

CHAPTER 4

GENERAL PROCUREMENT GUIDELINES & PLANNING

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1. **General.** This chapter contains general guidelines and suggestions when procuring goods, services, printing, and non-capital outlay construction. In some cases, these guidelines expand upon requirements that have their basis in the *Virginia Public Procurement Act (VPPA)*. Their intent is to assist purchasers in conforming to generally acceptable procurement principles, yet provide maximum interpretive latitude in their application.

4.1 **Lead-Time.**

- a. **Administrative Lead-Time.** Administrative lead-time is that period of time from initiation of the requirement by the user to issuance of an award. For routine procurements where informal written solicitations are used, the minimum time required to prepare, solicit, evaluate, and make an award may take from three (3) days up to thirty (30) days. When competitive sealed bidding or competitive negotiation is used, the time required by the purchasing office may be longer. It is important that agency purchasing personnel continue to emphasize to their requisitioners that this time period should be included in their planning.
- b. **Order/Ship Time (OST).** Order/Ship Time is the time after award required by suppliers to fill an order and ship by designated means (truck, rail, or air) to the delivery point. These times vary widely by industry. Consideration should be given to market conditions which will affect delivery. Except for the most routine of expendable supplies, e.g., off-the-shelf items, a range of 30-90 days should be estimated in determining the OST. Custom made and complex items of equipment normally take longer to obtain.

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

4.3 **Preparing the Written Solicitation.**

- a. **General.** Solicitations should convey to the reader, in a clear, concise and logical sequence, the information necessary to answer the basic questions of who, what, why, where, when and how. The *Code of Virginia*, § 2.2-4343.1D requires public bodies to prominently display a nondiscrimination statement concerning faith-based organizations in all Invitation for Bids (IFB), Request for Proposals (RFP), contracts, and purchase orders. The following statement must be prominently displayed on the cover page of every IFB or RFP:

Note: This public body does not discriminate against faith-based organizations in accordance with the Code of Virginia, § 2.2-4343.1 or against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.

- b. **Terms and Conditions.** Terms and conditions must be in writing, be clear and concise, and express the intent of the agency. Generally, if there is an ambiguity in a written contract that results in a dispute, its resolution will be against the party who wrote the contract. General Terms and Conditions shall be a part of every written solicitation issued by all agencies for goods and services (see Appendix B, Section I). Exceptions to the use of the terms and conditions in Appendix B, section I must be approved by the agency's legal advisor. Special Conditions can be found in sections II, III and IV of Appendix B. Some of the Special Conditions are mandatory whereas others are to be used at the buyer's discretion in IFBs and RFPs as the individual procurement may dictate. Information and assistance in the preparation or use of additional special terms and conditions not contained in this manual can be obtained by contacting the appropriate DGS/DPS official for the goods, or services (see Directory of Procurement Assistance, Annex 13-C). Unless the agency has provided for prequalification of bidders, the solicitation shall include a statement of any requisite qualifications. Such qualifications must be verifiable and must be used in determining responsiveness of bids and in evaluating proposals (see IFB Solicitation and File Checklist, Annex 6-D and RFP Solicitation and File Checklist, Annex 7-E).
- c. **Contract Period.** Term contracts normally cover a 12-month period or cite a specific time for completion for the project or service. A solicitation for a multi-year contract, or one that includes an option on the part of the

state to renew the contract for an additional period, may be advantageous and should be considered; however, in determining the value of the contract and procurement method, all possible renewal periods must be included. Multi-year programs are subject to availability of funds, and each solicitation covering a multi-year period must contain an availability of funds clause (see Appendix B, Section I) and reference to the *Vendors Manual*. If price adjustments are to be permitted during the contract period, the conditions under which they are authorized must be specified in the original solicitation and resulting contract. Agencies should review all multi-year contracts at least annually to determine if the goods or services are still required, if prices are fair and reasonable based on the current market conditions, and if performance is satisfactory. Multi-year contracts including options to renew normally should not exceed 5 years.

d. **Types of Contracts.** Listed below are some various types of contracts.

(1) **Fixed Price Contracts.**

- (a) **Firm Fixed Price.** Fixed pricing agreement where firm unit or total prices are established at the time of order placement or contract award for the goods or services. A fixed price contract may result from bidding or negotiation processes. Specifications are clear. Costs are predictable. There is minimal risk to the purchasing activity when firm fixed price contracting is used. This type of contract encourages efficient performance and is least costly to administer. Financial requirements are known. The use of firm fixed price contracting may be inappropriate if requirements or specifications are unclear or indefinite.
- (b) **Fixed Price with Escalation/De-escalation.** This fixed price agreement provides for price adjustments, up or down if specified contingencies occur. This type of contracting may result from bidding or negotiation processes. It is used to eliminate fluctuations in vendor's prices due to unstable markets. The contract period is typically over a long period of time. The use of fixed price contracts with escalation/de-escalation reduces the need for contractors to inflate cost of goods to offset unstable markets or economic conditions. The risk is partially transferred to the buyer. Costs are increased through greater contract administration efforts that are required by this type of contracting.

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- (2) **Requirements-Type Contracts.** Requirements-Type contracts are agreements for performance over a specified period of time, when quantities are indefinite. They have no fixed total dollar amount; rather, they are unit price based. They establish a framework under which goods/services are provided, but it is the degree of purchase order activity against the contract that will ultimately determine its total value. Effective administration of these open-ended agreements requires that the agency maintain some record of the degree of activity against these contracts. Purchasing must, either manually or through an automated system, have some means to capture, analyze, and report usage information. Purchase order activity must be periodically reviewed for compliance with the terms of the agreement. Contract expenditure activity should always be examined prior to the exercise of any renewal provision or re-solicitation. These contracts are generally used when conducting joint procurements and the need for close administration becomes even greater (see 10.21).

- (3) **Time and Materials Contracts (T&M).** The agreement for supplies or services is on the basis of billable hours, which include overhead, profit, and materials at cost. Details of the work are known but the scope of the work is not known. T&M contracts are suitable for maintenance, design, engineering, emergencies, etc. Competition is sought on the basis of labor-hour rate. These contracts may be expensive to administer. Whenever an agency or institution uses a cost-reimbursement agreement such as T&M to acquire needed goods/services, it is essential that billed costs be analyzed (and challenged when appropriate) prior to their approval for payment. Because there is usually no incentive for contractors to contain costs, agencies have an obligation to verify the legitimacy and accuracy of any costs submitted for reimbursement.

When a time and materials agreement is used, agencies must request a detailed job estimate which should include the amount and type of contract labor with associated rates and itemized material costs to allow evaluation of the reasonableness of its cost elements before authorizing the work to be performed. If it is determined that the estimate is not reasonable or in accordance with the terms of the contract, negotiation or the solicitation of additional estimates should be considered (see 10.22).

- (4) **Construction-Type Contracts.** Procurement and administration of construction services requires the planning and use of special procedures. Section 4.24 provides specific guidance.

- (5) **Blanket Purchase Agreements (BPA).** Blanket purchase agreements are contractual relationships which may be entered into with local vendors to obtain small dollar value, expendable operating supplies or services (less than the single quote limit) for which low or erratic demand usage exists. Use of these should be discouraged as the Commonwealth has a far more comprehensive program, with the Small Purchase Charge Card Program. For further guidance on BPAs see 5.10.
 - (6) **Cost Plus a Percentage of Cost.** 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. This contract permits a contractor to be paid for all costs plus a percentage of the cost. There is no incentive for the contractor to be cost conscious because the greater the cost, the greater the profit.
 - (7) **Cost-Plus-A-Fixed-Fee.** A cost-plus-a-fixed-fee contract is a cost-reimbursement type contract that provides for the payment of allowable costs plus a firm fixed fee to the contractor which is negotiated prior to contract award. The fixed fee, once negotiated, does not vary with the actual cost but may be adjusted as a result of any subsequent changes which may be negotiated in the scope of work or services to be performed under the contract. The scope of work is generally vague or specifications are indefinite. It accelerates procurement of new technologies. This contract is costly to administer. There are no incentives to reduce costs.
 - (8) **Incentive.** A fixed price is agreed upon with a target cost/profit, a ceiling price, and a profit formula. Below target, the contractor and state share savings. Above ceiling, the contractor must assume all costs. This is used for competitively negotiated contracts for high cost, long lead-time projects. The contractor's incentive is greater profit by improving performance to control costs. It promotes performance efficiency. The agency may save in costs savings. This type of contracting requires a good accounting system. It increases administrative burden to both parties. The target price may be difficult to establish. The agency assumes a portion of the risk.
- e. **Prebid or Preproposal Conferences.** Conference or site visits early in the solicitation cycle provide an opportunity to emphasize and clarify critical aspects of solicitations, eliminate ambiguities or misunderstandings, and permit vendor input. Conferences/site visits shall be conducted with potential bidders or offerors when issuing solicitations for complex, large (over \$100,000) or critical requirements. This requirement may be waived by an agency procuring under its authority upon written approval of the head of the agency or his or her designee. A waiver is normally granted only when the procurement is routine, and past procurements have shown no problems. Attendance at conferences or site visits may be either optional or mandatory. The issuing agency may permit attendance through teleconferencing or videoconferencing for optional prebid/preproposal conferences. When mandatory attendance is stipulated in the solicitation, an attendance roster is signed by the attendees and only bids or proposals from those firms represented at the conference or visiting the site will be accepted. Agencies should carefully consider whether it is absolutely necessary that bidders or offerors attend in order to understand the solicitation and submit a response to it. Such mandatory conferences and site visits can reduce competition because of vendor scheduling conflicts. In addition, no such conference or site visit can be scheduled less than ten full calendar days from the date the solicitation is issued and public notice requirements are completed. (A sample clause is in Appendix B, Section II.) Prebid or preproposal conferences scheduled during a period of suspended State business operations must be rescheduled by the purchasing agency to a date and time that will permit proper notification to all potentially interested participants. If a modification to the solicitation is required as a result of the conference or site visit, an addendum must be issued. Specific points to be considered when conducting these conferences or site visits are contained in Annex 6-E.
- f. **Response Time.** When establishing an opening date and time, buyers should allow for holiday mail disruptions and erratic mail deliveries as well as vendor's time required to respond to complex procurements. The sealed bid or proposal opening date shall be no less than ten (10) days after the scheduled prebid or preproposal conference. If the tenth calendar day falls on a weekend or holiday, the bid or proposal due date shall be no sooner than the first regular business day thereafter. The fact that an agency or institution is open on a weekend or official holiday does not affect these rules (see also 6.2d, 7.2e & h).
- g. **Acceptance Period.** Bids are valid for a minimum of 30 days unless a longer period of time is specified in the solicitation or in the bid response. (See *Vendors Manual*, 6.2). The Bid Acceptance Period clause in Appendix B should be used if it is anticipated that the review and evaluation period will exceed 30 days or the time period stated in the solicitation.

- h. **Public Posting of Solicitations.** Agencies shall designate a specific place available to the public used for the purpose of publicly posting solicitations (see 3.18).

4.4 **Specifications.** Specifications can either enhance or inhibit competition (see definition, Appendix A). It is the state's policy that competition be sought to the maximum feasible degree. This can be accomplished by describing goods or services in a manner which meets the agency's needs and encourages competition. Unless otherwise expressly stated in the solicitation, all supplies and equipment furnished must be new and in first class condition. Demonstration, previously rented, or reconditioned items are not considered new. The following specification (descriptive) categories are listed in the preferred order of use:

- a. **Generic (Performance and Design).** Buyers should analyze incoming requirements with a view towards soliciting the requirement on a generic specification basis. Under appropriate circumstances, performance specifications (setting forth the performance requirements), design specifications (setting forth the essential characteristics of the items solicited), or a qualified products list (QPL) may be used.
- b. **Brand Name or Equivalent.** When it is determined to be impractical to develop a generic specification, a brand name may be used to convey the general style, type, character and quality of the article desired. Unless otherwise provided in the IFB the name of a certain brand, make or manufacturer does not restrict bidders to the specific brand or manufacturer named. Any article which the state, in its sole discretion, determines to be the equivalent of that specified, considering quality, workmanship, economy of operation and suitability for the purpose intended, shall be accepted (*Code of Virginia*, § 2.2-4315). When brand or manufacturers' names are specified, and one or more of these are known to be Virginia brands or manufacturers, those known to be Virginian shall be listed first prior to listing non-Virginia brands or firms. When a brand name or equivalent specification is used, salient characteristics should be listed.
- c. **Proprietary.** A proprietary specification restricts the acceptable products to those of one or more specified manufacturers. It is appropriate to use a proprietary specification when the desired product must be compatible with or is an integral component of existing equipment or products, or where prequalification of products is necessary to support specific needs of a program; is covered by a patent or copyright; must yield absolute continuity of results; or is one with which a user has had extensive training and experience, and the use of any other similar piece of equipment would require considerable reorientation and training. Upon solicitation, every effort must be made to obtain full competition among the distributors which carry the manufacturer's product. The determination for the use of a proprietary specification shall be made in advance, in writing, and be included in the procurement file.
- d. **Vendor Assistance in Specification Preparation.** Advice or assistance may be received from a vendor in identifying the features and characteristics needed by the agency; however, no person who, for compensation, prepares an Invitation to Bid or Request for Proposal for or on behalf of a public body shall (i) submit a bid or proposal for that procurement or any portion thereof or (ii) disclose to any bidder or offeror information concerning the procurement which is not available to the public. However, a public body may permit such person to submit a bid or proposal for that procurement or any portion thereof if the public body determines that the exclusion of such person would limit the number of potential qualified bidders or offerors in a manner contrary to the best interests of the public body (*Code of Virginia*, § 2.2-4373). The provisions of this act shall not affect the validity of any procurement contract entered into prior to July 1, 1997. This does not prohibit agencies and vendors from freely exchanging information concerning what is sought to be procured and what is offered. The name of the vendor(s) providing assistance must be submitted with the requisition to the purchasing office. Such information is helpful to the buyer when identifying restrictive or proprietary features which could be challenged by other bidders or offerors causing delays and/or cancellations (see 2.5, 3.16b).

4.5 **Qualified Products Lists (QPL) or Qualified Contractor's Lists (QCL).** It is sometimes necessary to prequalify products or suppliers and only solicit those who have been prequalified. In such cases, a list is maintained of specific products (QPL) or contractors (QCL) which have been evaluated and determined to be acceptable in meeting predetermined minimum acceptable levels of quality or performance (*Code of Virginia*, § 2.2-4317). This qualification is performed in advance of any particular purchase program. By having a prequalification procedure, the time in the purchase cycle can be reduced. The qualification requirements must be established and potential contractors advised by letter and/or public posting sufficiently in advance of the anticipated procurement to allow for evaluation and qualification of potential contractors and/or products. A contractor whose product or service has been determined not qualified will be advised in writing. Solicitations are only sent to those contractors determined to be qualified. Agencies and institutions shall deny prequalification to contractors failing to register and participate in E-Verify (effective 12/01/2013) (*Code of Virginia*, § § 2.2-4317 and 2.2-4308.2). Information on prequalified products or contractors may be obtained by calling the DGS/DPS Specification Section at 804-786-1601.

- 4.6 **Computer Hardware-Site Preparation.** In the acquisition of computer hardware, the requesting agency is responsible for ensuring that all site and environmental requirements, such as cabling, space, electrical and temperature specifications, load-bearing capabilities and elevator capacities, can be satisfied prior to issuance of a delivery order. For agencies located in the Richmond metropolitan area in state-owned buildings under the jurisdiction of the Division of Engineering and Buildings (DEB) of the Department of General Services, coordination with DEB is required, including compliance with its regulations applicable to the use of such buildings. With respect to any hardware installation that the requesting agency anticipates will require modifications to a building under the jurisdiction of DEB, the agency shall certify in writing that it has advised DEB of any anticipated building modification requirements in accordance with applicable rules and regulations at DEB.
- 4.7 **Prompt Payment Discounts.** Prompt payment discounts should normally not be considered in determining the lowest responsive bidder. If a bidder does offer a discount for prompt payment, this will not be considered in evaluation, but should be included on the purchase order, and the discount taken if invoices are processed and payment made within the stipulated time frame. If an agency knows that it can regularly process payments within a prescribed time frame, such as 10 or 20 days, and wishes to consider cash discounts in its evaluation, then it may do so by including a statement such as “discounts for prompt payment within ____ (state number of days, e.g., 10, 20, etc.) days will be considered in determining net low bid.”
- 4.8 **Advance Payments.** Advance payments may become necessary for certain purchases. Prior to establishing contract advance payment conditions, agencies should consult the Department of Accounts, *Commonwealth Accounting Policies and Procedures Manual (CAPP)*, Section Number 20300, *CAPP* Topic Number 20310 on Special Expenditure Processing Policies for guidance and restrictions.
- 4.9 **Commodity Codes.**
- a. **Goods.** Commodity codes are listed in the *DGS/DPS Commodity Class and Item Book for Goods and Services*, revised January 2001. Requisitions sent to DGS/DPS shall have a five (5) digit commodity code for each line item listed. Requisitions received by DGS/DPS without the proper commodity code will be returned to the originating agency for correction. As future updates are anticipated for this commodity code classification system, agencies and institutions should ensure the listing they use is the most recent available by periodically checking the DGS/DPS web site.
 - b. **Services.** Solicitations (IFB/RFP) and contracts for services should include the appropriate five (5) digit service commodity code.
- 4.10 **Price Reasonableness Determination.** A written price reasonableness determination is required to determine if prices bid or offered are fair and reasonable when:
- a. competition is restricted or lacking,
 - b. the prices offered do not appear to be fair and reasonable,
 - a. Deleted

This also applies for any sole source purchase, single response purchase, contract change and contract renewal. The written determination of a fair and reasonable price requires that the price is acceptable to both the agency or institution and the bidder or offeror considering all circumstances. Circumstances include, but are not limited to, the degree of competition, market conditions, quality, location, inflation, value, technology and unique requirements of the procuring agency or institution. The written determination may be based on price analysis (comparison with prices previously paid, prices charged for functionally similar items, prices paid by other consumers, prices set forth in a public price list or commercial catalog, or state estimates) or through the analysis of price-to-unit variations, value analysis (make-or-buy study), or cost analysis. Advice and assistance can also be obtained from the appropriate buyer or contract officer at DGS/DPS. The written analysis must be supported by factual evidence in sufficient detail to demonstrate why the proposed price is deemed to be reasonable. If a determination is made that the prices offered are not fair and reasonable, then a decision has to be made whether to rebid seeking broader competition, revise specifications and rebid the requirement, or to negotiate a better price as may be identified through the price analysis process. A combination of these methods may be necessary. If it is a negotiated procurement, then the price should be negotiated to one that is fair and reasonable (see 3.1j and 7.4a).

4.11 **Order Splitting Prohibition.** The placement of multiple orders within other than a reasonable time period to one or more vendors for the same, like, or related goods or services to avoid using the appropriate method of procurement or to remain within delegated purchasing authority is prohibited. Order splitting results in higher administrative cost to the agency. It is a highly inefficient practice. Requirements should be combined when practical to obtain quantity discounts and other administrative efficiencies. Term contracts (annual or multi-year) should be considered where the anticipated cumulative annual costs for goods or services are over \$50,000 and a fixed price type contract or a unit priced requirements type contract can be awarded. In some instances, even though the annual amount is less than \$50,000, it may be advantageous to enter into a term contract and this should also be considered.

4.12 **Award Documents.** DGS/DPS requires written contracts to be issued in accordance with the provisions of Chapter 14. Every procurement transaction (except those made through the Small Purchase Charge Card Program) should originate from a requisition containing, among other information, budget details and the necessary approval authority. Agency Purchase Orders (APOs) must be prepared and given to suppliers who request a copy, regardless of dollar value. Award documents used by an agency will vary according to the method of solicitation. The award shall include or incorporate by reference the specifications, descriptions or scope of work, general conditions, special conditions and all other requirements contained in the solicitation (Invitation for Bids or Request for Proposal), together with all written modifications and the bid or proposal submitted by the contractor. The award document is to be signed and issued by an authorized official of the agency. Listed below are the types and conditions under which they are to be used.

- a. **Agency Purchase Order.** The Agency Purchase Order, DGS-41-056 or an agency's locally developed purchase order (see Annex 4-A), shall be used (other formats may be acceptable in placing orders against term contracts, especially in a direct order entry system):
- to place orders against term contracts for goods, services and printing. If items available from a term contract vendor are not on contract but are required from that vendor and the cost is \$5,000 or less, the same APO may be used to purchase both requirements.
 - as a binding commitment for one time spot purchases of goods, services and printing.
 - as a term contract for goods, services and printing issued under an agency's delegated purchasing authority using unsealed or sealed competitive bidding procedures.

The APO shall not be used to establish a line of credit with one vendor upon which a series of purchases can be made, unless a state or agency term contract has been awarded to the vendor (by use of the APO or the Notice of Award found in Annex 6-H) for the commodity being purchased (examples are bread, milk, fuel oil). The APO should not be used merely to encumber funds. Agencies and institutions using an APO generated from an automated system, (e.g., Oracle, PeopleSoft, etc.) shall also ensure that the Commonwealth's General Terms and Conditions printed on the reverse side of the APO form are provided to the contractor along with the computer-generated APO.

- b. **Notice of Award.** The Notice of Award form (see Annex 6-H) is the recommended document to be used as a unilateral award document issued to contractors to accept bids received from sealed and unsealed bid solicitations for spot purchases or term contracts. Using agencies may then place individual or standing orders against the contract using the APO form.
- c. **Standard Contracts.** A Commonwealth of Virginia Standard Contract (see Annex 7-D or 8-D as applicable) may be used as a two-party award document issued to a contractor resulting from a competitively or noncompetitively negotiated spot purchase or term contract. If the procurement was for an indefinite delivery, term type requirement, using agencies may then place individual or standing orders against the contract using the APO form. If the use of a Contractor's standard form is being considered, see 4.26.
- d. **Notice of Intent to Award.** The Notice of Intent To Award form (see Annex 6-G) is a suggested format agencies may use to officially notify the public through a public posting of their intent to issue an award. This notice is recommended for use whenever considerable bidder or offeror interest has been expressed about the potential award and/or an agency suspects an award decision may be challenged. The notice should not be posted until after completion of the evaluation. The notice shall be date stamped and publicly posted for the ten day period allowed for protest (*Code of Virginia*, § 2.2-4360). Upon expiration of the ten-day period, the appropriate award document as discussed above may be issued (see also 3.18).

4.13 **Freight.**

- a. **F.O.B. Destination.** It is the basic policy of the Commonwealth to solicit bids for goods F.O.B. (free on board) Destination, which means that freight charges are paid by the seller who owns and assumes all risk for the goods until they are accepted at the designated delivery point. The cost of shipping the goods may be included in the quoted price or by the bidder or offeror as a separate line item.
- b. **F.O.B. Origin.** Under F.O.B. Origin, the vendor will be required to select the most economical method of shipment consistent with the required delivery date, prepay the freight charge and add it to the invoice (*Vendors Manual*, 7.6). Regardless of the F.O.B. point, the Commonwealth accepts title only when goods are received (*Vendors Manual*, 7.5).
 - (1) Under F.O.B. Origin, the total cost for freight to destination, shipping and handling charges etc., shall be included in determining the lowest responsive and responsible bidder. In such cases, the buyer is required to obtain the actual or estimated cost of shipment and show the freight, shipping, and/or handling cost as a line item on the purchase document. Both the F.O.B. point and shipping cost must be clearly shown on the purchase document.
 - (2) Before approving an invoice for payment the agency should review it and compare it to the award document to determine if the shipping costs are accurate.

4.14 **Insurance.** Whenever work is to be performed on state owned or leased property or facilities, the contractor shall be required to have Workers' Compensation, Employer's Liability, Commercial General Liability and Automobile Liability, and in certain types of programs Professional Liability/Errors and Omissions insurance coverage. Requirements for the various Professional Liability/Errors and Omissions coverages are listed in Appendix B, Section I, T. The Commonwealth of Virginia must be named as an additional insured when requiring a Contractor to obtain Commercial General Liability coverage. In some cases, Workers' Compensation Insurance and Employer's Liability Insurance may not be required. Workers' Compensation insurance is required when the contractor has three (3) or more employees. If work is performed by a sole proprietor, the person does not need Workers' Compensation insurance, as they do not have employees. Employer's Liability is required if an employer has employees who are paid a wage or salary. Employer's Liability is not required for persons in business together, e.g., husband and wife, siblings or parents and children, as these persons would be considered owners not employees. For construction contracts, if any subcontractors are involved, subcontractors shall also be required to have Workers' Compensation Insurance in accordance with *Code of Virginia*, §§ 2.2-4332 and 65.2-800 et seq. Stipulated insurance must be obtained prior to commencing work and be maintained during the entire term of the contract. At a minimum, the contractor must certify to the agency that they possess the appropriate insurance coverage and documentation concerning the contractor's insurance shall be included in the procurement file. Documentation may be maintained on the Telephone Record for Services found in Annex 5-H. Certification shall be in writing when written quotes are required. The procuring office may require a certificate of insurance to be furnished prior to commencement of work and at anytime during contract performance.

4.15 **Bookstore, Commissary, Canteen, Gift Shop, and Similar Retail Outlet Purchases.** Bookstore purchases and purchases made for similar retail outlets such as those above are subject to the *VPPA* and this manual.

- a. For resale purchases, an agency may establish its own small purchase procedures, if adopted in writing, for single purchases or term contracts not expected to exceed \$100,000. Such small purchase procedures shall provide for competition wherever practicable.
- b. For bookstore small purchases, the use of manufacturers' current price lists serves the same purpose as obtaining informal quotes. The price lists used should be referenced on the order document and it is not necessary when using the price lists for the bookstore to list individual prices on the purchase order. A random sampling of invoices submitted should be conducted periodically to compare prices invoiced with informal quotes received or price lists used to ensure that they do not exceed the prices on the referenced price lists.
- c. Small purchases of like items such as pre-packaged edibles, books, magazines, novelties, paper, pens, pencils, toiletries, and wearing apparel may be purchased without competitive bidding or negotiation provided a written market survey of at least 10% of the highest use items has been conducted within the past 6 months and a determination made that the prices being paid are fair and reasonable. Competition shall be obtained when prices do not appear fair and reasonable. In establishing price reasonableness, product quality and such supplier services as merchandise stocking, merchandise returns, merchandise marking, and vendor responsiveness may be considered.

- d. For new book purchases, copyrighted books available only from their publishers, are considered “sole source procurements.” For such purchases, the following statement must be posted for each publisher annually for a period of one year on the DGS central electronic procurement website, otherwise known as eVA VBO:

“Sole Source Notice for the Purchase of Books”. Books available for purchase directly only from the publisher are hereby determined to be sole source procurements. This is an annual determination for such book purchases made during the period July 1, 20__ through June 30, 20__. The posting of this notice shall serve in lieu of newspaper publication.”

- e. For used book purchases, a want list shall be simultaneously distributed to several used book vendors and orders may be placed on a first response basis provided prices are reasonable.
- f. For purchases over \$100,000, the *Virginia Public Procurement Act* and the applicable portions of this manual shall apply.
- g. Public institutions of higher education purchases of items for resale at retail bookstores and similar retail outlets operated by such institutions are exempt from the *VPPA* and this manual (*Code of Virginia*, § 2.2 4343.A7); however, such purchase procedures shall provide for competition where practicable.
- h. Surplus (unsold) new books and used books that are no longer required must be disposed of using surplus procedures in accordance with surplus regulations (Chapter 12).

4.16 **Conference Planning.**

- a. Acquisition of the use of meeting rooms and lodging rooms in hotels or motels is considered to be short term rentals of portions of real property - real estate transactions. So long as the procurement involves only the use of the facilities, the competitive requirements of the *VPPA* and this manual do not apply. However, if the procurement includes the provision of catered meals, audio visual equipment, etc., and the value of these other included services exceeds the \$5,000 level for which competition is required, the entire procurement, including the use of the space, shall be procured as a package based on its anticipated value using procedures as stated below.
- b. For the purchase of a conference facilities package not expected to exceed \$30,000, agencies may use one of the following procedures. These procedures are alternatives to other authorized procurement procedures as described in Chapters 5, 6, 7, 8, and 9.
 - (1) Make such arrangements through their travel management contractor or through commercial conference planning agencies. In either case, such third parties act as your agent to assist in obtaining competitive written proposals from several hotels/motels that can provide the facilities, etc. Agencies frequently using commercial conference planners for this procedure should establish a competitively awarded contract for conference planning services. Agencies are also advised that travel management contractors and conference planners work on a commission basis paid by the hotels/motels with which arrangements are made on your behalf. This could result in higher overall prices in exchange for the assistance and expertise provided.
 - (2) Prepare a written description of the conference requirements and attach the General Terms and Conditions and any Special Terms and Conditions considered appropriate to the procurement. Prepare the evaluation criteria and methodology to be used in evaluating the proposals received.
 - (a) Contact at least four (4) facilities of sufficient size to handle the conference. Determine and document the availability of the desired dates and their interest in providing the services. Provide the written description of the services required.
 - (b) Visit each of these facilities, if practical. Discuss the conference requirements, their ability to meet these requirements, other related services they have to offer and obtain their proposed prices for the conference. Negotiate with each offeror until you are satisfied that you have obtained their best proposal. Obtain in writing, from each facility with whom negotiations have been held, confirmation of the services to be provided and prices.
 - (c) Upon completion of these discussions and negotiations, apply the evaluation criteria to the proposals as negotiated and determine who has presented the best proposal.
 - (d) Award the contract using the Standard Contract Form found in Annex 7-D.

- c. For purchases of conference facilities packages between \$30,000 to \$100,000, agencies shall issue a written solicitation following the guidelines in Chapter 5. For purchases of conference facilities over \$100,000, agencies shall follow the procedures prescribed for competitive sealed bidding or competitive negotiation (see Chapter 6 or Chapter 7, as applicable).
- d. In the event that only one particular hotel/motel can provide the needed facilities during the time frame in which the event is to be held, the procedures for sole source procurement shall be followed [see also 1.5b(14)].
- e. Conferences and meetings not held in state owned offices, buildings or facilities should be held at “Virginia Green” certified facilities if such use will meet the needs for the meeting, will not increase travel distances, and is not cost-prohibitive. A list of “Virginia Green” certified facilities can be found on the Virginia Department of Environmental Quality website, www.deq.virginia.gov.

4.17 **Used Equipment**

- a. Used equipment, that which has been previously owned and used, offered for sale “where is, as is” and does not include demonstration or factory rebuilt items marketed through distribution outlets, may be negotiated by agencies within their delegated authority. Complete information describing the item must be provided to the purchasing office along with the price being offered by the seller in writing. Prior to preparation of any purchase order, the purchasing office must obtain a written statement from a person who is technically knowledgeable of the type of equipment to be purchased, normally the end user, verifying the condition of the equipment, its future usefulness, and that its purchase would be in the best interest of the Commonwealth.
- b. Upon a determination in writing that the price is fair and reasonable for used equipment meeting the agency’s needs, a contract may be noncompetitively negotiated and awarded up to \$30,000 (see 1.5 b.(3)). Used equipment purchases over \$30,000 that are available from only one source, may be purchased in accordance with Chapter 8. If the cost exceeds the agency’s delegated authority, a requisition containing the above information shall be submitted to DGS/DPS for purchase.

4.18 **Rental/Lease, Installment Purchases**

- a. **Rental or Lease.** The procurement process for the rental or lease of any equipment will be handled in the same manner as the procurement of goods. Note, however, that hiring a contractor to provide equipment and personnel (operators) to perform a task is a contractual service subject to the guidance in 4.21 and 4.22. The following examples are offered to clarify the difference:
 - (1) Renting a bulldozer to be operated by state employees to perform grading work is an acquisition of goods. Hiring a contractor to use his bulldozer and operator to perform the same grading work is a contractual service.
 - (2) Renting 1,000 folding chairs to be picked up by state employees in state vehicles at the contractor’s place of business, used and returned is an acquisition of goods. Hiring a contractor to deliver, setup, remove, and haul away the same 1,000 folding chairs is a labor intensive contractual service.

The solicitation should, at a minimum, in addition to other terms and conditions, specify:

- (1) Length of time;
- (2) Number and types of equipment;
- (3) Who will provide maintenance and repair service and insurance coverage; and
- (4) Inspection at time of delivery and return.

- b. **Installment Purchase.** The procurement process for the installment purchase of any materials, equipment or supplies must be handled in the same manner as the procurement of goods. A purchase order is issued in the full amount but only encumbering the amount to be paid in the current fiscal year. The solicitation should contain an Availability of Funds provision (see Appendix B, Section I). If the purchase is being financed by a third party, the purchase order must name both the vendor and the third party, and use the third party’s address.

Installment purchases must also be made in accordance with the *CAPP* Manual, which gives a detailed discussion of the types and classification of leases and installment purchases. All solicitations for purchase of

personal property, including personal property to be fixed to realty which provides for installment purchase where payment of purchase price is deferred through installment payments, includes the payment of interest, or is otherwise financed by the seller, lessor, or third parties shall have prior approval of the Treasury Board.

Contact the Director of Debt Management, Department of the Treasury at 804-371-0341 (*Code of Virginia*, § 2.2-2417).

4.19 **Maintenance/Repair of Equipment.**

- a. **General.** Equipment is generally covered by warranty provisions for various periods of time. Care should be taken to assure that full advantage is taken of warranty provisions prior to contracting for maintenance or repair service. Where equipment is covered by insurance, i.e., boiler or machinery, the insurance carrier shall be advised, in accordance with the provisions of the policy, prior to contracting for repair.
- b. **Contracting for Equipment Maintenance.**
 - (1) Contracting for equipment maintenance falls into two basic methods:
 - (a) Full service maintenance normally requires the contractor to provide scheduled service, preventive maintenance, necessary repair parts and additional service calls as required under an annual contract at a firm fixed price. Full service maintenance contracts should be used only on an exception basis or when experience indicates that maintenance/repair on an as needed basis is not practical. In bidding on full service maintenance, contractors include in their bids the cost of all contingencies that might occur during the contract period; normally this results in higher agency costs.
 - (b) Maintenance/Repair on an as needed basis is normally provided on a time and materials cost basis. Materials and parts must be bid either at contractor's invoiced cost or on a bid percentage discount from manufacturer's published list or catalog prices. Cost plus percentage of cost (markup) is prohibited (*Code of Virginia*, § 2.2-4331). Time and materials contracts demand more effort by the receiving agency in monitoring actual hours expended, prompt identification and solution of problems, and cost control to assure the contractor's performance is not inefficient or wasteful.
 - (2) Solicitations for maintenance of equipment should identify the make, model, style, and the quantity of each type of equipment. Provisions may be made to add and/or delete equipment during the contract period on a prorated basis; also, for the loan of like equipment during extended periods of downtime. When maintenance is to be performed under contract on state-owned, leased, or rented property, the contractor shall be required to provide necessary insurance coverage (see 4.14 and Appendix B, Section II).
- c. **Contracting for Repair and Overhaul.**
 - (1) **Major Scheduled Repair/Overhaul:** In situations where major equipment items are scheduled to be repaired or overhauled, it is usually impossible to determine the amount of labor and parts required without complete disassembly of the item to inspect all of its internal parts. Contracting for major repair or overhaul work on a fixed price basis without such an inspection is impractical because it forces the bidders to base their prices on an assumed worst case basis. These situations are best handled in an Invitation for Bids requiring the work to be done in two phases. Bids are solicited for a lump sum fixed price for complete disassembly, inspection and preparation of an estimate of the costs to complete the job as the first phase. The second phase is for repair and reassembly with contractor furnished replacement parts and components, startup and operational test, all to be done on a time and materials basis. The bidders are required to bid on the basis of a labor hour rate, with an overall total (not to exceed) labor cost, and parts are to be provided at a bid percentage discount from the manufacturer's parts catalog prices. The IFB includes a bid evaluation procedure with a hypothetical number of man-hours and list price value of parts to which the discount offered will be applied. Assistance and examples of such solicitations are available from Service Contracts Section at 804-786-1601.
 - (2) **Unscheduled Repair:** Major equipment items which cannot be scheduled for repair should be handled using the appropriate existing emergency procedures. To control costs, it is important for an agency to establish a fixed hourly rate and an estimated number of hours prior to allowing the contractor to proceed with the repair/overhaul.

4.20 **Printing**

- a. **Ownership of Artwork, Negatives, Etc.** All artwork, negatives, dies, overlays or similar material used to print a job shall be the property of the Commonwealth and must be delivered to the requisitioning agency upon completion of the job. Agencies using their delegated authority to purchase printing should use the appropriate special conditions found in Appendix B, Section II. Agencies should not process any invoice for payment until these items are returned. This requirement may be waived by the agency purchasing director when it is not practical (see *Vendors Manual*, 3.9).
- b. **Copyright.** No vendor may copyright any work produced for the Commonwealth without the written consent of the requisitioning agency (see *Vendors Manual*, 3.8).
- c. **Colors and Ink.** Except for promotional publications and diplomas or where the use of color is essential to support the purpose of the publication, all printing shall be one color. Examples of supporting the purpose of the publication are: maps, aeronautical charts, or pictures such as those used in a medical publication illustrating the difference between healthy tissue and diseased tissue or the use of color blocks or words on a form to highlight or separate critical areas.
- d. **Use of Multi-Color Printing.** Multi-color printing may be used for promotional publications. A promotional publication is defined as:
 - (1) produced for agencies with specific statutory authority to advertise or promote;
 - (2) designated for specified audiences outside of government;
 - (3) intended to yield significant benefit to the state; and are produced for use in a competitive environment which may require multiple colors and other special features. A publication of the Economic Development Partnership, produced to attract out-of-state businesses to locate in Virginia qualifies as a promotional publication.

All requests not meeting conditions 1 through 3 must be accompanied by a letter of justification signed by the agency head or his/her designee. This applies to jobs produced in-house as well as outside purchases and purchases made locally as well as purchases through DGS/DPS. If the letter of justification is signed by an agency head designee, the agency head is still responsible for the decision to print using multiple colors of ink. Agencies which have specific statutory authority to advertise or promote must have on file in the purchasing department a copy of such specific statutory authority to be provided upon request (this is a Joint Legislative Audit Review Committee [JLARC] requirement).

- e. **Official State Stationery, Letterheads, and Envelopes.** Standardization of “Official State Stationery” was established in November, 1974, by Executive Memoranda to the heads of all state agencies and institutions. This included a standard format for letterheads. Institutions of higher education are exempt, as they are permitted to continue the use of their present seal and design. All other agencies and institutions must use the standard state blue ink (reflex blue) for both letterheads and envelopes. All agencies and institutions, including institutions of higher education, are restricted to the following white paper usage for letterheads and envelopes:

	<u>Letterhead</u>	<u>Envelopes</u>
Governor, Lieutenant Governor, Members of the Legislature, Office of Attorney General, Supreme Court and Cabinet, Secretaries	100% Rag	100% Rag
Directors of Agencies	25% Rag	25% Rag
Institutions of Higher Learning (Presidents and Chancellors)	25% Rag	25% Rag
Economic Development Partnership, Virginia		
- Commercial and Business Mailings Only	100% Rag	100%Rag
- Interdepartmental Mailings	No. 1 Bond	White Wove
Auditor of Public Accounts	Permalife	White Wove
All Other Letterheads and Envelopes	No. 1 Bond	White Wove

Only the Governor and the Cabinet Secretaries use “Office of the Governor” on their letterhead. Where necessary, agencies and institutions with policy and advisory boards or commissions may include the names of such board or commission members on the official letterhead or may use separate letterheads for the board or commission, and the agency or institution. Engraved stationery may be used only by the Governor’s Office, Lieutenant Governor, members of the Legislature, the Attorney General, and Supreme Court. Any deviation from these specifications and requirements must be approved in advance by the Director of DGS/DPS.

- f. **Business Cards.** Business cards must conform in style and layout to the uniform state business card design printed in the standard state blue ink, on white card stock as shown in the DGS/DPS annual contract. Engraved cards are limited to the Governor, Lieutenant Governor, members of the Legislature, Attorney General, Supreme Court, Cabinet Secretaries, Directors of Agencies, and Presidents and Chancellors of Institutions of Higher Education. Any deviations must be approved in advance by the Director of DGS/DPS.
- g. **Overruns and Underruns.** The state is not required to accept overruns provided “no overruns” is specified in the solicitation. However, an agency may for a valid and justified basis accept up to a 10% overrun. Prices for overruns must not exceed the quoted base price per unit or the quoted price for additional copies run at the same time (R.A.S.T.). Whichever price is less will prevail. An agency may accept an underrun. Prices for underruns will be calculated at the quoted base price per unit. If an agency will not accept underruns or overruns, it must be stated in the specifications. Include the Printing Special Term and Condition in Appendix B, Section II, Clause 45 in all printing solicitations.

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Services. Selecting the method for contracting for nonprofessional services shall be in accordance with section 4.22. Professional Services are addressed in section 4.23. When the estimated cost of materials, equipment, or supplies amounts to fifty percent (50%) or more of the total expenditure, it is not considered a contractual service and shall be obtained using the procedures for the procurement of goods. If there are questions as to which procedure applies, contact the DGS/DPS Deputy Director for Procurement at 804-786-3850.

Any employer with more than an average of 50 employees for the previous 12 months entering into a contract in excess of \$50,000 with any agency of the Commonwealth to perform work or provide services pursuant to such contract shall register and participate in the E-Verify program to verify information and work authorization of its newly hired employees performing work pursuant to such public contract (*Code of Virginia*, § 2.2-4308.2.).

4.22 **Non-Professional Services**

- a. **General.** This section covers contracting for nonprofessional services from nongovernmental sources. The term “nonprofessional” services, as used in this section, means all services not within the scope of the practice of accounting, actuarial services, architecture, dentistry, land surveying, landscape architecture, law, medicine, optometry, pharmacy, professional engineering, or the services of an economist procured by the State Corporation Commission. (*Code of Virginia*, § 2.2-4301).
- b. **Approvals Required.** Approval for certain services is required by law, regulation, directive or appropriation. Services requiring other state agencies’ approval or concurrence are as follows:
 - (1) Insurance – Department of Treasury/Division of Risk Management.
 - (2) Graphic Services - Department of General Services/Office of Graphic Communications (OGC).
 - (3) Capital Outlay Related Services - Department of General Services/Division of Engineering and Buildings.
 - (4) Banking and Bank - Related Cash Management Services - Department of the Treasury, Division of Cash Management and Investments.
- c. **Individual Services.** Contracting for the services of individuals as contractors should be treated the same as any other procurement transaction. Agencies contracting with individuals are cautioned that problems have arisen with the Federal Internal Revenue Service concerning withholding and Social Security taxes in situations where the individual contractor performs under the supervision and control of the agency. An employer - employee relationship has been determined to exist in such cases, thereby subjecting the Commonwealth to liability for such taxes plus those employment obligations established by State law or gubernatorial policy. When in doubt, consult your personnel officer and/or your Assistant Attorney General before entering into such a contract. For factors indicating whether an individual is an employee or an

independent contractor see Employer's Supplemental Tax Guide, Publication 15-A (January, 2002), on the IRS web site: <http://www.irs.gov/pub/irs-pdf/p15a.pdf>.

d. **Consultant Services.** By definition, consultants provide information, assistance, and guidance of a purely advisory nature, usually in the form of a report or other deliverable, setting forth alternative courses of action and recommendations based on the expertise possessed by the outside individual, firm or organization. Such advice or assistance does not relieve agency management of responsibility for its final decision. Use of consultants is a legitimate means to improve government services and operations.

(1) **Assistance through other state agencies.** In recognition of this need, the state has developed the capability for providing certain technical and managerial assistance through selected central agencies. State agencies are strongly encouraged to make maximum use of the consultant services available from these agencies and the Commonwealth's institutions of higher education before seeking such services from the private sector. **Agencies shall not engage outside firms to perform the following services offered by other state agencies without first examining their possible use, as follows:**

- **Virginia Information Technologies Agency** - services related to automated data processing, word processing, and telecommunications (*Code of Virginia*, § 2.2-1303).
- **Department of Planning and Budget** - analysis of alternatives, program review and evaluation, cost reduction programs and productivity improvement (*Code of Virginia*, § 2.2-1501).

(2) **Agency Responsibility.** Agencies and institutions are responsible for assuring that the use and control of the services of private consultants is properly justified in terms of agency mission, programs, priorities, and funding. As required by the Appropriations Act each year, Use Of Consulting Services, all state agencies and institutions of higher education shall make a determination of "return on investment" as part of the criteria for awarding or using contracts for consulting service.

(3) **Selection.** The process of selecting an outside consultant individual, firm, or organization should be objective, unbiased, and should encourage those qualified to offer their services. When procuring nonprofessional services the procurement procedures provided in this manual shall be used. See 4.23 for guidance on purchasing professional consulting services. The following methods are suggested for use in developing the pricing schedule and for payment of consultants:

- (a) A lump sum or fixed price for the total project.
- (b) Hourly rate plus cost reimbursement, with a ceiling on the total contract; payment will be made only for hours used at the agreed rate and cost incurred. Items for which cost reimbursement will be made must be specifically indicated in the solicitation and resulting contract.
- (c) Daily or hourly compensation for work "when requested" during the period of the contract at agreed rates, with a ceiling on the total, including any other costs which have been determined to be allowable.
- (d) An incentive fee arrangement designed to motivate the contractor to complete the project early or achieve specified economies (see also 4.3d (8)).

4.23 **Professional Services.**

a. **Responsibility.** **DGS/DPS is not responsible for the procurement of professional services.** The procurement of professional services from nongovernmental sources shall be in accordance with the applicable provisions of the *VPPA*, and, for small business enhancement, in accordance with rules adopted pursuant to Executive Order 20 (2014) and § 2.2-1605(A)(6) of the *Code of Virginia*. Summary information is provided below. See agencies below for specific guidance.

Service
Architecture, Professional Engineering
Landscape Architecture, Land Surveying
Law

Agency
DGS/Division of Engineering and Buildings
<http://bcom.dgs.virginia.gov>
Attorney General's Office

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- b. **General.** Professional Services as defined in § 2.2-4301 of the *VPPA* means work performed by an independent contractor within the scope of the practice of accounting, actuarial services, architecture, land surveying, landscape architecture, law, dentistry, medicine, optometry, pharmacy, professional engineering, and the services of an economist procured by the State Corporation Commission.
- c. **Legal Services and Expert Witness.** Information on the use of legal services and expert witness may be obtained from the Attorney General's Office.
- d. **Competitive Negotiation.** Competitive negotiation shall be used for the procurement of professional services as provided for in the *Code of Virginia*. Annex 7-C provides guidelines for negotiated procurements. Note that solicitations for professional services shall not request that offerors furnish estimates of man-hours or cost for services (*Code of Virginia*, § 2.2-4302.2).
- e. **Professional Services Small Purchases.** The small purchase threshold for the procurement of professional services is \$60,000. Procurements up to \$60,000 for Professional services may only be procured by other than competitive negotiation if the agency has implemented small purchase procedures in accordance with the *Code of Virginia*, § 2.2-4303G. Professional services procurements less than \$10,000 shall be set-aside for micro businesses. For purchases from \$10,000 up to \$50,000, procurements shall be set-aside for small businesses (including micro businesses). Procurements shall follow the agency's implemented procedures or § 2.2-4302.2 and include a tiered award clause as specified in Special Term and Condition M. Additionally, architectural, landscape architectural, land surveying and professional engineering services shall be purchased in accordance with the Construction and Professional Services Manual (CPSM), issued by DGS/Division of Engineering and Buildings. Public posting is required for professional service procurements over \$30,000
- f. **Evaluation and Award Procedures.** The evaluation and award procedure for the procurement of professional services by competitive negotiation is not under the authority of the Division of Purchases and Supply. Evaluation and award of professional services is addressed in the *Code of Virginia* §2.2-4302.2.
 - (1) Deleted.
 - (2) Deleted.
- g. **Contractor Performance.** During the period of the contract, the contractor's performance is to be monitored in accordance with the standards set forth in the contract.
- h. **Administration.** The administration of contracts is covered in Chapter 10 of this manual.

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4.24 **Construction.** The procurement of "construction" for "Capital Outlay Projects" is governed by the rules of the *Construction and Professional Services Manual*, issued by the Department of General Services, Division of Engineering and Buildings (*Code of Virginia*, § 2.2-1132).

a. **Definitions**

- (1) **Construction.** Construction shall mean building, altering, repairing, improving or demolishing any structure, building or highway, and any draining, dredging, excavation, grading or similar work upon real property (*Code of Virginia*, § 2.2-4301).
 - (2) **Capital Project (Capital Outlay Project).** Capital project as defined in the *Construction and Professional Services Manual* means the acquisition or proposed acquisition of property, including any improvements thereto, a new construction project or improvements to state-owned property, a renovation, maintenance or repair project, an equipment acquisition or improvements to state leased property which meets the criteria in the *Construction and Professional Services Manual*.
- b. **Construction.** Construction may be procured only by competitive sealed bidding, except that competitive negotiation may be used in the following instances upon a determination made in advance by the public body and set forth in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to the public, which writing shall document the basis for this determination (*Code of Virginia*, § 2.2-4303D):
- (1) by the Commonwealth, its departments, agencies, and institutions on a fixed price design-build basis or construction management basis under *Code of Virginia*, § 2.2-4306.

- (2) by any public body for the alteration, repair, renovation, or demolition of buildings when the contract is not expected to cost more than \$500,000.
 - (3) by any public body for the construction of highways and any draining, dredging, excavation, grading, or similar work on real property.
- c. By agreement between the Division of Engineering and Buildings (DEB), and the Division of Purchases and Supply:
- (1) Nonprofessional services needed for construction or facilities maintenance, such as cost estimating, Critical Path Method scheduling, construction inspections, roofing evaluations, and nondestructive testing, should be procured in accordance with 4.21 and 4.22 of this chapter.
 - (2) Construction, including but not limited to renovation, remodeling, demolition and repair work on buildings and other structures, which are not Capital Outlay Projects but which involve plans and specifications prepared by an architect or engineer and/or require a building permit, are to be procured using the same procedures and contract provisions of the ***Construction and Professional Services Manual*** as Capital Outlay Projects. See section 202 of the CPSM for definitions of construction, improvements, maintenance reserve project, and other terms.
 - (3) Construction procurements for work that does not require issuance of a building permit, either by DEB/BCOM or the agency through the annual permit process as approved by DEB may be procured in accordance with the ***APSPM*** and the ***VPPA***.
- d. For projects using Capital Outlay procedures, use the Commonwealth of Virginia Form of Agreement, Form CO-9 (05/02), as the contract along with the General Conditions of the Construction Contract (for Capital Outlay Projects), Form CO-7 (03/02), and Instructions to Bidders, Form CO-7a (03/02).
- e. For construction not following Capital Outlay procedures use the Commonwealth of Virginia Standard Contract (see Annex 7-D) along with the Additional Terms and Conditions for Non-Capital Outlay Construction, and any Special Terms and Conditions applicable to the particular procurement (see Appendix B, Sections I, II, III and IV).
- f. For services related to construction such as cost estimating, Critical Path Method (CPM) scheduling, etc., use the procedures from this chapter (see 4.21 and 4.22).
- g. Equipment and/or furnishings, whether built-in or free standing, not acquired as part of a general construction contract and not requiring plans and specifications prepared by an architect or engineer, will be purchased in accordance with the provisions of the ***APSPM***. The ***Construction and Professional Services Manual*** provides additional guidance and criteria for the method of procurement to be followed. See CPSM section 202 for definitions. Generally built-in equipment, unless it is a like for like replacement will require a permit and must be procured in accordance with the CPSM.
- h. Except in an emergency, all bids for construction services in excess of \$500,000 must be accompanied by a Bid Bond from a surety, selected by the bidder, which is legally authorized to do business in Virginia. The amount of the Bid Bond shall not exceed 5% of the amount bid (*Code of Virginia*, § 2.2-4336).
- i. Upon award of a construction contract exceeding \$500,000, the contractor shall furnish a Performance Bond and a Payment Bond, each in the sum of the contract. Each such bond shall be executed by one or more surety companies which are legally authorized to do business in Virginia. Form CO-10 (03/02) Commonwealth of Virginia Standard Performance Bond, and Form CO-10.1 (03/02) Commonwealth of Virginia Standard Labor and Material Payment Bond, shall be used (Forms may be downloaded from the DGS/Division of Engineering & Buildings web site, <http://deb.dgs.virginia.gov/BCOM>).
- j. As a minimum, a construction contractor will be required to provide insurance in accordance with the insurance clause in Appendix B, Section II. Additional insurance may be required based on the type of construction service being performed. Contact the Department of Treasury, Division of Risk Management for advice on the specific situation at 804-786-3152.
- k. Solicitations for construction contracts with an estimated cost of \$1,500 or more must contain the appropriate Contractor Registration clause in Appendix B, Section II.

1. **Construction Related Services.** The procurement of Architectural, Landscape Architectural, Land Surveying, and Professional Engineering Services for Capital Outlay projects and similar projects not classified as Capital Outlay projects must be in accordance with Chapters IV, V, and VI of the Commonwealth of Virginia's *Construction and Professional Services Manual*. Multiple project awards for architectural or professional engineering services are allowed under certain conditions. See *VPPA* § 2.2-4303.1 and the *DGS/DEB Construction and Professional Services Manual* for guidance.

4.25 **Make-or-Buy Analysis.** When contracting for services which have traditionally been accomplished using in-house resources, a thorough analysis of the services to be acquired should be performed. Agencies should first determine if the service is a viable candidate for privatization; then identify all internal costs associated with performing the service (see Annex 4-C, Make-or-Buy Analysis Procedures). Adequate performance expectations and close scrutiny of vendor performance following the award are critical to a successful program.

4.26 **Use of Contractor's Standard Contract Form.** A contractor's standard contract form should be carefully read and those provisions that are contrary to the interests of the Commonwealth or in conflict with state law, must be lined out, rewritten, or removed if the contract is less than \$50,000. If it is not possible to award a contract without using the contractor's contract form, the contractor should sign the Contract Addendum Form, found in Annex 4-B. A contractor's standard contract form should not be used for procurements of \$50,000 or more without the approval of the agency's legal advisor. Agencies unable to obtain goods or services without using the contractor's form and the contractor refuses to accept the Addendum to Contractor's Form should contact DGS/DPS at 804-786-3850.

4.27 **Samples.** There are situations when samples will be needed to verify quality levels or to test materials or equipment to determine conformance with the specifications stipulated in the solicitation. A request for bid samples must be clearly indicated in the IFB (see *Vendors Manual*, 5.6). Samples should be properly labeled, stored, and controlled until no longer needed. Those not destroyed during testing may be returned at the bidder's expense. If, after 60 days, the samples have not been picked up and bidders fail to provide disposition instructions, samples may be offered to other agencies or internal operating departments for use. If the items have significant reusable utility value, they should be disposed of using established property disposal procedures (see Chapter 12). The file must be documented as to disposition of samples.

4.28 **Deleted.**

4.29 **VBO Advertising.** See 3.18 for VBO advertising requirements. VBO electronic posting instructions are on the eVA web site (www.eva.virginia.gov) under VBO Ads.

4.30 **Antitrust Violations**

a. **General.** Practices that eliminate or restrict competition usually lead to excessive prices and may warrant criminal, civil, or administrative action against the offeror, vendor, or contractor. Examples of anti-competitive practices are collusive bidding, bid rigging, bid rotation, and sharing of the business.

Procurement personnel are an important potential source of investigating leads and recognizing possible antitrust violations. As a result, procurement personnel should therefore be sensitive to indications of unlawful behavior by offerors, vendors contractors, and other procurement, technical, or administrative personnel.

b. **Reporting Suspected Antitrust Violations.** Agencies shall report to the Office of the Attorney General, or to the agency's attorney advisor, any bids or proposals that show evidence or suspicion that an antitrust law violation has occurred. (See *Code of Virginia*, §§ 59.1-9.1 through 59.1-9.8 and §§ 59.1-68.6 through 59.1-68.8).

The purpose of the antitrust laws is to promote the free market system in the economy of this Commonwealth by prohibiting restraints of trade and monopolistic practices that act or tend to act to decrease competition. Annex 4-F, lists some behavior patterns that are often associated with antitrust law violations. Offerors, vendors, or contractors meeting the descriptions are not necessarily improper, but they are sufficiently questionable to warrant notifying the Office of the Attorney General or the agency's attorney advisor. Also see Annex 4-H, for a list of warning symptoms to detect possible waste and abuse.

c. Questions concerning the reporting requirement may be communicated by telephone to the Office of the Attorney General, Antitrust Section at 804-786-2116. Personnel are also encouraged to use the Virginia Waste, Fraud, and Abuse Hotline at 1-800-723-1615.

4.31 **Debarment.** Grounds for debarment of vendors and procedures for disqualification and reinstatement of vendors are contained in paragraph 7.20 of the Commonwealth of Virginia's *Vendors Manual*. Copies of the debarment listing may be obtained by calling Contract Compliance at 804-225-4045.

4.32 **Unsolicited Proposals.** This policy applies to goods and non-professional services, and not to construction or professional services. The submission of a unique offer for new and innovative goods or services through unsolicited proposals is encouraged. However, all solicited and unsolicited proposals and all solicited and unsolicited ideas for innovation or improvement are submitted at the risk and expense of the offeror, and no obligation on the part of the Commonwealth and no restriction on the Commonwealth's use of such ideas, proposals or the information contained therein shall arise in connection with such submission. The foregoing shall not preclude express, written commitments made by agencies in formal solicitation documents within the limitations imposed by the *Code of Virginia*, § 2.2-4342F and the *Freedom of Information Act*. The foregoing shall also not diminish or waive any copyright, patent rights or trademark rights, which the offeror may have.

If acceptance of offers to "loan" or provide goods or services at no cost or minor cost would tend to create a need for subsequent additional acquisitions, the requirement for such goods or services and the additional needs shall be offered for competition in accordance with the *Virginia Public Procurement Act (VPPA)* and the *Agency Procurement and Surplus Property Manual (APSPM)*. Potential bidders or offerors shall be afforded an opportunity to participate in the resulting procurement activity.

If the offeror believes that it is the only source practicably available for goods or services required by the agency and available through the unsolicited proposal, to assist the Commonwealth in evaluating the unsolicited proposal, the proposal shall include a justification by the offeror as to why the company is the only source practicably available for the goods or services in question.

- a. Definition: "Unsolicited Proposal" means a proposal received that is not in response to any Commonwealth initiated solicitation or program.
- b. Receipt: Unsolicited proposals shall be submitted in writing directly to the central procuring office of agencies, departments and institutions who shall establish a primary point of contact to coordinate the receipt and handling of unsolicited proposals.
- c. Evaluation:
 - (1) A favorable comprehensive evaluation of an unsolicited proposal by the agency or institution does not, in itself, justify awarding a contract without providing for competition. No preference shall be given to the offeror that initially offered the unsolicited proposal.
 - (2) If it is determined by the evaluation that goods or services required by the agency and offered in an unsolicited written proposal are practicably available from only one source, a buyer may negotiate and award a contract following the sole source procedures in Chapter 8. The buyer shall post a notice of intent to award for ten (10) calendar days before awarding the contract.

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4.33
4.34

General Services Administration (GSA) Contract Pricing. Deleted. See 3.7, Joint and Cooperative Procurement.

Procurement of Outdoor Light Fixtures: All state agencies and institutions shall procure only shielded outdoor light fixtures, unless exempted in writing by DGS/DPS. A shielded outdoor light fixture is an outdoor light fixture that is (i) fully shielded so that no light rays are emitted by the installed fixture above the horizontal plane or (ii) constructed so that no more than two (2) percent of the total luminaire lumens in zone of ninety to 180 degrees vertical angles is permitted, if the related output of the luminaire is greater than 3200 (§ 2.2-1111.B.3 *Code of Virginia*). Measurement details for shielded outdoor light fixtures may be found in Illuminating Engineering Society of North America Guide LM-64-01, *Photometric Measurements of Parking Areas* (Newly Revised) which is available for order at www.IESNA.org under the "Publications" tab.

If an agency/institution has a bona fide reason for not complying with this section, the agency/institution may submit a request for waiver from this requirement to DGS/DPS on a "Procurement Exemption Request" form, which can be found in Annex 13-D of this manual. Bona fide reasons for not complying include operational, temporary, safety or specific aesthetic need is indicated or that such fixtures are not cost effective over the life cycle of the fixtures.

The provisions of this section shall not apply to the procurement of outdoor light fixtures by the Virginia Department of Transportation until July 1, 2004.

TERMS AND CONDITIONS & INSTRUCTIONS TO VENDORS

1. This contractual agreement is subject to the terms and conditions of the Commonwealth of Virginia *Vendors Manual* and any revisions thereto, as published by the Department of General Services, Division of Purchases and Supply.
2. Goods or Services delivered must be strictly in accordance with bid referred to and shall not deviate in any way from terms, conditions or specifications of the bid. Equipment, materials and/or supplies delivered on this order shall be subject to inspection and test upon receipt. If rejected, same shall remain the property of the vendor.
3. Purchase Order number shall be shown by vendor on all related invoices, delivery memoranda, bills of lading, packages and/or correspondence.
4. A SEPARATE INVOICE FOR THIS PURCHASE ORDER OR FOR EACH SHIPMENT THEREON SHALL BE RENDERED IMMEDIATELY FOLLOWING SHIPMENT. ALL COPIES SHALL BE FORWARDED DIRECT TO AGENCY AT INVOICE ADDRESS SHOWN.
5. STATE SALES AND USE TAX CERTIFICATE OF EXEMPTION, FORM ST-12 WILL BE ISSUED UPON REQUEST, IF YOU DO NOT HAVE SAME ON FILE.
6. DELIVERIES AGAINST THIS ORDER MUST BE FREE OF EXCISE OR TRANSPORTATION TAXES, EXCISE TAX EXEMPTION REGISTRATION NO. 54-73-0076K MAY BE USED WHEN REQUIRED.
7. In the absence of other contractual terms, payment shall be due 30 days after receipt of proper invoice, or material/service, whichever is the latter.
8. If discount for prompt payment is allowed, the discount period will begin on the date of receipt of proper invoice, or material, whichever is the latter.
9. In case of default by the successful bidder, or failure to deliver the supplies or services ordered by the time specified, the Commonwealth after due notice (oral or in writing), may procure them from other sources and hold vendor responsible for any excess cost occasioned thereby.
10. No substitution, change or deviation shall be made without written authority from the Commonwealth by Purchase Order Change.
11. Vendors and contractors providing goods to the Commonwealth of Virginia under this order herewith assure the Commonwealth that they are conforming to the provision of the Civil Rights Act of 1964 as amended, as well as the *Virginia Fair Employment Contracting Act* of 1975 as amended, where applicable.
12. This Purchase Order/Contract shall be governed in all respects, whether as to validity, construction, capacity, performance or otherwise by the laws of the Commonwealth of Virginia.
13. All prices unless otherwise specified are net F.O.B. Destination with transportation charges prepaid.
14. If shipment is made by freight or express and charges added to invoice, the original bill of lading properly receipted shall accompany invoice. All charges must be prepaid.
15. Vendors and contractors performing work on Commonwealth owned or leased facilities or property shall, during the entire term of the contract, maintain at a minimum, the insurance coverages as listed in the *Vendors Manual* and any revisions thereto.

Note: This public body does not discriminate against faith-based organizations in accordance with the *Code of Virginia*, § 2.2-4343.1 or against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.

AGENCY PURCHASE ORDER - FORM DGS-41-056

How to Prepare This Form

1. Insert the full name/delivery address of the agency.
2. Insert the state contract number, if applicable.
3. Insert the date the purchase order is prepared.
4. Insert the agency purchase order number.
5. Insert the date the bid was opened, if available.
6. Insert the agency requisition number, if applicable.
7. Insert the terms offered by the vendor.
8. Insert the delivery date as denoted on the contract or bid.
9. Insert the assigned vendor number - mandatory entry (eVA Vendor ID or DUNS number).
10. Insert the full name, address and zip code of the vendor.
11. Insert the full name, address and zip code of the invoice to address. If the invoice name, address and zip code is the same as the delivery address, mark "Same" in section 11.
12. Insert the name of the vendor contact person.
13. Insert the purchase order number.
14. Insert the name of the agency contact person.
15. Insert the telephone number of the agency contact person.
16. Insert the item number, i.e., 1, 2, 3, etc.
17. Insert the commodity code as shown in the *Commodity Class and Item Book*.
18. Give a thorough description of the item or items required. If there is more than one item on a purchase order, double space between items. Complete specifications are required and should be included in this section or included by attachment to the purchase order.
19. Insert the quantity required.
20. Insert the unit as sold, i.e., each, dozen, case, etc.
21. Insert the unit cost as denoted on the contract or bid.
22. Insert the total price of all units. Example -
Item price: \$1.50 per dozen
Quantity ordered: 12 dozen
Total amount would be: \$18.00
23. Insert the total amount of all items ordered on the purchase order.
24. Include the signature and title of an authorized person at the agency.
25. Insert Agency 3-digit code and estimated amount in appropriate columns; however, at agency's option, all CARS II coding may be inserted.

DISTRIBUTION - FORM DGS-41-056

White copy (1-vendor) is sent to the vendor. The remaining copies are for agency use.

Annex 4-B

COMMONWEALTH OF VIRGINIA AGENCY
ADDENDUM TO CONTRACTOR'S STANDARD FORM

AGENCY NAME: _____ (“Agency” or “Commonwealth”)
ADDRESS: _____

CONTRACTOR NAME: _____ (“Contractor”) EIN: _____
ADDRESS: _____

TITLE OF ATTACHED FORM: _____

The Commonwealth and the Contractor are this day entering into a contract, and for their mutual convenience, the parties are using the attached form agreement provided by the Contractor. Nevertheless, the parties agree that this Addendum is incorporated into and amends the form agreement, as provided below.

Notwithstanding anything in the attached form agreement, the payments to be made by the Commonwealth for all goods, services and other deliverables under this contract shall not exceed \$ _____; payments will be made only upon the Agency’s receipt of a proper invoice detailing the goods/services provided. The total cumulative liability of the Commonwealth, its officers, employees and agents in connection with this contract or in connection with any goods, services, actions or omissions relating to the contract, shall not under any circumstance exceed payment of the above maximum purchase price plus liability for an additional amount equal to such maximum purchase price. All actions of the Contractor relating in any way to Agency shall be as an independent contractor, and not as an agent or employee of the Agency.

The Contractor’s form agreement is, with the exceptions noted herein, acceptable to the Commonwealth. Nonetheless, because certain standard clauses that may appear in the Contractor’s form agreement cannot be accepted by the Commonwealth, and in consideration of the convenience of using that form, and this form, without the necessity of specifically negotiating a separate contract document, the parties specifically agree that, notwithstanding any provisions appearing in the attached form agreement, none of the following shall have any effect or be enforceable against the Commonwealth:

1. Requiring the Commonwealth to obtain or maintain any type of insurance;
2. Renewing or extending the agreement beyond the initial term or automatically continuing the contract period from term to term;
3. Requiring or stating that the terms of the Contractor’s form agreement shall prevail over this Addendum;
4. Requiring the Commonwealth to defend, indemnify or to hold the Contractor harmless for third party claims of any kind;
5. Imposing interest charges exceeding those permitted by *Code of Virginia*, § 2.2-4347 through 2.2-4354, Prompt Payment;
6. Requiring the application of law other than Virginia law in interpreting or enforcing the contract, or requiring or permitting that any dispute under the contract be resolved in any court other than an appropriate state circuit court in Virginia;
7. Requiring the Commonwealth to pay liquidated damages, or requiring the Commonwealth to make any payment for lost revenue or profits if the contract is terminated before its ordinary period;
8. Requiring that the contract be accepted or endorsed by the home office or by any other person subsequent to execution by the undersigned Agency representative before the contract is considered in effect, or otherwise delaying the formation or effective date of the contract to a time later than execution of the contract by the undersigned Agency representative;
9. Requiring the Agency to agree to or be subject to any form of equitable relief not authorized by the Constitution or laws of Virginia;

10. Limiting or adding to the time period within which claims can be made or actions can be brought;
11. Limiting the liability of the Contractor for property damage or personal injury;
12. Permitting unilateral modification of this contract by the Contractor, or deeming the Commonwealth to agree to a modification by means other than affirmatively signing a modification agreement on paper;
13. Binding the Commonwealth to any arbitration process or decision;
14. Obligating the Commonwealth to pay costs of collection or attorney's fees;
15. Granting the Contractor a security interest in property of the Commonwealth.
16. Granting any right or incurring any obligation that is beyond the legal authority of the undersigned Agency to empower its contract officers to grant or incur on behalf of the Commonwealth, or requiring the Commonwealth to violate any applicable law or regulation.

In addition, the parties agree that the contract between them shall be deemed to incorporate provisions that the Virginia Public Procurement Act requires to be included in Commonwealth contracts. These can be found in the following Sections of the *Code of Virginia*: § 2.2-4363 (procedure for filing claims); § 2.2-4354 (requirement to pay subcontractors); § 2.2-4311 (non-discrimination in contracts above \$10,000); § 2.2-4312 (drug-free workplace in contracts above \$10,000); § 2.2-4311.1 (compliance with federal immigration law); and § 2.2-4311.2 (authorization to transact business in Virginia, if legally required).

This contract, consisting of this Addendum and the attached form agreement, constitutes the entire agreement between the parties and may not be waived or modified except by written agreement between the parties.

IN WITNESS WHEREOF, the parties have caused this contract to be duly executed, intending thereby to be legally bound.

AGENCY by _____

CONTRACTOR by _____

Title _____

Title _____

Date _____

Date _____

The Agency does not discriminate against faith-based organizations.

When Used: For contracts valued at less than \$50,000 and it is not feasible to award a contract without using the contractor's form, and clauses which are not in the best interest of the Commonwealth cannot be crossed out, then use this Addendum form after it has been filled in and signed by the contractor, with contractor's form attached. If the contractor wants signatures to both this form and the contractor's form agreement that is attached to this form, then both forms should be signed by contractor before submittal to the Agency for signing of both forms. For contracts over \$50,000, your legal advisor should be consulted prior to using this form.

“MAKE OR BUY” ANALYSIS PROCEDURES

PROCEDURE FOR EVALUATING SERVICE DELIVERY ALTERNATIVES

BACKGROUND

“Make or buy” analyses offer an opportunity for increasing the provision of government services by private sector entities and for removing government from activities that might more appropriately be provided by the private sector.

This “make or buy” analysis procedure was developed by DGS/DPS with the assistance of representatives of the Department of Planning and Budget and the Virginia Information Technologies Agency. It is intended to provide a concise procedural framework for agencies to follow in carrying out their responsibilities toward privatization. It should be used by agencies as a guide for accomplishing and documenting their evaluations and decisions regarding contracting with the private sector for services.

Comments and suggestions for improving this procedure should be addressed to the Division of Purchases and Supply, ATTN: Service Contracts Section.

I. PHASE ONE - INVENTORY OF SERVICES

- A. List all services now provided or proposed to be provided by your agency to the public or to other agencies, and the services your agency provides or contracts for, in support of its operations.
- B. Consider the public acceptability of contracting. Determine which services are close to the fundamental purpose of government, which includes the discretionary exercise of government authority (e.g., judicial, police, tax collection, revenue disbursement, intergovernmental affairs), or are essential to the government’s ability to protect the health, safety and welfare of its citizens (e.g., regulatory functions). Exercise caution in considering services of this nature for provision by contractors. Some parts of a particular service may be suitable for contractor provision while others may not.
- C. Determine which of the services on the list meet all or part of the following criteria. Those that do may be good candidates for contracting out and should be further examined as discussed in subsequent steps.
 - 1. Service is tangible, making stipulation of specific contractor requirements and performance measures possible.
 - 2. Service can be, or already is, available from the private sector.
 - 3. Service involves either repetitious and routine activities, or it requires a relatively low skill level, e.g., janitorial services, grounds keeping work, etc.
 - 4. Service requires special equipment or technical/specialized skills or credentials.
 - 5. Service is susceptible to changes in demand or funding support, making it difficult to justify a full time year-round work force, or the service is now provided using temporary employees.

II. PHASE TWO - DETERMINE COST OF IN-HOUSE PROVISION

- A. Determine the number of full time equivalent employees (FTEs) required to provide the service along with all other costs of service provision. The in-house costs include base expenses, such as salaries, fringe benefits, supplies and equipment, and the dollar costs for space and utilities. Some costs that need to be considered may cross program lines, e.g., inspection work done by personnel of another activity or other types of assistance provided from shared resources. The total in-house cost is needed for comparison with the net contract cost from Phase Three. If agencies wish to protect this information from public disclosure, it must be treated as a part of the cost estimate for the proposed procurement (*Code of Virginia*, § 2.2-4342B).

- B. For services currently provided in-house, the agency may wish to determine if there is a more cost efficient way to provide the required service in-house. The agency would then determine other factors (e.g., organizational structure, staffing, the use of resources, operational procedures) that would make for more efficient, effective, and economical in-house provision of the service. Based on the selected improvements, an estimate of the proposed optimum in-house cost of providing the service can be made. If the changes can be implemented within the same time frame as the contracting option, this optimum cost can be used for comparison with the net contract cost from Phase Three.

III. PHASE THREE - DETERMINE FEASIBILITY OF CONTRACTING OUT

- A. Determine availability of at least two commercial sources.
- B. Determine that the agency's contract administrator successfully completed DGS/DPS training or other appropriate training and that necessary personnel and procedures are in place to effectively administer the contract and monitor contractor performance. An administrator or project officer is critical to a successful privatization program.
- C. Consider the impact on your ability to bring the service back in-house if substantial capital equipment investment is involved and contracting out provides unsatisfactory results.
- D. Consider the impact on displaced employees and what provisions could be made for their continued employment, such as being hired by the contractor or retrained for other State service.
- E. Prepare and issue a formal solicitation [Invitation for Bids (IFB) or Request for Proposals (RFP)] based on the scope of services, performance standards, job analysis, etc., in accordance with the *Agency Procurement and Surplus Property Manual (APSPM)*.
- F. Prepare an estimate of the State's net cost of contracting the service (see II A. above). This includes the projected contract price; contract administration, e.g., audit, performance evaluation, communication; and other management costs, such as salaries, fringe benefits, etc.; contractor support costs, such as any space to be provided to the contractor; and "one time" costs or savings, such as solicitation costs, staff training, savings from sale of surplus property; personnel costs or savings, such as severance pay, unemployment benefits; savings on real property for the function, etc.
- G. Compare estimates of net contract cost to in-house cost. Existing or optimum in-house cost (paragraph II, A or B) can be used for this comparison. However, if optimum cost (paragraph B) is used and becomes the basis to retain the service in-house, the necessary improvements must be promptly implemented.

IV. PHASE FOUR - MAKE FINAL DETERMINATION

- A. If the net cost of contracting is equal to or less than the in-house cost and the quality and reliability of services are at least equal, proceed with award of the contract.
- B. If the net cost of contracting is higher than the in-house cost or the quality and reliability of services are not at least equal, provide/continue to provide the service in-house. Cancel the solicitation and reject all bids/proposals received.

V. PHASE FIVE - REVIEW AND REEVALUATE

- A. Review contracts continuously to ensure the costs stay below those estimated for in-house provision. The original estimate for in-house costs should be adjusted for inflation to properly compare them with contract costs.
- B. Completely reevaluate services retained in-house every two years in conjunction with budget request preparation to determine that it is still the most cost effective means of provision.

**Annex 4-D and 4-E
DELETED**

Annex 4-F

Tips for Detecting Bid Rigging, Price Fixing, and other Types of Collusion

The following are some tips for consideration when suspicious actions are detected:

1. Some bids are much higher than published price lists, previous bids by the same firms, or engineering cost estimates. (This could indicate token or complementary bids.)
2. Fewer competitors than normal submit bids. (This could indicate a deliberate plan to withhold bids.)
3. The same contractor has been the low bidder and was awarded the contract on successive occasions over a period of time.
4. There is an inexplicably large dollar margin between the winning bid and all other bids.
5. There is an apparent pattern of low bids regularly recurring, such as corporation "X" always winning a bid in a certain geographical area for a particular service, or in a fixed rotation with other bidders.
6. A certain company appears to be bidding substantially higher on some bids than on other bids, with no logical cost differences to account for the difference.
7. A successful bidder repeatedly subcontracts work to companies that submitted higher bids on the same projects.
8. There are irregularities (e.g., identical calculation errors) in the physical appearance of the bids or proposals, or in the method of their submission (e.g., use of identical forms or stationery), suggesting that competitors had copies, discussed, or planned one another's bids or proposals. If the bids are obtained by mail, there are similarities of postmark or post metering machine marks.
9. Two or more competitors file a "joint bid," even though at least one of the competitors could have bid on their own.
10. A bidder appears in person to present his bid and also submits the bid or bond of a competitor.
11. Competitors regularly socialize or appear to hold meetings, or otherwise get together in the vicinity of procurement offices shortly before bid filing deadlines.
12. Competitors meet as a group with procurement personnel to discuss or review terms of bids or proposals. (This may facilitate subtle exchanges of pricing information.)
13. Competitors exchange any form of price information among themselves. (When this occurs among sellers in concentrated markets [markets with sellers], it is suspicious. Note that such exchanges may take quite subtle forms, such as public discussions of the "right" price.)
14. There is industry-wide resale price maintenance. (This could help manufacturers police collusion at the manufacturing level, since any reduction in the resale price, which is both easily observable and known to be controlled by the manufacturer, is readily detected by other manufacturers to account for the extra cost of the transportation expense.)
15. Competitors submit identical bids or frequently change prices at about the same time and to the same extent. (Regulations currently permit submission of identical bid data to the Antitrust Division.)
16. Bidders who ship their product short distances to the buyer charge the same price as those that ship long distances. (This may indicate price fixing, since otherwise the distant sellers would probably charge more for a given item to account for the extra cost of transportation.)
17. Local competitors are bidding higher prices for local delivery than for delivery to points farther away. (This may indicate rigged prices in the local market.)
18. Bid prices appear to drop whenever a new or infrequent bidder submits a bid.
19. An employee (buyer, clerk, temporary hire), upon receipt and opening of bids/proposals reveals pricing information to various bidders/offerors via telephone or mail to give them a chance to submit or change their pricing prior to bid/proposal due date and time for receipt.

Annex 4-G

Employee or Independent Contractor? Factors to Consider

Guidance in making the determination concerning the classification of an employee versus an independent contractor is available from the Department of Treasury, Internal Revenue Service (IRS), in Publication 15-A. It may be found on the IRS web site. The web address for this publication is <http://www.irs.gov/pub/irs-pdf/p15a.pdf>.

Annex 4-H

Waste and Abuse Warning Symptoms

The following are some “warning symptoms” for consideration when waste and abuse may be suspected.

1. Billing for work not performed (false invoices).
2. Delivered item was other than what was specified (substituted product, demonstration equipment).
3. Frequent dating of requisition and/or approval after receipt of merchandise.
4. Improper Charge e.g., a part number is listed on an invoice but is not verified to assure the correct part was installed on the correct item (Cadillac fuel pump installed on an employee’s car but billed as installed on the agency’s Chevrolet shuttle bus).
5. Order splitting to avoid bidding (\$17,000 house repair in under \$5,000 increments).
6. Repeated use of restricted specs therefore avoiding competition, not using “or equivalent.” The winning contractor always is the same for the specified item.
7. High number of sole source and “emergencies” or single source purchases - possible “specification rigging.”
8. High use of change orders - adding new items, significant change in scope of work, original bid much lower than other bidders (low balling).
9. Staggered invoices but same pick up date and signature on a copied delivery ticket.
10. Using contractor furnished usage figures when rebidding.
11. Minimum advertisement time - excessive use of mandatory prebid conferences - discourages and prevents competition.
12. Not properly advertising (use of small newspaper, few mailings, etc.).
13. Site visits required - site visitors being told of special conditions and no addenda issued.
14. Accepting nonresponsive bid from a preferred contractor.
15. Using biased individuals on evaluation panels.
16. Statement that bidder does not service that area or only ABC Co. sells in that area (possible collusion/price fixing).

