seek to identify those purchases in which contract sizing may influence the availability of purchasing opportunities to small business vendors (a "Size-Related Contract"). Where these purchases are identified, the agency shall determine whether there are small businesses capable of meeting the purchasing requirements. If the agency identifies no

DSBSD-certified small businesses capable of performing the contract requirements, then the agency shall consult with DSBSD to seek to identify available vendors unless contract timing issues require the agency or institution to complete the contract process before DSBSD input can be obtained. For any Size-Related Contract for which the agency or institution determines that contract timing issues require contract award without identifying any small business vendors or consultation with DSBSD, the agency or institution shall consult with DSBSD promptly after award of the contract to develop potential small business vendors for the next similar procurement. State agencies and institutions shall work together with DSBSD to seek to increase the number of DSBSD certified small businesses that are available to do business with the Commonwealth.

e. **Competitive Requirements.** All 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 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 of certified small businesses maintained on the DSBSD and eVA web sites, www.dsbds.virginia.gov and www.eva.virginia.gov. This shall include DSBSD-certified women-owned and minority-owned businesses that have also received the DSBSD small business certification.

f. **(Deleted)**

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

1. Small Business Enhancement Award Priority

Awards Under \$10,000: For 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. 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. 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 \$10,000 up to \$100,000: For purchases from \$10,000 to \$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. 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.

* Include in all unsealed written Request for Proposals for services over \$10,000 Special Term and Condition #36 B.

Set-aside Award Priority:

Micro Business Set-Aside Award Priority

- | | |
|-------------------|-------------------|
| under \$10,000.00 | 1) Micro Business |
| | 2) Small Business |

3) Open to all

Small Business Set-Aside Award Priority

- \$10,000 up to \$100,000 1) Small Business (including micro businesses)
- 2) Open to all

- 2. However, the procurement is exempted from the set-aside requirement if exempted from competitive requirements in 1.5 b and d; or in 14.9 b items 1-4, 6-16, and 18-28; or is available from mandatory sources or non-mandatory sources in 2.1 and 2.2, such as the Virginia Industries for the Blind, Virginia Correctional Enterprises, employment services organizations, as well as purchases made from existing mandatory or optional statewide contracts. Small businesses shall be identified on the vendor list.
- 3. Additionally the procurement may be exempted from the Small Business Enhancement Award Priority if there is not a reasonable expectation that the agency or institution will receive at least two competitive bids or offers from DSBSD-certified micro/small businesses and the agency includes in the procurement file determination, supported by factual evidence explaining in sufficient detail that the procurement does not qualify for a set-aside.

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

Each prime contractor who wins an award in which provision of a small business subcontracting plan is a condition of the award, shall deliver to the contracting agency or institution timely reports substantiating compliance in accordance with the small business subcontracting plan (subject only to insubstantial shortfalls and to shortfalls arising from subcontractor default). See Appendix B., Section II. 36. When such business has been subcontracted to these firms, the contractor agrees to furnish the purchasing office at a minimum, the following information: name of firm, phone number, total dollar amount subcontracted, category type (small; small and women-owned; or small and minority-owned), and type of product/service provided, at the frequency required in the contract. The purchasing agency shall confirm that the contractor has certified compliance with the contract's SWaM procurement plan before making final payment. If a variance exists, the contractor shall provide a written explanation that shall be kept with the contract file and made available upon request. A subcontractor shall be considered a Small Business for purposes of a contract if and only if the subcontractor holds or held a certification as such by the DSBSD on the due date for receipt of bids or proposals (if the subcontractor was included in the originally submitted small business subcontracting plan) or on the date the parties' amend the contract to add a new subcontractor to the contract's small business subcontracting plan).

3.11 **Multiple 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 should be given to the administrative costs to the agency of processing individual purchase documents, and separate invoices and checks.

3.12 **Nondiscrimination.**

- a. In the solicitation, awarding or administration of contracts, no agency shall discriminate against a bidder, offeror, or contractor because of the race, religion, color, sex, age, disability, national origin, status as a service disabled veteran, or any other basis prohibited by state law relating to discrimination in employment (*Code of Virginia*, § 2.2-4310A). Agencies and institutions shall prominently display a nondiscrimination statement in all invitations to bid, requests for proposals, contracts, and purchase orders indicating that the public body does not discriminate against faith-based organizations (*Code of Virginia*, § 2.2-4343.1D).
- b. In the solicitation or awarding of contracts, no state agency, department or institution shall discriminate against a bidder or offeror because the bidder or offeror employs ex-offenders unless the state agency, department or

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institution has made a written determination that employing ex-offenders on the specific contract is not in its best interest (Code of Virginia, § 2.2-4310.E).

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

3.13 **Petitioning for Less Toxic Goods or Products.** Any vendor, who manufactures, sells or supplies goods or products may petition purchasing offices to include requirements for less toxic goods and products into its procurement process. The vendor shall submit, prior to or during the procurement process, documentation which establishes that the goods or products meet the applicable performance standards. If agencies determine that the documentation establishes that the less toxic goods or products meet the performance standards set forth in the applicable specifications, they shall incorporate the specifications for the less toxic goods and products into their procurement process. Agencies are instructed to revise their procedures and specifications on a continuing basis to encourage the use of less toxic goods and products; however, agencies 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).

3.14 **Preferences**

- a. **Reciprocal Preferences.** 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 responsive and 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. 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.) See www.eva.virginia.gov for a listing of state preference laws and (*Code of Virginia*, § 2.2-4324B).
- b. **Virginia Vendors and Products.** Preference is given to goods produced in Virginia, goods or services or construction provided by Virginia persons, firms or corporations, in the event of a tie bid (see 3.24a).
- c. **Recycled Paper and Paper Products Preference.** In determining the award of any contract for paper and paper products to be purchased for use by agencies of the Commonwealth, DGS/DPS, 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 10% 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; see also 3.24b). Agencies shall purchase only recycled paper for use in office equipment except where equipment limitations preclude the use of recycled paper
- d. **Coal.** There is a preference for Virginia-mined coal used in state facilities. In determining the award of any contract for coal purchased for use in state facilities with state funds, DGS/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 4% 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 manufacturer's (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.

In developing the specifications for oil and antifreeze products as defined above, 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.

- d. **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. **Appliances and Equipment.** Commonwealth agencies and institutions shall purchase or lease Energy Star or equivalent rated appliances and equipment for all classifications for which an Energy Star or equivalent rating is available. The classifications may be found on Energy Star's website at: <http://www.energystar.gov/>. All new office equipment purchased or leased by the Commonwealth that uses paper shall be recycled paper-compatible.
- h. **Biodiesel Fuel.** Beginning on September 1, 2010, agencies and institutions shall procure only diesel fuel, taking into consideration availability and variability in cost of biodiesel fuel with respect to unblended fuel, containing, at a minimum, two percent, by volume, biodiesel fuel or green diesel fuel, as defined in §45.1-394 of the *Code of Virginia*. This requirement shall only apply to procurements of diesel fuel for use in on-road internal combustion engines and #2 fuel burned in a boiler, furnace, or stove for heating, and shall not apply if supply is not readily available or the cost of such procurement exceeds the cost of unblended diesel fuel by 5 percent or more. (See *Code of Virginia* § 2.2-1111.B.7)
- i. Deleted.

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

- Small Purchase procedures
- Competitive Sealed Bidding (The preferred method.)
- Competitive Negotiation
- Sole Source
- Emergency
- Reverse Auctioning (See 3.29)

Annex 3-A contains a flowchart depicting each method and when it should be used. In addition, a separate chapter is dedicated to each method of procurement. See chapters 5, 6, 7, 8, and 9 for the methods described above.

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3.16

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 (see 4.4d). 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.

c. **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 3.1 h for information on amending or withdrawing bids/proposals and *Code of Virginia*, § 2.2-4330 C. for Withdrawal of bid due to error.)

d. **By employees of state government or Eastern Virginia Medical School, certain family members, and businesses in which they have a personal interest.** State employees may not enter into a contract to sell goods or services to any state governmental agency (including their own), or remain in State employment if such a contract is entered into by their spouse, a dependent living with them, or a business from which they collectively receive more than \$5,000 of annual income or own more than 3% of the equity, unless the contract is exempted. The following contracts are exempted:

(1) Contracts having a value of \$500 or less.

(2) Contracts with a governmental agency other than the employee's own agency if the contract is awarded as a result of (i) competitive sealed bidding or competitive negotiations or (ii) after a finding, in writing, by the administrative head of the governmental agency that competitive bidding or negotiation is contrary to the best interest of the public.

(3) Any other contract, if the contract does not place the employee in violation of the State and Local Government Conflict of Interest Act. Examples of contracts permitted by the Conflicts Act can be found in § 2.2-3106.C through E and § 2.2-3110.A(1) through (9). In case of doubt, employees may request an advisory opinion from the Attorney General, as provided in § 2.2-3121. Employees are also encouraged to seek such advice because of the many exceptions not described here.

This subsection 3.16 d does not apply to contracts with State advisory agencies, or to employees of State advisory agencies. Advisory agencies are agencies that do not exercise any sovereign power or duty but instead merely make studies or recommendations.

This subsection is intended to restate some but not all of what the Conflicts Act already prohibits. It shall not be construed as prohibiting anything permitted by the Conflicts Act or as altering any employee's duties under the Act.

3.17

Public Access to Procurement Records. Records are open to the public in accordance with the *Virginia Freedom of Information Act*, subject to the following:

a. Cost estimates relating to a proposed procurement transaction prepared by or for an agency shall not be open to public inspection (*Code of Virginia*, § 2.2-4342B).

b. Any bidder upon request, shall be given an opportunity to inspect bid records within a reasonable time after opening and evaluation of bids, but prior to award, except in the event the agency decides to reject all bids or offers and rebid (*Code of Virginia*, § 2.2-4342C). Information read aloud at a public bid opening will be furnished upon request.

- c. Any offeror who responds to an RFP, upon request shall be afforded the opportunity to inspect proposal records within a reasonable time after the evaluation and negotiation of proposals are complete but prior to award, except in the event the buying agency decides not to accept any of the proposals and to resolicit.
- d. Bids and proposal records shall be open to the public only after award.
- e. Any inspection of procurement records shall be subject to reasonable restrictions to ensure the security and integrity of the records.
- f. Trade secrets or proprietary information submitted for 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 protection of *Code of Virginia*, § 2.2-4342F, in writing, 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 reasons why protection is necessary. It is an agency's responsibility to establish and enforce procedures to protect vendor proprietary information with the same degree of protection that would be provided for confidential information of the Commonwealth. 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 will be considered nonresponsive or the proposal will be rejected.
- g. To protect the Commonwealth and its employees from possible claims for damages because of the improper release of information, agencies and institutions shall not release any information that a bidder, offeror, or contractor has claimed to be a trade secret or proprietary information, unless ordered to do so by a court of competent jurisdiction. If a party seeking information disagrees with the designation of it as proprietary or a trade secret, upon concurrence of the agency's attorney advisor, the party seeking the information may be advised that they will have to obtain a court order and request to be named as a defendant in the suit involving the bidder, offeror, or contractor which designated the information as proprietary as well as the agency or institution.
- h. **Small Purchase Records.** Unsealed bids 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.

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3.18

Publicly Posted Notices. All Invitations to Bid, Requests for Proposal, sole source award notices, emergency award notices, government-to-government service contracts starting at \$25,000, and conceptual proposals received under a PPEA or PPTA shall be posted on the DGS central electronic procurement system, commonly known as eVA VBO. (*Code of Virginia*, § 2.2-1110). Small purchases for goods and services greater than \$5000 and any professional service procurements over \$30,000 must be posted per §2.2-4303 . Addenda are also required to be posted. The eVA web site address is www.eva.virginia.gov. The agency must include in the posting access to an electronic version of all solicitation documents.

- a. All written informal solicitations that are expected to exceed \$5,000 shall require the posting of a public notice in eVA VBO. The use of Quick Quote meets the public posting requirement.
- b. IFB solicitations must be publicly posted on eVA VBO at least 10 days prior to the date set for receipt of bids (*Code of Virginia*, §§ 2.21110 and 2.2-4302.1). In addition, notices may be published in a newspaper of general circulation, at least 10 days prior to the date set for receipt of bids. Prebid conferences or site visits should be indicated when applicable. When canceling or amending a solicitation, a copy of the notice or addendum must be publicly posted on eVA VBO.
- c. RFP solicitations must be publicly posted on eVA VBO at least 10 days prior to the date set for receipt of proposals. Notices shall also be published in a newspaper or newspapers of general circulation in the area in which the contract is to be performed. The newspaper notice need only be a brief summary of essential elements of information (*Code of Virginia*, §§ 2.21110 and 2.2-4302.2). The essential elements should include agency seeking proposals; goods or services to be purchased; how offerors can obtain information about the RFP including a reference to eVA VBO; preproposal conference date and time; and the closing date and time. The notice should be brief in order to minimize cost to the agency. See Annex 3-K for an example. Preproposal conferences or site visits should also be indicated on the cover sheet of the solicitation when applicable. When canceling or amending a solicitation, a copy of the notice or addendum must be publicly posted on the eVA VBO.

- d. Award Notices must be posted for a ten (10) day period immediately following the actual time of award. If used, the Notice of Intent to Award must be posted ten days prior to the actual time of award (see also 4.12d). Emergency notices must state that the contract is being issued on an emergency basis while sole source notices must state that only one source was determined to be practicably available and both must also state that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. Routine award notices may be a copy of the bid tabulation sheet revealing bidders prices and indicating the bidder receiving the award. IFB and RFP solicitations must contain the General Term and Condition on Announcement of Award (see Appendix B, Section I. U.). The award notice shall be posted on the eVA VBO and in any additional locations as prescribed in the solicitation for a ten (10) day period immediately following the actual time of award (*Code of Virginia*, § 2.2-4360).
- e. Documentation to support the posting/advertising requirements must be contained in or attached electronically to the procurement record. It is not necessary to date/time stamp routine award notices or to file them when they are removed from posting; however, the agency or institution must ensure that the posting requirement is met and be able to withstand protest/challenge pertaining to compliance with the posting requirement. It is recommended that the procedure for posting and removing notices be made a part of the agency's or institution's written internal policies and procedures (see 1.2). If a protest is anticipated, the Notice of Intent to Award should be date/time stamped when it is posted and removed, and it should be made part of the procurement file.
- f. In addition to its normal contract postings, each agency and institution shall post or provide accessible links to future anticipated contract opportunities on the eVA home page under the "Future Procurements" link These postings should include:
 - (1) All existing term contracts with expiration dates, with such expiration dates clearly identified;
 - (2) Anticipated IFBs and RFPs that have not yet been developed including a best estimate of the date of issue of such IFBs and RFPs and contact information for potential vendors for pre-issuance contract information; and
 - (3) Other anticipated contract opportunities.
- g. Each agency and institution shall post on the eVA home page under the "Future Procurements" link any government-to-government purchases for services over \$25,000 that appears on the Commercial Activities List provided by the Department of Planning and Budget. The posting requirement does not apply to Mandatory Sources, central services state agencies, activities operated by an Internal Service Fund or purchases from Institutions of Higher Education.
- h. Each agency and Institution shall post on eVA VBO the solicitation/opportunity for receipt of proposals/applications to receive grant awards/funds.. The posting in VBO shall be designated as "Grant Opportunity".
- i. Conceptual proposals submitted in accordance with PPEA § 56-575.17 or PPTA § 33.2-1820 shall be posted on eVA VBO.

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3.19 **Recycled Goods Purchase Program.** Agencies are encouraged to promote the use of recycled goods. Through its programs, the Department of Environmental Quality shall increase agency awareness of the benefits of using such products. Information on the availability of recycled goods, including those which use post-consumer and other recovered materials processed by Virginia-based companies may be obtained by calling the DGS contact at 804-786-0103. Agencies shall, to the greatest extent possible, adhere to any recycled products procurement guidelines established by DGS (*Code of Virginia*, § 2.2-4323D).

3.20 **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, or when required in the solicitation 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;
- 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 *Vendors Manual*, 3.7).

Assistance in making this determination (preaward surveys, etc.) is available from DGS/DPS Contract Compliance Section at 804-225-4045.

3.21 **Responsive Bid.** To be considered for an award, a bid must comply in all material respects with the Invitation for Bids. Responsiveness relates to compliance with the provisions of the solicitation, including specifications and terms and conditions. Failure to comply with the requirements set forth in the Invitation for Bids may result in a bid being declared nonresponsive, e.g., failure to sign a bid, failure to return the required bid documents, substitution of vendor's terms, deletion of terms and conditions stated in the Invitation for Bids, failure to offer a product or service that meets the requirements of the Invitation for Bids, etc. 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 nonresponsive. This is true whether the price was left blank or the bidder entered a figure of \$0. To avoid inconsistent treatment of bidders the following statement should be included in the pricing schedule of such solicitations, "Any bidder who enters \$0 on a pricing blank or leaves it blank shall be considered nonresponsive." Bidders who provide multiple prices for performing a service where a single price was solicited are also nonresponsive. For bid evaluation and award procedure guidance see Annex 6-B, Step three, V. D. If a bid is found to be nonresponsive, a notation as to why it is nonresponsive shall be made and signed by the buyer/contract officer and be included in the contract file.

3.22 **Standards of Conduct.** The laws of this Commonwealth dictate a higher standard of conduct for procurement officials than for public employees generally because of the extraordinary trust and responsibility exercised by public officials conducting procurement transactions, and because of the legitimate expectation by the public that this trust and responsibility be exercised properly. Procurement officials and vendors must be cognizant of these laws which include the *VPPA*, the *State and Local Government Conflict of Interests Act*, and the *Governmental Frauds Act*. All state employees having official responsibility for procurement transactions shall conduct business with vendors in a manner above reproach in every respect. Transactions relating to the expenditure of public funds require the highest degree of public trust.

a. Except as specifically allowed by subdivisions A2 and A3 of § 2.2-3112, no public employee having official responsibility for a procurement transaction shall participate in that transaction on behalf of the public body when the employee knows that:

- (1) The employee is contemporaneously employed by a bidder, offeror, or contractor involved in the procurement transaction; or,
- (2) The employee, the employee's partner, or any member of the employee's immediate family holds a position with a bidder, offeror, or contractor such as an officer, director, trustee, partner or the like, or is employed in a capacity involving personal and substantial participation in the procurement transaction, or owns or controls an interest of more than five percent; or
- (3) The employee, the employee's partner, or any member of the employee's immediate family has a pecuniary interest arising from the procurement transaction; or
- (4) The employee, the employee's partner, or any member of the employee's immediate family is negotiating, or has an arrangement concerning prospective employment with a bidder, offeror, or contractor (*Code of Virginia*, § 2.2-4369).

An immediate family member is defined as a spouse, children, parents, brothers and sisters, and any other person living in the same household as the employee. The Attorney General has advised that the definition of immediate family includes siblings not living in the same household as the employee (*Code of Virginia*, § 2.2-4368).

b. No state employee having administrative or operating authority, whether intermediate or final, to initiate, approve, disapprove, or otherwise affect a procurement transaction, or any claim resulting there from:

- (1) shall solicit, demand, accept, or agree to accept from a bidder, offeror, contractor, or subcontractor any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal or minimal value present or promised, unless consideration of substantially equal or greater value is exchanged (*Code of Virginia*, § 2.2-4371);
 - (2) shall accept employment from any bidder, offeror, or contractor with whom the employee dealt in an official capacity concerning procurement transactions for a period of one year from the cessation of employment by the state unless the employee or former employee provides written notification to the head of the state agency prior to commencement of employment by that bidder, offeror, or contractor (*Code of Virginia*, § 2.2-4370).
- c. In some situations it may be necessary for personnel to make site visits in conjunction with a solicitation to evaluate vendor capability and equipment. If site visits are required for evaluation purposes, the state, and not the vendors being evaluated, should pay for such visits. Exceptions to this policy may be made by the agency head or his/her designee. Any exception must be made on a case by case basis. If an exception is made a written determination signed by the agency head or his or her designee shall be included in the contract file. A statement that this is a mandatory provision of the procurement will be included in the solicitation along with the maximum number of employees who will participate in the site visit. State employees making such site visits will incur and recover travel costs from the agency for which the procurement is being conducted in accordance with state travel regulations. No direct reimbursement of individuals by a vendor is permitted. The procuring agency will determine all costs incurred by state employees in connection with the site visit and bill the appropriate vendor for reimbursement of costs by means of a check payable to the agency.
 - d. State employees having official responsibility for procurement transactions may attend vendor-sponsored seminars or trade shows where they will benefit from receiving product information and learning of new techniques and product or service trends. Food, drinks and give-away items offered to all participants at such functions may be accepted by state employees attending.
 - e. All personnel having official responsibility for procurement transactions shall be knowledgeable about the provisions of Article 6, *Code of Virginia*, §§ 2.2-4367 through 2.2-4377, entitled "Ethics in Public Contracting." "No public employee having official responsibility for a procurement transaction shall knowingly falsify, conceal, or misrepresent a material fact; knowingly make any false, fictitious or fraudulent statements or representations; or make or use any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry" (*Code of Virginia*, § 2.2-4376). "Willful violation of any provision of this article shall constitute a Class 1 misdemeanor. Upon conviction, any public employee, in addition to any other fine or penalty provided by law, shall forfeit his employment" (*Code of Virginia*, § 2.2-4377). Agencies and institutions "may require public employees having official responsibility for procurement transactions in which they participated to annually submit for such transactions a written certification that they complied with the provisions of this article" (*Code of Virginia*, § 2.2-4375).
 - f. 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 (2010 *Appropriation Act*, § 4-2.01.a.) 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 2010 *Appropriation Act*, § 4-2.01.a.
 - g. 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.
 - h. **Political Contributions Prohibited During Procurement Process**
 1. 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.

2. 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.
3. 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 *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.
4. 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.
5. 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.

3.23 **Taxes.**

- a. **Excise.** The Commonwealth of Virginia is generally 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. Buyers may receive requests for a Tax Exemption Certificate (Form ST-12, see Annex 3-F) or exemption number. The certificate is available through Department of Taxation channels or may be obtained from DGS/DPS. When it is evident on the face of the bid that taxes were improperly included, the bidder will be given the opportunity to delete them. If further interpretive assistance is required, contact the Department of Taxation, Office of Customer Service at 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. The following examples are offered to show that taxes apply to lodging and conference facilities under a variety of circumstances:

Sales and Use Taxes apply:

Example 1: A state employee takes an overnight trip. All state taxes apply to lodging and meals in this transient situation.

Example 2: A state employee registers for a conference and decides to pay for lodging and nonconference meals that were charged with a personal credit card and later get reimbursement from the agency. All state taxes apply to the expenses incurred.

Example 3: A state employee registers for a conference, seminar, DPS Procurement Forum, etc., making reservations with the facility by submitting a PO for payment. All state taxes for lodging and meals charged against the PO would apply. If an employee pays out of the pocket for meals, the tax would apply.

Example 4: The agency is sponsoring a conference or seminar, sets a master account, and provides the facility with a PO. All state taxes would apply to lodging, facilities, meals, AV, and other taxable services charged to the master account.

Note: The following exceptions from the *Code of Virginia*, (§58.1-3833 E.) must be taken into consideration when applying the above examples to determine to what extent taxes may apply: “E. Notwithstanding any other provision of this section, no locality shall levy any tax under this section upon (i) that portion of the amount paid by the purchaser as a discretionary gratuity in addition to the sales price; (ii) that portion of the amount paid by the purchaser as a mandatory gratuity or service charge added by the restaurant in addition to the sales price, but only to the extent that such mandatory gratuity or service charge does not exceed 20% of the sales price; or (iii) alcoholic beverages sold in factory sealed containers and purchased for off-premises consumption or food purchased for human consumption as "food" is defined in the Food Stamp Act of 1977, 7 U.S.C. § 2012, as amended, and federal regulations adopted pursuant to that act, except for the following items: sandwiches, salad bar items sold from a salad bar, prepackaged single-serving salads consisting primarily of an assortment of vegetables, and nonfactory sealed beverages.”

- 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. The same principle applies to persons who enter into contracts with a governmental entity to perform real property construction or repair.

3.24 **Tie Bids**

- a. **Virginia Products and Firms.** In the case of a tie bid, preference shall be given to goods produced in Virginia, goods or services or construction provided by Virginia persons, firms or corporations, if such choice is available (see 3.14b); otherwise the tie will be resolved by the toss of a coin. The coin toss must be witnessed and the results recorded by a supervisor above the level of the buyer. Award(s) are to be made in favor of the Virginia bidder for tie line items and multiple purchase orders or contracts placed as required. Copies of tie bids resulting from competitive sealed bidding shall be forwarded to the Anti Trust Section of the Office of The Attorney General.
- 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 (see also 3.14c).

3.25 **Electronic Commerce.** Deleted.

3.26 **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 there under. 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.

3.27 **Protection of Personally Identifiable Information.** Commonwealth agencies are responsible for safeguarding personally identifiable information of their clients, employees, vendors, contractors and any other individuals providing information to the Commonwealth. Personally identifiable information includes, but is not limited to, Social Security Numbers, financial account numbers, and any other such information protected from disclosure by federal law or the Code of Virginia. The Commonwealth and its contractors shall safeguard personally identifiable information from disclosure to the public. Agencies shall not include personally identifiable information on purchase orders. Include Special Term and Condition 61 from Appendix B, II in contracts when the contractors utilize, access, or store personally identifiable information.

Agency procurement officers must ensure that any Social Security Numbers, Taxpayer Identification Numbers, or other personally identifiable information are redacted from contract files before files are disclosed to the general public or inspected by any other individuals, firms or other interested parties who are granted access to information.

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

- a. In accordance with the *Code of Virginia*, § 2.2-4311.2, all public bodies shall include in every written contract 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. General Term and Condition BB shall be included in all contracts to meet this requirement. (See General Term and Condition **BB: AUTHORIZATION TO CONDUCT BUSINESS IN THE COMMONWEALTH**, Appendix B, Section I.)
- 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” (see Annexes 6-J and 7-I). Accordingly, Special Term and Condition **64: STATE CORPORATION COMMISSION IDENTIFICATION NUMBER** shall be included in all Invitations for Bids or Requests for Proposals.
- 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.

3.29 **Auctioning**

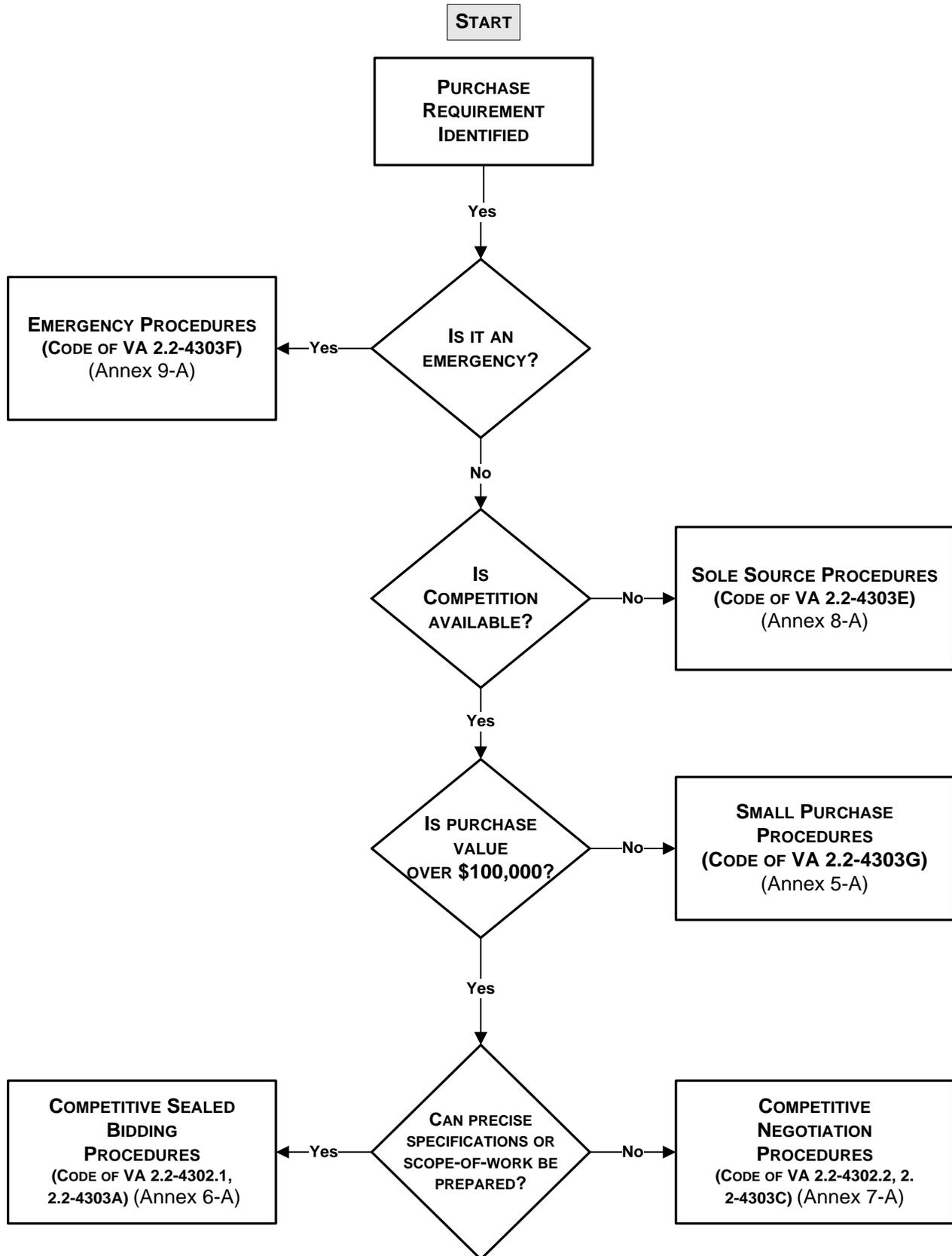
- a. Public Auction: Upon a determination made in advance by a public body and set forth in writing that the purchase of non-technology goods, products or commodities from a public auction sale is in the best interests of the public; such items may be purchased at the auction. The writing shall document the basis for this determination. (*Code of Virginia*, § 2.2-4303.I).
 1. Public auctioning (non-electronic) may be used up to the Agency's delegated authority.
 2. Participation in online public auctions is not permitted.
 3. Set-aside for DSBSD-certified small businesses unless exempted (see 3.10 g). The procurement file shall be documented if the procurement does not qualify for a set-aside.

- b. Reverse Auctioning: The purchase of non-technology goods or nonprofessional services may be made by utilizing the Reverse Auctioning tool available in eVA. However, construction, professional services, or the bulk purchases of commodities used in road and highway construction in maintenance, and aggregates shall not be made by reverse auctioning (*Code of Virginia*, § 2.2-4303.J).
 1. Reverse auctioning should be used for goods or services that can be easily described and specified, with definable quantities and when an adequate number of vendors can be expected to respond. 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.
 2. Reverse auctioning should not be used for highly technical or complex solicitations, when prequalification is necessary, for solicitations with multiple attachments, for emergency procurements. Any appropriate Special Terms and Conditions must be stated in or attached to the reverse auction.
 3. Agencies are authorized to conduct reverse auctions up to the agency's delegated authority using Reverse Auctioning tools in eVA.
 4. Procurements under \$100,000 shall be Set-aside accordance with the Small Business Enhancement Award Priority, unless exempted.
 5. eVA VBO advertising is required. The use of the eVA Reverse Auctioning tool meets the eVA VBO posting requirement
 6. The reverse auction shall be open for the period of time stated, but must be open for at least three (3) business days (24 business hours). A reasonable amount of time should be allowed for vendors to respond based on the nature of the procurement. The closing time may not be extended and shall be set to close during eVA Customer Care's normal business hours, in order for vendors to have access to support if needed.
 7. Awards shall only be made on grand total basis
 8. Receipt of Bids – Only eVA registered vendors can participate. Paper responses are not allowed. A bidder must participate electronically.

Annex 3-A

PROCUREMENT METHODS FLOWCHART

Commonwealth public procurement process - Basic decisions and procedures



Annex 3-B
Summary of Procurement Thresholds and Associated Small Business Enhancements Policies

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

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

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

Threshold	Procedures
Over \$100,000; may be used for lesser amounts. →	<p>If used for purchases \$100,000 or less it shall be set-aside unless documented (3.10). The Solicitation shall include a tiered award clause as specified in Special Term and Condition 2.L or 2.M, and follow procedures described in Chapters 6, or 7, as applicable.</p> <p>Procurements over \$100,000 shall include a Prime Contractor Small Business Subcontracting Plan unless documented (3.10h).</p> <p>Use one of the following methods for purchases over \$100,000 unless an exception (see III. below).</p> <ol style="list-style-type: none"> 1 - Competitive sealed bidding. 2 - Two-step competitive sealed bidding. 3 - Competitive negotiation. A written justification is required. <p>Public posting on eVA VBO is required. Requests for Proposal also required to be advertised in a newspaper.</p>

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

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

Annex 3-C and D (Deleted)

Annex 3-E

Bond Documentation Review Checklist

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

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

COMMONWEALTH OF VIRGINIA
SALES AND USE TAX CERTIFICATE OF EXEMPTION

(For use by the Commonwealth of Virginia, a political subdivision
of the Commonwealth of Virginia, or the United States)

To: _____ Date _____, 20____
(Name of Dealer)

(Number and street or rural route) (City, town, or post office) (State and ZIP Code)

The Virginia Retail Sales and Use Tax Act provides that the Virginia Sales and Use Tax shall not apply to tangible personal property for use of consumption by this State, any political subdivision of this State, or the United States. (This exemption does not apply to sales or leases to privately owned financial and other privately owned corporations chartered by the United States.)

The undersigned, for and on behalf of the governmental agency named below, hereby certifies that all tangible personal property purchased or leased from the above dealer on and after this date will be for use or consumption by a governmental agency, that each such purchase or lease will be supported by the required official purchase order, and that such tangible personal property will be paid for out of public funds: (Check proper box below.)

- 1. Tangible personal property for use or consumption by the Commonwealth of Virginia.
- 2. Tangible personal property for use or consumption by a political subdivision of the Commonwealth of Virginia.
- 3. Tangible personal property for use or consumption by the United States.

(Name of governmental agency)

(Number and street or rural route) (City, town, or post office) (State) (ZIP Code)

I certify that I am authorized to sign this Certificate of Exemption and that, to the best of my knowledge and belief, it is true and correct, made in good faith, pursuant to the Virginia Retail Sales and Use Tax Act.

By _____
(Signature) (Title)

Information for dealer. -- A dealer is required to have on file only one Certificate of Exemption properly executed by the governmental agency buying or leasing tax exempt tangible personal property under this Certificate.

**COMMONWEALTH OF VIRGINIA
STANDARD BID BOND FOR NON-CONSTRUCTION**

KNOW ALL MEN BY THESE PRESENTS:

That _____ (“Principal”)
(insert legal name of the contractor – should match name on contract)

whose principal place of business is _____,
(insert street address)

and _____ (“Surety”), whose principal place of business is
_____, are held
(insert street address)

and firmly bound unto the Commonwealth of Virginia, _____
(name of agency or institution)

(“Obligee”), in the amount of _____% of the total bid by Principal (the Bid Guarantee) for the payment whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, in response to IFB No. _____, Principal has submitted a bid to Obligee dated _____, 200__ for _____ (the “Bid”),
(insert brief description of bid)

which Bid is by reference expressly made a part hereof;

NOW THEREFORE, THE CONDITION OF THIS OBLIGATION is as follows: This Bid Bond shall guarantee that the Principal will not withdraw his Bid during the period of _____ days following the opening of the bids; that if his Bid is accepted, Principal will enter into a formal contract with the Obligee in accordance with the Invitation for Bids; that Principal will submit a properly executed and authorized Standard Performance Bond and a Standard Labor and Material Payment Bond in a form matching those included in the Invitation for Bids; and that in the event of the withdrawal of the Bid within the said period, or failure to enter into a contract and give said bonds within ten days after Principal has received notice of acceptance of his Bid, Principal and Surety shall jointly and severally be liable to the Obligee for the difference between the amount specified in the Bid and such larger amount for which the Obligee may contract with another party to perform the work covered by the Bid, up to the amount of the Bid Guarantee. This amount represents the damage to the Obligee on account of the default of the Principal in any particular thereof.

The Surety represents to the Principal and the Obligee that it is legally authorized to provide these services in the Commonwealth of Virginia.

This Bid Bond shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect hereto shall be brought in the courts of the Commonwealth.

Signed and sealed this ___ day of _____, 20__.

_____(SEAL)

Principal

By: _____

Title: _____

Witness

_____(SEAL)

Surety

By: _____

Attorney-in-Fact

Typed Name: _____

AFFIDAVIT AND ACKNOWLEDGEMENT OF ATTORNEY-IN-FACT

COMMONWEALTH/STATE OF _____

CITY/COUNTY OF _____

I, the undersigned notary public, hereby certify that _____, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is signed to the foregoing bid bond in the amount of ___% of the total bid amount, which is dated _____, 200__ and which names the Commonwealth of Virginia, _____ as Obligee, personally appeared before me today in the above jurisdiction and, being duly sworn, stated that s/he is the attorney-in-fact of _____, a _____ corporation which is the Surety in the foregoing bond, that s/he is duly authorized to execute on the above Surety's behalf the foregoing bond pursuant to the power of attorney that is dated _____ and attached hereto, and that on behalf of the above Surety, s/he executed the foregoing bond and acknowledged the foregoing bond before me as the above Surety's act and deed. S/he has further stated under oath before me at this same time and place that the attached power of attorney has not been revoked and that s/he has not and had not, at the time of signing and delivering the bond or doing any other act pursuant to the power of attorney, received actual knowledge or actual notice of the revocation or termination of the power of attorney, by death, disability or otherwise, or notice of any facts indicating the same.

Given under my hand this ___ day of _____, 20__.

_____(SEAL)

Notary Public

Print name: _____

My commission expires: _____

APPROVED AS TO FORM

Assistant Attorney General

Date

**COMMONWEALTH OF VIRGINIA
STANDARD LABOR AND MATERIAL PAYMENT BOND FOR NON-CONSTRUCTION**

This bond is issued simultaneously with a Performance Bond in favor of the Obligee, conditioned on the full and faithful performance of the contract.

KNOW ALL MEN BY THESE PRESENTS: That _____

(Insert full name or legal title of Contractor and address)

as Principal, and _____
(Insert full legal title of the Surety)

as Surety, are held and firmly bound unto the Commonwealth of Virginia

(name of the Agency or Institution of the Commonwealth)

as Obligee, in the amount of _____ Dollars \$_____, for the payment whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns jointly and severally, firmly by these presents.

WHEREAS,

Principal has by written agreement dated _____ 20__, entered into a contract with _____ for _____

_____ which contract (the "Contract") is by references expressly made a part hereof.

NOW THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if Principal shall promptly make payment to all claimants as hereinafter defined, for labor performed and material furnished in the prosecution of the work provided for in the Contract, then this obligation shall be void; otherwise it shall remain in full force and effect, subject however, to the following conditions.

The Principal and Surety hereby jointly and severally agree as follows:

1. A claimant is defined as one having a direct Contract with the Principal or with a subcontractor of the Principal for labor, material, or both for use in the performance of the Contract. A "subcontractor" of the Principal, for the purposes of this bond only, includes not only those subcontractors having a direct contractual relationship with the Principal, but also any other contractor who undertakes to participate in the work which the Principal is to perform under the aforesaid Contract, whether there are one or more intervening subcontractors contractually positioned between it and the Principal (for example, a subcontractor). "Labor" and "material" shall include but not be limited to, public utility services and reasonable rentals of equipment, but only for periods when the equipment rented is actually used at the work site.
2. Subject to the provisions of paragraph 3, any claimant, who has performed labor or furnished material in accordance with the Contract documents in the prosecution of the work provided in the Contract, who has not been paid in full therefore before the expiration of ninety (90) days after the day on which such claimant performed the last of such labor or furnished the last of such materials for which he claims payment, may bring an action on this bond to recover any amount due him for such labor or material, and may prosecute such action to final judgment and have execution on the judgment. The Obligee need not be a party to such action and shall not be liable for the payment of any costs or expenses of any such suit.
3. Any claimant who has a direct contractual relationship with any subcontractor of the Principal from whom the Principal has not required a subcontractor payment bond, but who has no contractual relationship, express or implied, with the Principal, may bring an action on this bond only if he has given written notice to the Principal within one hundred eighty (180) days from the day on which the claimant performed the

last of the labor or furnished the last of the materials for which he claims payment, stating with substantial accuracy the amount claimed and the name of the person for whom the work was performed or to whom the material as furnished. Notice to the Principal shall be served by registered or certified mail "Return Receipt Requested," postage prepaid, in an envelope addressed to the Principal at any place where his office is regularly maintained for the transaction of business. Claims for sums withheld as retainages with respect to labor performed or materials furnished shall not be subject to the time limitations stated in this paragraph 3.

4. No suit or action shall be commenced hereunder by any claimant:
 - a. Unless brought within one year after the day on which the person bringing such action last performed labor or last furnished or supplied materials, it being understood, however, that if any limitation embodied in this bond is prohibited by any law controlling the construction hereof, the limitation embodied within this bond shall be deemed to be amended as to be equal to the minimum period of limitation permitted by such law.
 - b. Other than in a Virginia court of competent jurisdiction, with venue as provided by statute, or in the United States District Court for the district in which the project, or any part thereof is situated.
5. The amount of this shall be reduced by and to the extent of any payment or payments made in good faith hereunder.

Signed and sealed this ____ day of _____, 20__.

Witness

_____(SEAL)

Principal

By: _____

Title: _____

_____(SEAL)

Surety

By: _____

Attorney-in-Fact

Typed Name: _____

COMMONWEALTH/STATE (strike one) OF _____

CITY/COUNTY (strike one) OF _____

I, the undersigned notary public, hereby certify that _____, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is signed to the foregoing payment bond in the sum of _____, which is dated _____ and which names the Commonwealth of Virginia, _____ as Obligee, personally appeared before me today in the above jurisdiction and, being duly sworn, stated that s/he is the attorney-in-fact of _____, a _____ corporation which is the Surety in the foregoing bond, that s/he is duly authorized to execute on the above Surety's behalf the foregoing bond pursuant to the power of attorney that is dated _____ and attached hereto, and that on behalf of the above Surety, s/he executed the foregoing bond and acknowledged the foregoing bond before me as the above Surety's act and deed. S/he has further stated under oath before me at this same time and place that the attached power of attorney has not been revoked and that s/he has not and had not, at the time of signing and delivering the bond or doing any other act pursuant to the power of attorney, received actual knowledge or actual notice of the revocation or termination of the power of attorney, by death, disability or otherwise, or notice of any facts indicating the same.

Given under my hand this __ day of _____, 20__.

_____(SEAL)
Notary Public

My name (printed) is:

My commission expires:

APPROVED AS TO FORM

Assistant Attorney General Date

COMMONWEALTH OF VIRGINIA
STANDARD PERFORMANCE BOND FOR NON-CONSTRUCTION

KNOW ALL MEN BY THESE PRESENTS: That _____, the Contractor ("Principal") whose principal place of business is located at _____, and _____ ("Surety"), whose address for delivery of notices is located at _____, are held and firmly bound unto the Commonwealth of Virginia, _____ ("Obligee"), in the amount of _____ dollars (\$ _____) (the "Bonded Sum") for the payment whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal has by written agreement dated _____ entered into Contract No. _____ with Obligee for _____, which contract (the "Contract") is by reference expressly made a part hereof;

NOW THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if the Principal shall promptly and faithfully perform all its obligations under said Contract in strict conformity with the plans, specifications and conditions of the Contract during the time specified in the Contract and any extensions thereof as may be granted by the Obligee with or without notice to Surety, and shall also promptly and faithfully perform all requirements of any amendment to the Contract made as provided in the Contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

Any amendments which may be made in the terms of the Contract, or in the work to be done under it, or the giving by the Obligee of any extension of time for the performance of the Contract, or any other amendments, extensions or forbearance on the part of either or both of the Obligee or the Principal to the other shall not in any way release the Principal and the Surety, or either of them, their heirs, executors, administrators, successors or assigns from their liability hereunder, notice to the Surety of any such amendment, extension, or forbearance being hereby waived.

Whenever the Principal is in breach of the Contract and the Obligee has given Surety written notice of such breach and written demand for Surety to act under this paragraph, the Surety shall contact the Obligee in writing and arrange an in-person or telephone conference to be held with Obligee within ten days of such written demand to discuss methods of remedying the breach. Within forty days after such written demand, the Surety shall take one of the following actions: (1) fully remedy the breach; (2) unconditionally pay the Bonded Sum to the Obligee; (3) if acceptable to Obligee (in Obligee's sole discretion), enter into a written takeover agreement with Obligee by which Surety (through specified agents or independent contractors) undertakes to perform all of Principal's obligations under the Contract and pay all damages for which Principal is liable under the Contract; or (4) agree to pay Obligee all amounts (not exceeding the Bonded Sum) by which Obligee is damaged as a result of Principal's breach, as such damages are or were incurred, including without limitation, the net cost of obtaining some or all of the Contract performance from an alternative source through the Public Procurement Act or other legally available procedure, plus all damages resulting from the nonperformance or from the delay between the Contract deadline(s) and the actual completion of the Contract performance.

The time required for the above conference or to complete the above actions shall not toll any Contract deadlines or operate as a waiver of any of the Obligee's rights under the Contract or under this Performance Bond. If Surety fails to take one of the four specified actions within forty days after such written demand, Surety shall, within such time, provide Obligee with a written statement of any basis upon which it denies obligation to take such action, and at any time after such forty day period, Obligee may proceed to complete the work in any reasonable manner without further notice to Surety and recover from Surety (up to the Bonded Sum) the damages caused by Principal's breach.

No action shall be brought on this bond unless brought within one year after (a) completion of the Contract, including the expiration of all warranties and guarantees, or (b) discovery of the defect or breach of warranty that gave rise to the action. No other delay by Obligee in exercising rights under this bond shall operate as a waiver of such rights. The validity,

interpretation, and enforcement of this Bond shall be governed in all respects by Virginia law. Any suit in connection with this Bond shall be brought solely in the appropriate circuit court of the Commonwealth of Virginia.

Signed and sealed this ___ day of _____, 20__.

_____(SEAL)

Principal

By

Title: _____

Witness

_____(SEAL)

Surety

By: _____

Attorney-in-Fact

Typed Name: _____

AFFIDAVIT AND ACKNOWLEDGEMENT OF ATTORNEY-IN-FACT

COMMONWEALTH/STATE (strike one) OF _____

CITY/COUNTY (strike one) OF _____

I, the undersigned notary public, hereby certify that _____, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is signed to the foregoing performance bond in the sum of _____, which is dated _____ and which names the Commonwealth of Virginia, _____ as Obligee, personally appeared before me today in the above jurisdiction and, being duly sworn, stated that s/he is the attorney-in-fact of _____, a _____ corporation which is the Surety in the foregoing bond, that s/he is duly authorized to execute on the above Surety's behalf the foregoing bond pursuant to the power of attorney that is dated _____ and attached hereto, and that on behalf of the above Surety, s/he executed the foregoing bond and acknowledged the foregoing bond before me as the above Surety's act and deed. S/he has further stated under oath before me at this same time and place that the attached power of attorney has not been revoked and that s/he has not and had not, at the time of signing and delivering the bond or doing any other act pursuant to the power of attorney, received actual knowledge or actual notice of the revocation or termination of the power of attorney, by death, disability or otherwise, or notice of any facts indicating the same.

Given under my hand this ___ day of _____, 20__.

_____(SEAL)

Notary Public

My name (printed) is:

My commission expires:

APPROVED AS TO FORM:

Assistant Attorney General Date

Annex 3-J
CERTIFICATION OF COMPLIANCE
WITH PROHIBITION OF POLITICAL CONTRIBUTIONS AND GIFTS DURING THE
PROCUREMENT PROCESS

For contracts with a stated or expected value of \$5 million or more except those awarded as the result of competitive sealed bidding

I, _____, a representative of _____,
Please Print Name *Name of Bidder/Offeror*

am submitting a bid/proposal to _____ in response to
Name of Agency/Institution

_____, a solicitation where stated or expected contract value is
Solicitation/Contract #

\$5 million or more which is being solicited by a method of procurement other than competitive sealed bidding as defined in § 2.2-4301 of the *Code of Virginia*.

I hereby certify the following statements to be true with respect to the provisions of §2.2-4376.1 of the *Code of Virginia*. I further state that I have the authority to make the following representation on behalf of myself and the business entity:

1. The bidder/offeror shall not 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/proposal and the award of the contract.
2. No individual who is an officer or director of the bidder/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/proposal and the award of the contract.
3. I understand that any person who violates § 2.2-4376.1 of the *Code of Virginia* shall be subject to a civil penalty of \$500 or up to two times the amount of the contribution or gift, whichever is greater.

Signature

Title

Date

Annex 3-K

Example RFP Newspaper Advertisement

Request for Proposals

Agency: Agency Name

RFP: 1234

Title: Food Services

Closing Date/Time: Aug 1, 2013 2:00/EST

More Info: www.eva.virginia.gov