

July 1, 1999

MEMORANDUM

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

FROM: Ron Bell
Director

SUBJECT: Procurement Information Memoranda (PIM) #98-001

Enclosed is PIM #98-001 representing several changes to the September 1998 edition of the *Agency Procurement and Surplus Property Manual (APSPM)*. Please make the pen and ink changes noted on pages 2 and 3. In addition, certain replacement pages are enclosed. Please replace the appropriate pages and discard the corresponding original pages. The appropriate page numbers are shown at the bottom of the page.

Appendix C of the *APSPM* contains a log in which to list the PIM number and date of revision. This letter and the corresponding PIM #98-001 should be filed in back of the Appendix C log.

Every effort was made in the revised 1998 *APSPM* to be consistent with the wording of the dollar thresholds for each level of procurement action. As a point of clarification, please note that when a threshold is shown, such as, "up to \$5,000" or "up to \$30,000" the intention is to mean, "up to and including" the upper limit. If the wording says, "three quotes up to \$15,000" that means the requirement is three quotes up to and including \$15,000. Then, if the wording shows "over" a certain threshold, such as, "over \$30,000," the meaning is not including, but over \$30,000, as in \$30,000.01. This may seem insignificant, but appropriate questions were raised about this and for consistency sake, I wanted to be clear about the "up to" and "over" language concerning the threshold limits.

If you should have any questions about the changes noted, please contact Nancy M. Davis at 804-786-0323.

PIM #98-001, 7/1/99

Make the following pen and ink changes to the September 1998 APSPM:

Topic/Section	Pen & Ink Change
1.4b(4)	Change the third sentence of the second paragraph of section 1.5b(4) to read, “See Annex 1-C, for a copy of DIT Form #300.”
PO limit 2.1 4.12 10.12	DGS/DPS has increased the threshold at which purchase orders or contracts must be written and now requires written contracts to be issued for requirements over \$5,000. Pen & ink changes should be made to change the reference to the PO limit from \$2,000 to \$5,000 in the following cites: 2.1 <u>Mandatory Sources.</u> 4.12 <u>Award Documents.</u> 10.12 <u>Modifications and Change Orders.</u>
4.23e Prof. Services Sm. Purchases	Change “are contained in Chapter VI” to “Chapter 4.”
pg. 6-8, STEP 3	Change the page number shown as 6-6 under <u>PREPARE THE IFB</u> : to Page 6-7.
pg. 6-9, STEP 4	Change the page number shown as 6-5 under A. <u>COVER SHEET</u> : to Page 6-6.
7.2a	Change the word “will” to “shall” in the last sentence of 7.2a at the top of page 7-2 so the sentence reads, “This document shall be signed by the agency head or his/her designee, and be retained in the purchase file.”
10.22b	Change the last numeral in the paragraph from (2) to (3) so the reference reads “See 4.3d(3).”
Annex 12-B, Page 12-15. Surplus Prop Transfer Doc	Change the instructions on item #5 to, “Insert the telephone number of the agency purchasing the surplus property.” Change the instruction on item #7 to, “Insert the agency code of the agency purchasing the surplus property.”
Appendix B Page B-17 40. Performance and Payment Bonds	Change the “When Used” guidance in paragraph 40, from “See Appendix 3-B & C” to read, “See Annex 3-C & 3-D.”
Appendix B Page B-20 51 B. Renewal Clause	Add to #51 B on Page B-20, the following When Used guidance: “For recent Consumer Price Index statistics, contract the Bureau of Labor Statistics at their website http://stats.bls.gov/news.release/cpi.toc.htm or by telephone at 202-606-7000. A link to the Bureau of Labor Statistics is on the DGS/DPS website at www.dgs.state.va.us/dps/agcyinfo/index.htm.”
Index Page Index-4	Change the reference to Bartering in the Index from 2.7f (1) to 12.7f(1).

Index Page Index-5	Change the reference to Bid, Competitive, to show the following thresholds: between 0-\$5,000;5.3 Over \$5,000-\$15,000;5.5 Over \$15,000-\$30,000;5.6; 5.7
Index Page Index-7	Change the reference under “ Conflict of Interest ” under the <i>APSPM</i> reference to show, 12.11 ; under the Vendors Manual, show the reference as 7.20f, 9.1b.
Index Page Index-14	Under Lead-Time listing in the Index under the <i>APSPM</i> heading, change the references to show 4.1a & b, 4.29, 13.7b, 13.8d, Appendix A. This is a cross reference for the listing shown under Administrative Lead Time and Purchase Lead Time.
Index Page Index-15	Add to the Index a listing under “M” entitled “ Minority Business Plan ” and reference § 3.10a under APSPM and under Code of Virginia §11-48.

Replacement pages are enclosed for the following topics:

Topic/Section	Summary of Replacement Page Changes (insert actual pages attached)
1.5 Pg. 1-5	1.5 Exceptions to Competitive Requirements, indicates that a quote “should” be obtained. Change this to indicate that a quote “must” be obtained. Add guidance that a PO is not required for items in categories numbered, 1-Subscriptions; 3-Alcohol; 7-Professional organization membership dues; 11-Contributions and donations made by a University; 13-Utility charges. Changes requirement for a PO to \$5,000.
1.5b(9) Pg. 1-6	Add as an exception to competitive requirements, the exception for original or true antique, period art frames not to include newly created or reproduction frames.
1.5b(16) Pg. 1-6	Add a 16 th category of exceptions to competition: (16) – Exhibition rental fees, as an additional exception to competitive requirements up to 30,000.
4.14 Insurance Pg. 4-8	Change language to indicate when Employer’s Liability and Worker’s Compensation Insurance is required and that the Commonwealth of Virginia must be named as an additional insured when requiring a Contractor to obtain Commercial General Liability coverage.
4.16d. Conference Planning Pg. 4-9	Remove words after “or” to the next comma, deleting the reference to the only facility that can hold the conference in the time frame required. This infers that competition was attempted and one was found available for the conference in the needed time frame, therefore, that situation is covered under b or c above and the reference should be deleted from d.
7.2i RFP Preparation Pg. 7-2	Add, as the second sentence of 7.2i, “In addition to advertising in the VBO, RFPs over \$30,000 shall be advertised in a newspaper of general circulation in the area in which the contract is to be perform. The advertisement should be a brief statement about the requirement information on how to receive a copy of the solicitation.”
Chapter 8- 8.2, 8-5, 8-6 Pg. 8-1, 8-2, 8-5, & 8-6	Effective July 1, 1999, the threshold for review and approval of technology-related Agency Procurement Requests (APRs) is raised from \$50,000 to \$100,000. Change the agency reference from CIM to DTP (Department of Technology Planning).

<p>9 Emergency Y2K Pg. 9-1 & 9-2</p>	<p><i>Code of Virginia</i> 11-41 I. Effective until January 1, 2001, procurement of goods, services, or construction to address computers, software programs, databases, networks, information systems, firmware, or any other devices which are not compliant with the “Year 2000” date change shall be deemed emergency procurements under subsection E. Include no requirement for written determination by agency head.</p>
<p>pg. 11-3, 11.2d Pg. 11-3</p>	<p>Add the following as the third sentence in 11.2d following, as provided in 3.18c. “The written protest must be received in the purchasing office not later than 5:00 p.m. on the tenth day. If the tenth day falls on a weekend or an official holiday, the ten-day period expires at 5:00 p.m. on the next regular work day.”</p>
<p>Appendix B Insurance Pg. B-6</p>	<p>The General Term “Insurance” has changed back to the earlier version (1995 <i>APSPM</i>) wording under Commercial General Liability. Also, the Profession/Service of Health Care Practitioner category will be increased to \$1,500,000 per medical incident/occurrence effective August 1, 1999.</p>

(6) **Consulting services** on the development of ADP and telecommunications equipment specifications can be provided by the Department of Information Technology. Contact Director, Acquisition Services Division, at 804-371-5931 for further information.

c. **DGS/DPS has delegated the authority to agencies and institutions to make bulk purchases of the following listed commodities.** Under \$30,000 use small purchase procedures (see Chapter 5); over \$30,000 use the applicable method of procurement.

<u>CC#</u>	<u>COMMODITY</u>		
040-All	Animal and Livestock	745-84	Slurry Seal
325-All	Animal Feed, All types	750-07	Borrow and Soil
335-All	Fertilizer, All types	750-21	Cement, Truckload Lots
390-All	Foods, Perishable	750-35	Crushed Stone
540-78	Sawdust	750-56	Lightweight Aggregate, all types
595-All	Wood Chips & Bark, etc.	750-63	Local Option Materials, Gravel, Nonpotable Water, Pit Run Sand, etc.
675-All	Poisons, Agriculture		
690-All	Poultry, Live		
745-07	Asphalt	750-70	Ready-Mix Concrete
745-14	Asphaltic Concrete, Cold Laid	750-77	Sand and Gravel
745-21	Asphaltic Concrete, Hot Laid	750-95	White (Hydrated) Lime
745-70	Road Oil	770-06	Aggregate, Gravel, Marble, etc.
745-77	Rock Asphalt, Cold Mix	790-All	Seed, Sod, etc.

d. **Purchases of goods (except printing) from the federal government, other states and their agencies or institutions, and public bodies** are not required to be requisitioned through DGS/DPS (see 1.5).

e. **Purchase of Copyrighted Books and Copyrighted Audio-Visuals.** The purchase of copyrighted material such as books, written publications, standardized tests, answer sheets, and copyrighted audio/audio-visual film, diskettes, compact discs, and tapes are not required to be requisitioned through DGS/DPS. Under \$30,000 use small purchase procedures; over \$30,000 use the applicable method of procurement.

1.5 **Exceptions to Competitive Requirements.** DGS/DPS has determined that competition normally is either not practicable or available for purchases of the following goods or services, and purchase through DGS/DPS is not mandatory; however, one quote must be obtained and documented, and a purchase order must be issued for requirements over \$5,000. Purchases using the Small Purchase Charge Card (SPCC) do not require a purchase order to be issued (see 4.12) Purchase orders are not required for items in 1.5b numbered 1, 3, 7, 11, and 13. When an order document is not issued, agencies are advised that proper verification of receipt or performance is essential for audit purposes.

a. Purchases under \$5,000.

b. The following selected categories of goods and services up to and including \$30,000:

- (1) Books, pre-printed materials, reprints and subscriptions (e.g., print or electronic), pre-recorded audio and video cassettes, compact discs, slide presentations, etc., when only available from the publisher/producer.
- (2) Academic/research consulting services.
- (3) Alcohol purchased from Alcohol Beverage Control stores.
- (4) Honoraria, entertainment (speakers, lecturers, musicians, performing artists).
- (5) Training that is specialized, proprietary, not typically available to the general public for which competition is generally unavailable, off-site, and requires a registration fee. Contact the Department of Personnel and Training, Training Specialist (804) 225-2016, to ascertain if the training being requested is available through an existing contract or another source.
- (6) Royalties and film rentals when only available from the producer or protected distributors.
- (7) Professional Organizational Membership dues.

(8) Writers.



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

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

(11) Contributions and donations made by a university.

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

(13) Utility charges.

(14) Conference facilities (to include conference support and related lodging and meals) only when the use of a specific facility is directed by an outside donor, sponsor, or organization (see 4.16 for the purchase of conference facilities under all other conditions).

(15) Accreditation fees and academic testing services.



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

- c. Purchases of used equipment up to and including \$30,000 (see 4.17). This also includes used equipment purchased at a public auction, if determined in writing that the purchase would be in the best interest of the public.
- d. Purchases from the federal government, other states and their agencies or institutions, and public bodies. Care must be exercised to be certain that the price is fair and reasonable.
- e. Surplus property (see Chapter 12).
- f. Purchases under \$30,000 for testing or evaluation (limited to purchases of quantities considered necessary for complete and adequate testing).
- g. Emergency purchases (competition obtained when practicable). DGS/DPS prior approval is required if personal property or safety are not impaired and the value of the procurement exceeds an agency's delegated authority (see Chapter 9).

especially in a direct order entry system):

- X 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.
- X as a binding commitment for one time spot purchases of goods, services and printing.
- X 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*, § 11-66). 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, Worker's Compensation Insurance and Employer's Liability Insurance may not be required. Worker's 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. Employers' 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* § 11-46.3 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.

- a. **Applicability.** Bookstore purchases and purchases made for similar retail outlets such as those above, are subject to the VPPA and this manual except items purchased by public institutions of higher education for resale at retail bookstores and similar retail outlets operated by such institutions are exempt from the VPPA and this manual. However, such purchase procedures shall provide for competition where practicable (*Code of Virginia*, § 11-35J).
- b. In lieu of following the purchasing procedures contained in this manual, agencies operating such retail outlets may use the modified procedures contained in Annex 4-E to this chapter.

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 three 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 package deals expected to exceed \$30,000, agencies shall issue a written solicitation and 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)].

4.17 **Used Equipment.**

- a. Used equipment, that which has been previously owned and used, offered for sale anywhere is, as is, does not include demonstration or factory rebuilt items marketed through distribution outlets, may be negotiated by agencies within their delegated authority. Upon a determination in writing that there is only one source practicably available for equipment meeting the agency's needs, a contract may be negotiated and awarded to that source without competitive sealed bidding or competitive negotiation (see 1.5c).
- b. 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. 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 II). 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 Director of Debt Management, Department of the Treasury, 804-225-4929 (*Code of Virginia*, § 2.1-179.2).

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*, § 11-43B). 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 & 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, 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

CHAPTER 7

COMPETITIVE NEGOTIATION

In this Chapter look for . . .

- 7. General
- 7.1 Competitive Negotiation (For Goods and Nonprofessional Services)
- 7.2 Preparation and Issuance of a Request for Proposal (RFP)
- 7.3 Sealed proposals - Receipt and Evaluation
- 7.4 Negotiation and Award

Annexes

- 7-A Competitive Negotiation Process Flowchart
- 7-B Sample Format and Step-by-Step Procedures
- 7-C Negotiation Tips/Guidelines
- 7-D Standard Contract Format (Competitively Negotiated Contracts)
- 7-E RFP Solicitation and File Checklist

7. **General.** The *Virginia Public Procurement Act (VPPA)* requires the use of competitive negotiation for the procurement of all professional services. For professional service procurement guidelines, refer to 4.23. Competitive negotiation may be the procurement method used for goods and nonprofessional services when it is not practicable or fiscally advantageous to use competitive sealed bidding (*Code of Virginia*, §§ 11-37 & 11-41C.1). The competitive negotiation process, for the purchase of goods and nonprofessional services, is depicted in the flowchart in Annex 7-A.

7.1 **Competitive Negotiation (for Goods and Nonprofessional Services).** Competitive negotiation has the advantage of flexibility for describing in general terms what is being sought and the factors to be used in evaluating responses. It offers the opportunity, through negotiation, to change the content of an offer and pricing after opening. Negotiation is the dialogue that occurs to achieve mutually satisfactory objectives and benefits and to reconcile differences through mediation. This discussion provides the means for both the buyer and seller to reach agreement on a contract's content, terms, and conditions. In the course of negotiation, both parties should be able to reach a mutually acceptable agreement. Competitive negotiation is not "horse trading," "haggling," or an auction. Competitive negotiation, properly carried out, requires skill and extensive preparation on the part of the negotiators to achieve specific procurement objectives.

This method of procurement requires the issuance of a Request For Proposal (RFP) that describes in general terms the requirement, the factors that will be used to evaluate the proposal, the Commonwealth General Terms and Conditions, plus any special conditions including unique capabilities or qualifications that will be required. In a sealed program, all responses must be held unopened until the date and time specified for their receipt.

7.2 **Preparation and Issuance of a Request for Proposal (RFP).**

- a. 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, goods, services, or insurance may be procured by competitive negotiation (*Code of Virginia* § 11-41C.1). The writing shall document the basis for this determination. This document will be signed by the agency head or his/her designee, and be retained in the purchase file.

- b. A written RFP is issued to describe in general terms that which is to be procured (see Annex 7-B for format and contents). The RFP must specify and list the specific requirements to be addressed by the offerors that will be used in evaluating the proposals and will contain other applicable contractual terms and conditions, including any unique capabilities or qualifications required of the contractor.
- c. If the method for receiving “Best and Final Offers” (BAFO) is to be used in the negotiation and evaluation process, then this must be stated in the RFP for the offerors’ notification and consideration.
- d. Mandatory requirements should be kept to a minimum and refer only to those areas that are required by law or regulation or are such that they cannot be waived and are not subject to negotiation. The use of “shall” or “must” indicates a mandatory requirement. Specify any optional information desired. The factors for use in evaluation shall be stated in the RFP, and the weights assigned to them must be included in the RFP or shall be posted in the location used for public posting of procurement notices prior to the opening and evaluation of proposals. A breakout of subcomponent weights need not be listed. Price shall be one of the factors considered, but need not be the determining one. Include a pricing schedule in the RFP (see Annex 7-B).
- e. Review the RFP Solicitation and File Checklist (Annex 7-E) to assure that all specific requirements applicable to the procurement have been met (see 3.18 for posting requirements). In writing the scope of work and/or technical specification for an RFP, use the term “contractor” to describe the person/firm that is to perform the requirements of the contract after award. Use the term “offeror” to describe who is the submit a response to the RFP.
- f. Establish a proposal submission due date and time which provide sufficient time for potential offerors to develop a proposal. The minimum time period is ten (10) days from issue date of the RFP. The time period used may be greater than the required ten (10) days based on the complexity of the requirement and whether or not a preproposal conference is required.
- g. For the purchase of material, equipment, supplies or nonprofessional services estimated to cost \$30,000 or more, RFPs shall be sent to at least six potential sources. This should be expanded to include a minimum of four minority and/or women-owned businesses, if available. If fewer than the required number of sources are solicited, the reasons must be stated in writing and placed in the purchase file.
- h. All preproposal conferences or site visits must be mentioned in the RFP and any advertisement of it. If attendance at such a conference or site visit is a prerequisite for submitting a proposal, the public notice period must be at least ten (10) days after issuance to provide adequate opportunity for potential offerors to obtain a copy of the RFP and attend. Preproposal conferences scheduled during a period of suspended State business operations must be rescheduled by the purchasing agency to a date and time which will permit proper notification to all potentially interested participants (Annex 6-E).
- i. Purchase actions requiring advertisement in the *Virginia Business Opportunities* should be forwarded to DGS/DPS in accordance with section 4.29. In addition to advertising in the VBO, RFPs over \$30,000 shall be advertised in a newspaper of general circulation in the area in which the contract is to be performed. The advertisement should be a brief statement about the requirement and information on how to receive a copy of the solicitation.



7.3 **Sealed Proposals - Receipt and Evaluation.**

- a. Public openings of proposals are not required. If a public opening is held, the names of the individuals, or the names of firms submitting proposals in a timely manner, is the only information read aloud and made available to the offerors and general public (see 3.1e for further guidance on the receipt and opening of proposals).
- b. The proposals are evaluated by the buyer, contracting officer, or an evaluation team. As an option, evaluators may request presentations or discussions with offerors, as necessary, to clarify material in the offerors proposals, to help determine those fully qualified and best suited. Proposals are then evaluated on the basis of the criteria set forth in the RFP, using the scoring weights previously determined. All RFP responses are to be evaluated. Proposals not meeting requirements should be scored lower. Only bids in response to an IFB may be determined to be nonresponsive. Offerors may be given an opportunity to correct a deficiency in their proposals, within an appropriate period of time, as determined by the purchasing office. Offerors who fail to submit required documentation or meet mandatory requirements, in such time, for evaluation purposes may be eliminated from

CHAPTER 8

SOLE SOURCE PROCUREMENT

In this Chapter look for . . .

- 8. Definition
- 8.1 Agency Head Approval
- 8.2 Procurements Over \$10,000
- 8.3 Negotiating a Contract
- 8.4 Price Reasonableness Determination
- 8.5 Posting Requirements
- 8.6 Award Document

Annexes

- 8-A Sole Source Process Flowchart
- 8-B Sole Source Checklist
- 8-C Sole Source Procurement Approval Request Form
- 8-D Standard Contract Format (Non-Competitively Negotiated Contracts)
- 8-E Notice of Sole Source Award

8. **Definition.** A sole source procurement is authorized when there is only one source practicably available for the goods or services required. Competition is not available in a sole source situation; thus distinguishing it from a proprietary purchase where the product required is restricted to the manufacturer(s) stipulated, but is sold through distributors and competition between them can be obtained. Sole source justification based solely on a single vendor's capability to deliver in the least amount of time is not appropriate since availability alone is not a valid basis for determining a sole source procurement. Note: For sole source procurements to \$15,000 a quote shall be obtained and documented. For sole source requirements exceeding \$15,000, a written quotation must be obtained from the vendor.

8.1 **Agency Head Approval.** A written determination approved in advance by the agency head or his/her designee, documenting that there is only one source practicably available for that which is to be procured, must be included in the procurement file. The writing shall document the basis for the determination which should include any market analysis conducted in order to ensure that the good or service required was practicably available from only one source.

8.2 **Procurements Over \$10,000.** All sole source procurements over \$10,000 must be submitted to DGS/DPS for review and approval. Any sole source technology procurement over \$100,000 must be submitted to the Department of Technology Planning (DTP) for approval before being submitted to DGS/DPS for final approval. A copy of the request form can be found in Annex 8-C. In addition, a memorandum must accompany the request form which addresses the following four points:

- X Explain why this is the only product or service that can meet the needs of the purchasing agency.
- X Explain why this vendor is the only practicably available source from which to obtain this product or service.

- X Explain why the price is considered reasonable.
- X Describe the efforts that were made to conduct a noncompetitive negotiation to get the best possible price for the taxpayers.

Once written approval has been given, agencies and institutions are delegated the authority to proceed with awarding the contract.

- 8.3 **Negotiating a Contract**. Upon satisfying the requirements of paragraphs 8.1 and 8.2 above, a contract shall be negotiated and awarded without competitive sealed bidding or competitive negotiation. In making a sole source procurement, it is the buyer's or contracting officer's responsibility to negotiate a contract that is in the best interest of the Commonwealth. Negotiations can be conducted on adding terms and conditions favorable to the Commonwealth and deleting or changing terms that are one-sided, in favor of the contractor. It is important to know the market and the contractor's situation in regard to the market. In noncompetitive negotiation, one must be exceptionally well prepared and negotiate to the extent that is practicable. Written documentation of the negotiations shall be included in the procurement file. For assistance in conducting negotiations, please see Annex 7-C.
- 8.4 **Price Reasonableness Determination**. The buyer or contracting officer should carefully research the good or service and determine in writing what is a fair and reasonable price (see 4.10 for additional guidance). For example, if the good or service has been provided before, find out what price was previously paid. Research and determine if another agency has purchased the same commodity. This will provide valuable pricing information that can be used in the course of negotiations and in determining price reasonableness.
- 8.5 **Posting Requirements**. For sole source procurements over \$15,000, notices must state that only one source was determined to be practicably available and must also state that which is being procured, the contractor selected, and the date on which the contract was or will be awarded (see 3.18 for additional guidance). See Annex 8-E for the proper form.
- 8.6 **Award Document**. Agencies must issue an award document (PO or contract) for sole source purchases that are over \$5,000 and post a notice of award for requirements over \$15,000. When a quote has been obtained from the vendor and no further negotiations are needed, a purchase order is acceptable. When complicated negotiations have been involved, it may be in the agency's best interest to use the Commonwealth of Virginia Standard Contract form found in Annex 8-D.

Annex 8 -C

Sole Source Procurement Approval Request

All requests for sole source purchases must meet the criteria established under Section 11-41 of the *Code of Virginia*. The agency head must sign this form. The Department of General Services/Division of Purchases and Supply (DGS/DPS) or the Department of Technology Planning (DTP) must review and approve all information technology-related requests before issuance of any contract or purchase order. In addition, the agency must also (1) assign an identifying number to the request, (2) attach a brief description of the contract, and (3) attach the justification for the sole source request.

Agency Code _____ Request Number _____ Date _____
 Agency Name _____
 Agency Head Signature _____
 Print Agency Head Name _____
 Contact Person _____ Telephone Number _____

Commodity Code _____ Description _____

Information Technology-Related Request

DTP Review Not Applicable

All sole source requests for computer equipment, software and related services, and telecommunications products must be reviewed by either the DGS/DPS (requests between \$10,000 to \$100,000) or the DTP (requests over \$100,000).

DTP Recommended approval

DTP Recommended disapproval

Signature _____ Date _____

Division of Purchases and Supply

Approved

Disapproved

More information needed (specify and return to agency)

Signature _____ Date _____

Note: This form must be filed with the contract/purchase order. Agencies and institutions are delegated authority to make ~~contract award after appropriate approval. (Purchase using noncompetitive negotiation.)~~

SOLE SOURCE PROCUREMENT INSTRUCTIONS

It is the policy of the Commonwealth of Virginia that contracts be awarded on a competitive basis and that the use of a sole source procurement must be limited to those instances where only one source is practicably available.

Pursuant to the Governor=s Chief of Staff memorandum of July 14, 1998, every sole source request must contain a memorandum from the purchasing agency that addresses in a direct and concise manner the following four points (by number and in order):

1. Explain why this is the only product or service that can meet the needs of the purchasing agency.
2. Explain why this vendor is the only practicably available source from which to obtain this product or service.
3. Explain why the price is considered reasonable.
4. Describe the efforts that were made to conduct a noncompetitive negotiation to get the best possible price for the taxpayers.

Agencies must use the attached Sole Source Procurement Approval Request form as the cover routing form for all sole source procurements. Complete the “Agency” portion of the form and forward the sole source procurement request to the appropriate organization for review and approval action:

Sole source procurement requests that exceed \$10,000 and are not related to information technology shall be forwarded directly to the Division of Purchases and Supply.

Information technology-related requests for computer equipment, software and related services, and telecommunications products shall be forwarded to either the Department of General Services/Division of Purchases & Supply (requests to \$100,000) or the Department of Technology Planning (requests over \$100,000).

The above information must be submitted with the Sole Source Procurement Approval Request.

CHAPTER 9

EMERGENCY PROCUREMENT

In this Chapter look for . . .

- 9. General
- 9.1 Types of Emergency Procurements
- 9.2 Award of Emergency Procurements
- 9.3 Documentation
- 9.4 Emergency Planning

Annexes

- 9-A Emergency Procurement Process Flowchart
- 9-B Notice of Emergency Award

9. **General.** An emergency is an occurrence of a serious and urgent nature that demands immediate action. Emergency procedures may be used to purchase only that which is necessary to cover the requirements of the emergency. Subsequent requirements shall be obtained using normal purchasing procedures. The potential loss of funds at the end of a fiscal year is not considered an emergency.
- 9.1 **Types of Emergency Procurements.** The nature of the emergency will determine what pre-award action may be taken:
- a. For an emergency purchase required to protect personal safety or property, efforts should be directed to finding a source and directing the contractor to proceed; however, such procurement shall be made with such competition as is practicable under the circumstances (*Code of Virginia*, § 11-41E). This does not relieve the agency from negotiating a fair and reasonable price and subsequently documenting the procurement action.
 - b. For other types of emergencies, competition should also be sought to the maximum extent practicable. Vendor's qualifications may be checked and verification of insurance coverage, if applicable, information on warranty offered, and any other data pertinent to the procurement. An agency may procure materials, equipment or supplies above its delegated authority with the advance written approval of DGS/DPS without requisitioning through DGS/DPS. The Procurement Exemption Request form in Annex 13-D should be used for this purpose.
 - c. Effective until January 1, 2001, procurement of goods, services, or construction to address computers, software programs, databases, networks, information systems, firmware, or any other devices which are not compliant with the "Year 2000" date change shall be deemed emergency procurements (*Code of Virginia* § 11-41 I).
- 9.2 **Award of Emergency Procurements.** The agency must prepare a confirming contract or agency purchase order, as soon as practicable, after directing the contractor to proceed. Care should be taken to include in detail any agreements, including price, that were made orally with the contractor.
- 9.3 **Documentation.**
- a. **Written Determination.** Prepare a written determination for signature by the agency head or designated representative indicating the nature of the emergency, the reason for selection of the particular contractor and include such



determination with the file. No written, signed, determination of emergency procurement is necessary for the purchase of items which are not compliant with the "Year 2000" date change (see 9.1c).

- b. **Posting Requirements.** Issue, post and/or publish required written notice. For emergency procurements over \$15,000, notices must state that the procurement has been declared an emergency and must also state that which is being procured, the contractor selected, and the date on which the contract was or will be awarded (see 3.18 for further guidance). See Annex 9-B for the proper form.

9.4 **Emergency Planning.** In many cases, procurement planning can reduce the need for using emergency procedures. Each agency should prepare and keep current a list of local sources of goods and services that might be needed in an emergency. Information on rates and charges should be established and agreed upon in advance. In addition, Aon call,≡ Aas needed,≡ annual contracts for various services may be competitively bid to expedite action, ensure adequate support, and reduce the cost of meeting emergency requirements.

- (2) If, upon appeal pursuant to the *Code of Virginia*, § 11-70 or § 11-71, it is determined that the decision of the public body was not an honest exercise of discretion, but rather was arbitrary or capricious or not in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid, and the award of the contract in question has not been made, the sole relief shall be a finding that the bidder is a responsible bidder for the contract in question. If it is determined that the decision of the public body was not an honest exercise of discretion, but rather was arbitrary or capricious or not in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid, the relief shall be as set forth in § 11-66 B of the *Code of Virginia*.
- (3) A bidder contesting a determination that he is not a responsible bidder for a particular contract shall proceed under this section, and may not protest the award or proposed award under § 11-66.
- (4) Nothing contained in this section shall be construed to require a public body, when procuring by competitive negotiation, to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous.

d. **Protest of Award or Decision to Award.** Any bidder or offeror may protest the award or decision to award a contract by submitting such protest in writing to the procuring agency, or an official designated by the agency, no later than ten days after the award or the announcement of the decision to award, whichever occurs first. Any bidder, offeror, or contractor, or a potential bidder or offeror on a contract negotiated on a sole source or emergency basis who desires to protest the award or decision to award such contract shall submit such protest in the same manner no later than ten days after posting or publication of the notice of such contract as provided in 3.18c. However, if the protest of any actual or potential bidder or offeror depends in whole or in part upon information contained in public records pertaining to the procurement transaction, then the time within which the protest must be submitted shall expire ten days after those records are available for inspection by such bidder or offeror, or at such later time as provided in this section. The written protest must be received in the purchasing office not later than 5:00 p.m. on the tenth day. If the tenth day falls on a weekend or an official holiday, the ten-day period expires at 5:00 p.m. on the next regular workday. No protest shall lie for a claim that the selected bidder or offeror is not a responsible bidder or offeror. The written protest shall include the basis for the protest and the relief sought. The procuring agency or an official designated by that agency shall issue a decision in writing within ten days stating the reasons for the action taken. This decision shall be final unless the bidder or offeror appeals within ten days of the written decision by invoking administrative procedures under § 11-71 of the *Code of Virginia*, or in the alternative by instituting legal action under § 11-70 of the *Code of Virginia*. Nothing in this subsection (§ 11-70) shall be construed to permit a bidder to challenge the validity of the terms or conditions of the Invitation for Bids or Request for Proposals.



If prior to an award it is determined that the decision to award is arbitrary or capricious, then the sole relief shall be a finding to that effect. The agency shall cancel the proposed award or revise it to comply with the law. If, after an award, it is determined that an award of a contract was arbitrary or capricious, then the sole relief shall be as hereinafter provided. Where the award has been made but performance has not begun, the performance of the contract may be enjoined. Where the award has been made and performance has begun, the agency may declare the contract void upon a finding that this action is in the best interest of the public. Where a contract is declared void, the performing contractor shall be compensated for the cost of performance up to the time of such declaration. In no event shall the performing contractor be entitled to lost profits (*Code of Virginia* § 11-66).

When an agency, an official designated by that agency, or an appeals board determines, after a hearing held following reasonable notice to all bidders, that there is probable cause to believe that a decision to award was based on fraud or corruption the agency-designated official or appeals board may enjoin the award of the contract to a particular bidder (*Code of Virginia*, § 11-66).

- e. **Effect of Appeal Upon Contract.** Pending final determination of a protest or appeal, the validity of a contract awarded and accepted in good faith in accordance with this manual shall not be affected by the fact that a protest or appeal has been filed (*Code of Virginia* § 11-67).
- f. **Stay of Award During Protest.** An award need not be delayed for the period allowed a bidder or offeror to protest, but in the event of a timely protest or the filing of a timely legal action, no further action to award that contract will be taken unless there is a written determination that proceeding without delay is necessary to protect the public interest or unless that bid or offer would expire (*Code of Virginia* § 11-68).

- g. **Legal Actions.** If injunctive relief is granted, the court, upon request of the public body, shall require the posting of reasonable security to protect the public body. In the event the apparent low bidder, having been previously determined by the public body to be not responsible in accordance with § 11-37, is found by the court to be a responsible bidder, the court may direct the public body to award the contract, forthwith, to such bidder in accordance with the requirements of this section and the Invitation to Bid. A contractor may bring an action involving a contract dispute with a public body in the appropriate circuit court. A bidder, offeror, or contractor need not utilize administrative procedures meeting the standards of § 11-71 of the Code, if available, but if those procedures are invoked by the bidder, offeror, or contractor, the procedures shall be exhausted prior to instituting legal action concerning the same procurement transaction unless the public body agrees otherwise. Nothing herein shall be construed to prevent a public body from instituting legal action against a contractor (*Code of Virginia*, § 11-70).

11.3 **Disputes.**

- a. **Claims.** Written notice of the contractor's intention to file a claim must be given at the time of the occurrence or beginning of the work upon which the claim is based. Contractual claims whether for money or other relief shall be submitted in writing no later than sixty days after final payment. Nothing herein shall preclude a contractor from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of claims shall not delay payment of amounts agreed due in the final payment (*Code of Virginia*, § 11-69).

A contractor may not institute legal action prior to receipt of the purchasing office's decision on the claim unless that office fails to render such decision within thirty (30) days. The decision of the purchasing office shall be final and conclusive unless the contractor, within six months of the date of the final decision on the claim, institutes legal action as provided in the *Code of Virginia*, § 11-70.

- b. **Claims Relief.** Under certain circumstances, beyond the control of the contractor such as acts of God, sabotage, and fire or explosion not caused by negligence, relief from performance of the contract or performance within the time required by the contract may be granted by the purchasing office (see Liquidated Damages Clause, Appendix E, Section II).

- O. **CHANGES TO THE CONTRACT:** Changes can be made to the contract in any of the following ways:
1. The parties may agree in writing to modify the scope of the contract. An increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.
 2. The Purchasing Agency may order changes within the general scope of the contract at any time by written notice to the contractor. Changes within the scope of the contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The contractor shall comply with the notice upon receipt. The contractor shall be compensated for any additional costs incurred as the result of such order and shall give the Purchasing Agency a credit for any savings. Said compensation shall be determined by one of the following methods:
 - a. By mutual agreement between the parties in writing; or
 - b. By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the contractor accounts for the number of units of work performed, subject to the Purchasing Agency's right to audit the contractor's records and/or to determine the correct number of units independently; or
 - c. By ordering the contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The contractor shall present the Purchasing Agency with all vouchers and records of expenses incurred and savings realized. The Purchasing Agency shall have the right to audit the records of the contractor as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the Purchasing Agency within thirty (30) days from the date of receipt of the written order from the Purchasing Agency. If the parties fail to agree on an amount of adjustment, the question of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the procedures for resolving disputes provided by the Disputes Clause of this contract or, if there is none, in accordance with the disputes provisions of the Commonwealth of Virginia *Vendors Manual*. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this contract shall excuse the contractor from promptly complying with the changes ordered by the Purchasing Agency or with the performance of the contract generally.
- P. **DEFAULT:** In case of failure to deliver goods or services in accordance with the contract terms and conditions, the Commonwealth, after due oral or written notice, may procure them from other sources and hold the contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the Commonwealth may have.
- Q. **TAXES:** Sales to the Commonwealth of Virginia are normally exempt from State sales tax. State sales and use tax certificates of exemption, Form ST-12, will be issued upon request. Deliveries against this contract shall usually be free of Federal excise and transportation taxes. The Commonwealth's excise tax exemption registration number is 54-73-0076K. **(NOT NORMALLY REQUIRED FOR SERVICE CONTRACTS)**
- R. **USE OF BRAND NAMES:** Unless otherwise provided in this solicitation, the name of a certain brand, make or manufacturer does not restrict (bidders/offerors) to the specific brand, make or manufacturer named, but conveys the general style, type, character, and quality of the article desired. Any article which the public body, in its sole discretion, determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. The (bidder/offeror) is responsible to clearly and specifically identify the product being offered and to provide sufficient descriptive literature, catalog cuts and technical detail to enable the Commonwealth to determine if the product offered meets the requirements of the solicitation. This is required even if offering the exact brand, make or manufacturer specified. Normally in competitive sealed bidding only the information furnished with the bid will be considered in the evaluation. Failure to furnish adequate data for evaluation purposes may result in declaring a bid nonresponsive. Unless the (bidder/offeror) clearly indicates in its (bid/proposal) that the product offered is an Aequal product, such (bid/proposal) will be considered to offer the brand name product referenced in the solicitation. **(NOT NORMALLY REQUIRED FOR SERVICE CONTRACTS)**

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

(NOT NORMALLY REQUIRED FOR SERVICE CONTRACTS)

- T. **INSURANCE:** By signing and submitting a bid or proposal under this solicitation, the bidder or offeror certifies that if awarded the contract, it will have the following insurance coverages at the time the contract is awarded. For construction contracts, if any subcontractors are involved, the subcontractor will have workers= compensation insurance in accordance with §§ 11-46.3 and 65.2-800 et seq. of the *Code of Virginia*. The bidder or offeror further certifies that the contractor and any subcontractors will maintain these insurance coverages during the entire term of the contract and that all insurance coverages will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

INSURANCE COVERAGES AND LIMITS REQUIRED:

1. Worker's Compensation - Statutory requirements and benefits; require that the Commonwealth of Virginia be added as an additional named insured on contractor=s policy.
2. Employers Liability - \$100,000.
3. Commercial General Liability - \$500,000 combined single limit. Commercial General Liability is to include Premises/Operations Liability, Products and Completed Operations Coverage, and Independent Contractor's Liability or Owner's and Contractor's Protective Liability. The Commonwealth of Virginia must be named as an additional insured when requiring a Contractor to obtain Commercial General Liability coverage.
(**Note to Agency/Institution:** When the requirement is for parking facilities and garages for motor vehicle maintenance contracts, the forgoing sentence should be changed to read: These coverages are to include Products, Completed Operations Coverage and Garagekeeper=s Liability.)
4. Automobile Liability - \$500,000 - Combined single limit. (Only used if motor vehicle is to be used in the contract.)

NOTE: In addition, various Professional Liability/Errors and Omissions coverages are required when soliciting those services as follows:

<u>Profession/Service</u>	<u>Limits</u>
Accounting	\$1,000,000 per occurrence, \$3,000,000 aggregate
Architecture	\$2,000,000 per occurrence, \$6,000,000 aggregate
Asbestos Design, Inspection or Abatement Contractors	\$1,000,000 per occurrence, \$3,000,000 aggregate
Health Care Practitioner (to include Dentists, Optometrists, Nurses, Pharmacists, Doctors, etc.)	\$1,500,000 per occurrence, \$3,000,000 aggregate (Increased limit effective August 1, 1999)
Insurance/Risk Management	\$1,000,000 per occurrence, \$3,000,000 aggregate
Landscape/Architecture	\$ 500,000 per occurrence, \$1,000,000 aggregate
Legal	\$1,000,000 per occurrence, \$5,000,000 aggregate
Professional Engineer	\$2,000,000 per occurrence, \$6,000,000 aggregate
Surveying	\$ 100,000 per occurrence, \$ 300,000 aggregate

*** When Used: FOR CONSTRUCTION AND/OR SERVICE CONTRACTS - Required in all solicitations where a contractor will perform work or services in or on state facilities. The limits are minimums and may be increased. The Department of General Services, Division of Risk Management (786-3943) should be contacted when other types of coverage may be required or when in doubt as to the need for other limits. When soliciting one of the Professions/Services listed above include the Professional Liability/Errors and Omissions coverage and limits as shown. When not soliciting one of these Professions/Services, omit the required coverages section from the General Terms and Conditions boilerplate.**

NOTE TO STATE AGENCIES AND INSTITUTIONS: Select from Appendix B, Sections II & III, appropriate Special Terms and Conditions to be included in the solicitation. Refer to Chapter 6, ACompetitive Sealed Bidding, Chapter 7, ACompetitive Negotiation, for proper sequence of contents.