

October 2, 2006

**MEMORANDUM**

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

FROM: Ron Bell  
 Director 

SUBJECT: Procurement Information Memoranda (PIM) #98-021

Enclosed is PIM #98-021, effective 10/2/06, representing changes to the September 1998 edition of the *Agency Procurement and Surplus Property Manual (APSPM)*. Changes are effective October 2, 2006 and incorporate changes resulting from Executive Order 33, dated August 10, 2006. The revised policies place emphasis on small business initiatives, which include DMBE-certified women-owned and minority-owned businesses that have also received the DMBE small business certification. The changes are noted in the table below. All changes to the *APSPM* are incorporated into a web-based *APSPM*, which is downloadable from the eVA and Division of Purchases and Supply web sites at <http://www.eva.virginia.gov> and <http://dps.dgs.virginia.gov/dps/>, respectively. The version containing changes as a result of PIM #98-021 will be posted to the website within the next week. The location of text changes is indicated by an arrow in the margin ( → ) with the corresponding PIM 98-021 number identified next to the changes. All arrows indicating previous changes are removed. Revised Annexes containing flow charts (Annexes 5-C, 5-E, 5-F, 6-A, 7-A) are updated within the respective chapters in the on-line *APSPM* but are not shown within this PIM.

Appendix C contains a log in which to record the PIM number and date of revision. This letter and the corresponding PIM #98-021 should be filed in the back of the Appendix C log.

	<b>Summary of Changes</b>
2.3	The fourth sentence is changed to add “DMBE-certified” small, women-owned and minority-owned businesses.
3.7 b.	Adds a provision stipulating that the use of cooperative contracts is not authorized when there are DMBE-certified small businesses available to provide the goods or furnish the services at fair and reasonable prices.

3.10 a.	The first paragraph is modified to read: “Each executive branch agency and institution of the Commonwealth shall adopt an annual SWAM (Small, Women and Minority-owned businesses) plan that will specify that agency’s or institution’s SWAM plans and small business goals for procurement in accordance with Executive Order 33, dated August 10, 2006. Executive branch agencies and institutions shall submit an annual SWAM plan to the Department of Minority Business Enterprise (DMBE) and the appropriate cabinet secretary, in a form specified by DMBE, on September 1 of each fiscal year. The plan shall include the annual designation of a SWAM champion to ensure nondiscrimination in the solicitation and awarding of contracts.”
3.10 b.	Discussion concerning small businesses, women-owned businesses and minority-owned businesses eliminates the word “enterprises” after each reference.
3.10 c.	The title of this sub-section is renamed, “Contract Sizing/Assessing Bundled Contracts.” The section on “Prime Contractor SWAM Procurement Plan” is deleted under this sub-section and moved to new sub-section 3.10.h.
3.10 d.	The title of this sub-section is renamed, “Consultation with Department of Minority Business Enterprise (DMBE) and Department of Business Assistance (DBA).” A last sentence is added requiring all state agencies and institutions to work together with DMBE and DBA to seek to increase the number of DMBE certified SWAM businesses that are available to do business with the Commonwealth.
3.10 e.	Section 3.10 e. is changed to require state agencies and institutions to solicit small businesses from the list maintained on the eVA and DMBE web sites. This includes DMBE-certified women-owned and minority-owned businesses that have also received the DMBE small business certification. Former sections 3.10 e.1., 3.10 e.2., and 3.10 e.3. are moved to 3.10 g.
3.10 f.	The title of this section is revised to read, “Award to Other than the Lowest Priced Bidder or Highest Ranking Offeror over \$50,000.” This section is changed to remove the \$100,000 restriction for a contract to be awarded to a reasonably priced or reasonably ranked small business bidder or offeror that is other than the lowest priced bidder or highest ranking offeror. The award clause in Appendix B, Section II, 7. J. or K., as applicable, must be included in the solicitation if the agency or institution desires to make the award to other than the lowest priced bidder or highest ranking offeror over \$50,000. This section is changed to add the requirement that such cases must be approved in writing by the agency’s or institution’s Chief Procurement Officer and to delete the last sentence of the paragraph.

3.10 g.	Small business set-asides are mandatory for procurements up to \$50,000. Small businesses shall include, but not be limited to, certified women-owned and minority-owned businesses that have received the DMBE small business certification. Procurements shall be set-aside for DMBE-certified small businesses from \$5,000 to \$50,000 unless there is a reasonable expectation that at least two competitive bids or offers will not be received. Procurements over \$50,000 may be set aside, in whole or in part, when there is a reasonable expectation that at least two competitive bids or offers will be received. If the agency or institution does not proceed with the set-aside for small business up to \$50,000, the reason shall be documented in the procurement file.
3.10 h.	New sub-section h. is added using information moved from 3.10 c. 2 and renamed, Prime Contractor Small Business Subcontracting Plan. This sub-section is modified to encourage participation by DMBE-certified small business vendors and adds the requirement for reporting of DMBE-certified small business participation by the prime.
3.23	A "Note" is added following the last example under Sales and Use Tax in 3.23 c. because of law changes enacted in the <i>Code of Virginia</i> (§58.1-3833 E.) which must be taken into consideration when applying the Sales and Use Tax examples to determine to what extent taxes may apply.
Annex 3-B	The Summary of Procurement Policies is changed to require agencies and institutions to set-aside requirements up to \$50,000 exclusively for DMBE-certified small businesses, when there is adequate registration in the commodity. This annex also summarizes the minimum number of DMBE-certified small businesses to be solicited by dollar thresholds.
5.1	Information is added to advise that procurements up to \$50,000 shall be set-aside exclusively for small business participation. Competition, where required, is to be made according to the number of competitive sources identified in Chapter 5. If two or more sources cannot be identified to set-aside the procurement under \$50,000, then the file shall be documented with the efforts made to obtain the number of required sources.
5.1 a.	Single quotes, for purchases up to \$5,000, require soliciting orally or in writing, a minimum of one (1) DMBE-certified small business, if available. Reference to soliciting a women-owned or minority-owned business is removed.
5.1 b.	Written quotes for purchases over \$5,000 and up to the small purchase dollar threshold of \$50,000 require soliciting at least four (4) DMBE-certified small businesses, if available. Reference to soliciting a women-owned or minority-owned business is removed. Information is added to advise that if the procurement is expected to exceed \$50,000 over the entire term of the contract, including all possible renewal periods, the procedures outlined in Chapter 6 on competitive sealed bidding or in Chapter 7 on competitive negotiation should be used.

5.3 a.	Where the agency's or institution's estimated cost of goods or nonprofessional services is \$5,000 or less, purchases may be made upon receipt of a minimum of one (1) written or telephone (oral) quotation from a DMBE-certified small business, if available. Reference to soliciting a women-owned or minority-owned business is deleted.
5.6 b. 5.6 d.	The requirement for unsealed bidding, over \$5,000 to \$50,000, is to solicit four (4) DMBE-certified small business sources, if available. Reference to soliciting a women-owned or minority-owned business is removed. 5.6 d. is deleted.
5.7 a.1. and 5.7 b. 8.	5.7 a. 1. and 5.7 b. 8, on the competition requirements for Unsealed Proposals, requires solicitation of four (4) DMBE-certified small business sources, unless the requirement is set-aside for Small business participation only. Reference to soliciting a women-owned or minority-owned business is removed.
Annex 5-C	Annex 5-C is changed to reflect the requirement to obtain one quote and make the award to a DMBE-certified small business or businesses for requirements up to \$5,000, if available. The reference to the American Express card is changed to the Small Purchase Charge Card.
Annex 5-E; Annex 5-F	Annexes 5-E and 5-F are changed to reflect the requirement to solicit DMBE-certified small businesses for requirements over \$5,000 and up to \$50,000, if available.
6.1	Competitive sealed bidding thresholds are modified to allow award to a reasonably priced DMBE-certified small business bidder that is other than the lowest priced bidder. Reference to soliciting women-owned or minority-owned businesses is replaced with soliciting small businesses that include DMBE-certified women-owned or minority-owned businesses that have received the DMBE small business certification.
6.2 e.	The required number of sources for solicitation of competitive sealed bids is revised to differentiate between set-aside and non-set-aside programs over \$50,000. The Award To Other Than The Lowest Priced Bidder clause in Appendix B, Section II. 7. J. may not be used if the competitively bid requirement is set-aside for small business participation. The guidance is modified to instruct the agency or institution not to use the clause if the procurement has been set-aside for small business participation only.
6.2 f.	A new section entitled, Small Business Subcontracting Plan is added and requires a Small Business Subcontracting Plan to be completed by prime contractors for any prime contract in excess of \$100,000. The new form is located in Annex 7-G.
6.3 d.; 6.5 b.; 6.6	These sections are revised to remove the \$100,000 restriction for a contract to be awarded to a qualified reasonably priced DMBE-certified small business bidder that is other than the lowest priced bidder. The award may be made to other than the lowest priced bidder by including the appropriate clause in Appendix B., Section II, 7. J. in the solicitation.

Annex 6-A	The solicitation requirement is changed from soliciting four (4) women-owned or minority-owned businesses to soliciting DMBE-certified small businesses.
Annex 6-B	The Faith-based nondiscrimination statement is added to the cover page of the sample IFB solicitation.
Annex 6-D	The section on the Bidders List on the IFB Solicitation and File Checklist is modified to change the solicitation requirements for sealed bids to include the solicitation of DMBE-certified small businesses.
Chapter 7	Under “In this Chapter look for . . .” the title for Annex 7-G is changed to, Small Business Subcontracting Plan. Annex 7-H, Summary of Evaluation Ratings by Criteria Worksheet, is added.
7.2 g.	The required number of sources for solicitation of competitively negotiated procurements is revised to differentiate between set-aside and non-set-aside programs over \$50,000. The Award To Other Than The Highest Ranking Offeror clause in Appendix B, Section II. 7. K. may not be used if the competitively negotiated requirement is set-aside for small business participation. The “When Used” guidance is modified to instruct the contract officer not to use the clause if the procurement has been set-aside for small business participation only.
7.2 j.	Offerors must include, as part of their proposal, a plan that ensures small business participation, for all prime contracts in excess of \$100,000. The small business subcontracting plan shall be one of the evaluation criterion and the weight shall be no less than 20% of the total evaluation points. The change eliminates reference to “goals identified in the agency’s SWAM plan” and adds reference to the “statewide goal of 40 percent of the Commonwealth’s discretionary spending in combined prime and subcontracts for small businesses.” The last paragraph is added requiring the offeror to complete either Section A, B, or C of the Small Business Subcontracting Plan (Annex 7-G), as appropriate, in order to receive points for this evaluation criterion.
7.4 a.	This section is revised to remove the \$100,000 restriction for a contract to be awarded to a qualified reasonably ranked DMBE-certified small business offeror that is other than the highest ranking offeror.
7.5 d.	A new sentence is added to the end of the last paragraph which reads, “If the procurement value is over \$100,000, reference 7.2 j.”
7.5 i.	The required number of sources for solicitation of competitively negotiated procurements under Best Value Acquisition is revised to differentiate between set-aside and non-set-aside programs over \$50,000. The Award To Other Than The Highest Ranking Offeror clause in Appendix B, Section II. 7. I. may not be used if the competitively negotiated requirement is set-aside for small business participation. The “When Used” guidance is modified to instruct the contract officer to delete the third sentence concerning award to other than the highest ranking offeror if the procurement has been set-aside for small business participation only.

7.5 m.	This section is revised to remove the \$100,000 restriction for a contract to be awarded to a qualified reasonably ranked DMBE-certified small business offeror that is other than the highest ranking offeror.
Annex 7-A	The solicitation requirement is changed from soliciting four (4) women-owned or minority-owned businesses to soliciting four (4) DMBE-certified small businesses.
Annex 7-B	The Faith-based nondiscrimination statement is added to the cover page of the sample RFP solicitation.
Annex 7-B, Step 2, IV. B. 6	The note regarding the matter of compensation as being completely open to negotiation is deleted. The reference to SWAM Utilization is replaced with the Small Business Subcontracting Plan in these sections.
Annex 7-B, Step 2, V. A. 4	The evaluation criterion shown as SWAM Utilization is replaced with Small Business Subcontracting Plan. The sample evaluation criterion is revised to clarify that experience and qualifications of the offerors' personnel are included when evaluating offers. A note is added that reads, "NOTE: Experience and qualifications not only of the firm but also of the personnel to be assigned to the contract shall be included in the 'Experience and qualifications' criterion, when appropriate (e.g., services, furnish and install)."
Annex 7-B, Step 2, VI. G.	Instructions are changed in the sample RFP to advise about the requirements for a Small Business Subcontracting Plan in solicitations where the prime contract is in excess of \$100,000 and related requirements in 3.10 h.
Annex 7-B, Step 2, VIII.	A fourth sentence is added to the RFP guidance which says, "Delete General Terms and Conditions that are not applicable to the instant procurement such as clauses Q., R., and S. which are not applicable to service contracts; clause T for goods purchases; and clause Z. if the procurement is not set-aside (see 3.10g)."
Annex 7-B, Step 2 IX.	Delete D. and reference to the <u>Availability of Funds</u> clause which is a General Term and Condition.
Annex 7-E	A sentence is added that reads, "If set-aside, solicit a minimum of four (4) DMBE-certified small businesses, if available."
Annex 7-G	The title of this attachment is changed from SWAM (Small, Women and Minority-owned Businesses) Utilization Plan to Small Business Subcontracting Plan. Small businesses must be certified by the Commonwealth of Virginia, Department of Minority Business Enterprise (DMBE) to be counted in the SWAM program.
Appendix A	Definitions for Small Business Subcontracting Plan and Subcontractor are added.
Appendix B, Section I.	The title page is modified to add Set-Asides as a new General Term and Condition Z. Set-Asides was previously a Special Term and Condition (#60).

Appendix B, Section I. Z.	A new General Term and Condition entitled, Set-Asides, shall be used in all solicitations up to \$50,000, unless a written determination is made that a set-aside is not appropriate. This General Term and Condition may be used for requirements over \$50,000. When Used Guidance is added.
Appendix B, Section II	The title page is modified to change Special Term and Condition #36 to read, "Small Business Subcontracting and Evidence of Compliance."
Appendix B, Section II, 4.	The "When Used" guidance for the Audit term and condition is modified to read, "Must be included in all term contracts for goods or services and all prime vendor contracts requiring a Small Business Subcontracting Plan for contracts over \$100,000."
Appendix B, Section II, 7.	This Award of Contract term and condition changes the reference to a contract's total value to exceeding \$50,000. The second sentence is re-written to clarify when to use Award clauses J. or K.
Appendix B, Section II, 7. H.	Because procurements under \$50,000 are set-aside for small business participation, the fifth sentence is deleted which reads, "The award may be made to a reasonably ranked minority or women-owned offeror that is other than the highest ranking offeror."
Appendix B, Section II, 7. I. & 7. K.	These sections are revised to remove the \$100,000 restriction for a contract to be awarded to a qualified reasonably ranked DMBE-certified small business offeror that is other than the highest ranking offeror. The guidance is changed to read, "DMBE-certified small business offeror" for which an agency may award even if that offeror is other than the highest ranking offeror.
Appendix B, Section II, 7. J.	The wording in this section is changed to "DMBE-certified small business bidder(s)" for whom an agency may award even if that bidder is other than the lowest priced bidder.
Appendix B, Section II, 36.	The title of this provision is changed to Small Business Subcontracting and Evidence of Compliance and is rewritten to allow the contract officer a space to insert the period of time or occurrence when evidence of compliance is due, e.g., request for final payment, monthly, quarterly, annually, end of contract period. A provision is added for withholding final payment until proof of compliance with the plan submitted by the prime contractor when the Small Business Subcontracting Plan was a condition of the award.
Appendix B, Section II, 60.	The Special Term and Condition on Set-Asides is moved to Appendix B, Section I. Z. in the General Term and Conditions. The Special Term and Condition on Nonprofit Sheltered Workshops and Nonprofit Organizations listed as Special Term and Condition #61 is renumbered as #60.
Appendix B., Section II, 61.	The Special Term and Condition on Nonprofit Sheltered Workshops and Nonprofit Organizations listed as Special Term and Condition #61 is renumbered as #60 and #61 is deleted.

	Note: Throughout the manual, woman-owned business(es) is changed to women-owned business(es).
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Changes to each of the chapters, appendices, index, and changes to the searchable whole *APSPM* version are available on the eVA website, under the *APSPM* Manual. Changes to the *Vendors Manual* are also available on the eVA website.

To print a hard copy of the manual, save the chapters and appendices to your hard drive or network and print from there. Printing directly from the website will result in lost formatting. Use the “whole *APSPM*” for text searches. If you should have questions about the changes, please contact Eugene Anderson at 804-786-1600 or [eugene.anderson@dgs.virginia.gov](mailto:eugene.anderson@dgs.virginia.gov).

2.3 **Source Lists.** Care should be taken to solicit sources capable of providing, as a regular part of their business, the goods or services needed. The maintenance and use of appropriate and current source lists are essential to competitive procurement. Personnel at all levels should make a concerted effort to identify responsible vendors as sources of supply for goods and services. Special emphasis should be placed on including Virginia vendors and DMBE-certified small, women-owned and minority-owned businesses on all solicitation lists. Agency source lists may also be furnished to DGS/DPS for its use as well as for use by other agencies. DGS/DPS maintains an automated list of registered vendors by commodity and service (see 3.10a, 13.3 and the Bidders List tool in eVA). For information on selection of bidders/offerors, see 4.1 of the *Vendors Manual*.

3.7 **Cooperative Procurement.** The *Code of Virginia*, § 2.2-4304 authorizes public bodies to utilize cooperative procurement to satisfy requirements for goods and non-professional services; however, state agencies and institutions must comply with the following requirements, and all such purchases shall be made through eVA. Additional agencies and institutions not specifically named in the solicitation desiring to purchase from another public body's contract may do so if the original solicitation specified that the procurement was being conducted on behalf of other public bodies and the issuing public body modifies the contract in writing with concurrence from the contractor to add the specific agency or institution.

- a. **Sponsoring a Cooperative Procurement:** No state agency or institution may sponsor, conduct or administer a cooperative procurement arrangement when the total value of the contract is expected to exceed their delegated purchasing authority without advance approval from the Director of the Division of Purchases and Supply. An agency or institution initiating a procurement and desiring to allow its use by other public bodies must include the ADDITIONAL USERS clause found at Appendix B, Section II, and shall serve as the lead agency (contracts manager) and shall administer the program in accordance with Chapter 10 of this manual. Vendor complaints and disputes will be managed by the ordering entity, but the lead agency should be provided copies of any such complaints or disputes.
- b. **Use of Other Cooperative Contracts:** Agencies and institutions desiring to participate in a cooperative procurement arrangement for non-telecommunications and non-technology goods and nonprofessional services as set forth in §2.2-4304 may do so without regard to their delegated purchasing authority; however, the use of cooperative contracts is not authorized when there are, DMBE-certified small businesses available to provide the goods or furnish the services at fair and reasonable prices. *APSPM* General Terms and Conditions shall apply.

**General Services Administration (GSA) or other U.S. Government Contracts:** Except as authorized by the United States Congress and consistent with applicable federal regulations, the direct placement of an order against a federal GSA contract is not permissible. The United States Congress has authorized use of certain contracts by specific entities under the 1122 Program. Information on contracts and entities authorized to use those contracts is available from the State Police website, [www.vsp.state.va.us](http://www.vsp.state.va.us). Click on "More" then scroll to Law Enforcement Procurement Program. For additional information, contact the 1122 Program Manager, at 804-674-2000. The requirement to modify the original contract to add additional specific agencies or institutions to the contract does not apply to any contract awarded by the U.S. General Services Administration (GSA) or any other agency of the U.S. government that has been authorized for use by the U.S. Congress.

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

- a. **Agency Plans.** Each executive branch agency and institution of the Commonwealth shall prepare and adopt an annual SWAM (Small, Women and Minority-owned businesses) plan that will specify that agency's or institution's SWAM plans and small business goals for procurement in accordance with Executive Order 33, dated August 10, 2006. Executive branch agencies and institutions shall submit an annual SWAM plan to the Department of Minority Business Enterprise (DMBE) and the appropriate cabinet secretary, in a form specified by the DMBE, on September 1 of each fiscal year. The plan shall include the annual designation of a SWAM champion to ensure nondiscrimination in the solicitation and awarding of contracts.

Agencies shall establish internal procedures consistent with the provisions of the *VPPA* and this manual to facilitate the participation of small businesses and businesses owned by women and minorities in procurement transactions. The procedures established shall be in writing and shall comply with the provisions of any

enhancement or remedial measures authorized by the Governor pursuant to § 2.2-4310C of the *VPPA*, and shall include specific plans to achieve any goals established therein (*Code of Virginia*, § 2.2-4310B).

Agencies and institutions should not accept a bad business deal or a lower quality vendor, product or service in order to meet SWAM business goals. Quality, price and contractual terms should not be sacrificed in any meaningful way in order to achieve SWAM procurement goals.

- b. **Certified Vendors.** No vendor shall be considered a Small Business, a Women-Owned Business or a Minority-Owned Business unless certified as such by the Department of Minority Business Enterprise (DMBE) by the due date and time for receipt of bids or proposals. DMBE-certified women- and minority-owned businesses shall also be considered small businesses when they have received DMBE small business certification. Definitions for Women-Owned Business, Small Business, and Minority-Owned Business, are found in Appendix A.
- c. **Contract Sizing/Assessing Bundled Contracts.** The size of a proposed procurement can limit the potential participation by small business vendors. The following rule is designed to address that issue, while preserving the cost-savings and other benefits that the Commonwealth has achieved through bundling contracts and other procurement initiatives.

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

- d. **Consultation with the Department of Minority Business Enterprise (DMBE) and the Department of Business Assistance (DBA).** Each contracting agency or institution, in consultation with DMBE and DGS where practical, shall seek to identify those purchases in which contract sizing may influence the availability of purchasing opportunities to small business vendors (a "Size-Related Contract"). Where these purchases are identified, the agency shall determine whether there are small businesses capable of meeting the purchasing requirements. If the agency identifies no DMBE-certified small businesses capable of performing the contract requirements, then the agency shall consult with DMBE to seek to identify available vendors unless contract timing issues require the agency or institution to complete the contract process before DMBE input can be obtained. For any Size-Related Contract for which the agency or institution determines that contract timing issues require contract award without identifying any small business vendors or consultation with DMBE, the agency or institution shall consult with DMBE promptly after award of the contract to develop potential small business vendors for the next similar procurement. State agencies and institutions shall work together with DMBE and DBA to seek to increase the number of DMBE certified SWAM businesses that are available to do business with the Commonwealth.
- e. **Competitive Requirements.** All employees with purchasing responsibility who are involved in procurement decisions for goods and services are expected to notify and give every consideration to using qualified small business suppliers of procurement opportunities in a manner that is consistent with state and federal laws and regulations and with the provisions set forth in this manual. Whenever the agency or institution engages in a solicitation or request for quotes, it will include businesses selected from the list of certified small businesses maintained on the DMBE and eVA web sites, [www.dmbe.virginia.gov](http://www.dmbe.virginia.gov) and [www.eva.virginia.gov](http://www.eva.virginia.gov). This shall include DMBE-certified women-owned and minority-owned businesses that have received the DMBE small business certification.
- f. **Award to Other than the Lowest Priced Bidder or Highest Ranking Offeror Over \$50,000.** Procurements over \$50,000 may be awarded to a reasonably priced or reasonably ranked DMBE-certified small business bidder or offeror that is other than the lowest priced bidder or highest ranking offeror. Include the award clause in Appendix B, Section II, 7 J. or K., as applicable, in the solicitation. The decision to make an award to other than the lowest priced bidder or highest ranking offeror must be approved in writing by the agency or institution's Chief Procurement Officer; this approval authority cannot be delegated. If the award is made to

other than the lowest priced bidder or highest ranking offeror, the award shall be made to the lowest responsive and responsible or highest ranking DMBE-certified small business bidder or offeror.

- g. **Set-asides.** The goal of the Commonwealth is that 40% of its purchases be made from small businesses. Small businesses shall include, but not be limited to, DMBE-certified women-owned and minority-owned businesses that have received the DMBE small business certification. Set-asides apply unless the procurement has already been competed, such as when orders are placed against a mandatory or optional use contract. Set-asides do not apply to mandatory sources, such as the Virginia Industries for the Blind, Virginia Correctional Enterprises or purchases made from existing mandatory or optional statewide contracts. Small businesses shall be identified on the vendor mailing list.

- (1) Procurements up to \$5,000 shall be set-aside exclusively for DMBE-certified small businesses. If prices do not appear to be fair and reasonable the agency shall document the procurement file to that effect, including stating the basis for the determination, and then additional quote(s) shall be obtained from at least one additional DMBE-certified small business, if available.

If the agency or institution is unable to obtain a fair and reasonable price from a DMBE-certified small business up to \$5,000, the set-aside may be withdrawn and the procurement awarded to other than a DMBE-certified small business. The reason shall be documented in the procurement file.

- (2) Procurements over \$5,000 and up to \$50,000 shall be set-aside exclusively for DMBE-certified small businesses unless there is not a reasonable expectation that the agency or institution will receive at least two competitive bids or offers and the agency documents the procurement file that the procurement does not qualify for a set-aside. If the procurement does not qualify for a set-aside, General Term and Condition Z. – Set-Asides must be removed from the solicitation.

If the agency or institution receives only one acceptable bid or offer as a result of the set-aside, the award should be made to that bidder or offeror if the price or offer is fair and reasonable. The agency or institution is responsible for determining price reasonableness (see 4.10). If the agency or institution receives no acceptable bids or offers, the set-aside may be withdrawn and the requirement resolicited using competitive, non-set-aside, procedures described in Chapter 5.

If the agency or institution is unable to proceed with the set-aside for small business up to \$50,000, the reason shall be documented in the procurement file. Documentation may be made on the requisition.

- (3) Procurements over \$50,000 may be set-aside, in whole or in part, when there is a reasonable expectation that the agency or institution will receive at least two competitive bids or offers. If the decision is made not to set-aside the procurement over \$50,000, General Term and Condition Z. – Set-Asides must be removed from the solicitation.

If the agency or institution receives no acceptable bids or offers, the set-aside may be withdrawn and the requirement resolicited using competitive, non-set-aside, procedures described in Chapters 6, or 7, as applicable.

- h. **Prime Contractor Small Business Subcontracting Plan.** All agencies and institutions shall include in the terms and conditions, the requirement for a Small Business Subcontracting Plan for the award of any prime contract in excess of \$100,000 (see Annex 7-G). For competitive negotiation, the Small Business Subcontracting Plan shall be used as one of the evaluation criteria. A DMBE-certified small business, including women-owned and minority-owned businesses when they have received DMBE small business certification, who serves as prime contractor will receive full credit for subcontracting for work performed by such prime. See Appendix B, Section II, 36 for the special term and condition that may be included in solicitations requiring the contractor to provide evidence of compliance with this requirement.

Each prime contractor who wins an award in which provision of a small business subcontracting plan is a condition of the award, shall deliver to the contracting agency or institution timely reports substantiating compliance in accordance with the small business subcontracting plan (subject only to insubstantial shortfalls and to shortfalls arising from subcontractor default). See Appendix B., Section II. 36. When such business has been subcontracted to these firms, the contractor agrees to furnish the purchasing office at a minimum, the following information: name of firm, phone number, total dollar amount subcontracted, category type (small;

small and women-owned; or small and minority-owned), and type of product/service provided, at the frequency required in the contract. Final payment under the contract in question may be withheld until such certification is delivered and, if necessary, confirmed by the agency or institution, or other appropriate remedies may be assessed in lieu of withholding such payment.

- 3.23 c. Following example 4 a Note is added which reads:

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

**Annex 3-B**

**Summary of Procurement Policies**

**I. Small Purchases - Goods and Services, other than Professional Services**

Thresholds	Procedures
<b>Set-aside for Small Businesses:</b>	
Up to \$5,000	Obtain a minimum of one (1) quote from a DMBE-certified small business, if available. (Use of the Small Purchase Charge Card is encouraged up to \$5,000.)
Over \$5,000 to \$50,000	Solicit a minimum of four (4) DMBE-certified small business sources, if available, in writing or electronically. Use Quick Quote for bids or quotes or Unsealed Proposal methods to request proposals over \$5,000 to \$50,000.

**II. Competitive Sealed Bidding or Competitive Negotiation (Code of Virginia, § 2.2-4301 and §2.2-4303)**

Threshold	Procedures
Over \$50,000; may be used for lesser amounts.	Unless set-aside for small businesses only (see 3.10 g), solicit a minimum of six (6) sources, including a minimum of four (4) DMBE-certified small businesses, in writing, including electronically through eVA. If set-aside, solicit a minimum of six (6) DMBE-certified small businesses, if available. Use one of the following methods for purchases over \$50,000 unless an exception (see III. below).: 1 - Competitive sealed bidding. 2 - Two-step competitive sealed bidding. 3 - Competitive negotiation, including Best Value Acquisition. A written justification is required.

**III. Exceptions To Competitive Procurement (Code of Virginia, § 2.2-4303 E and F)**

Thresholds	Procedures
Emergency (See Chapter 9)	Take immediate action if required to protect personal safety or property. Other emergencies, seek competition to the extent practicable. Requires written determination signed by the agency/institution head or designee.
Sole Source (Unlimited dollar amounts) (See Chapter 8)	Over \$5,000, a written quotation must be obtained from the vendor. Requires written justification approved in advance by the agency/institution head. Over \$50,000 requires approval from DGS/DPS. Agencies and institutions may make contract awards after appropriate approval. Purchase using noncompetitive negotiation.
Used Equipment up to \$50,000	Competition not required. See 1.5c & 4.17.

**IV. Exemption from Purchasing through DGS/DPS**

Thresholds	Procedures
Various	See 1.5.

**Note:** Public posting by advertising in the *Virginia Business Opportunities (VBO)* on eVA ([www.eva.state.va.us](http://www.eva.state.va.us)) is required over \$50,000 for goods and nonprofessional services. For Competitive Negotiation over \$50,000 notice is also required to be advertised in a newspaper (see 3.18).

- 5.1 **Competitive Requirements.** Procurements up to \$50,000 shall be set-aside exclusively for DMBE-certified small business participation in accordance with 3.10 g. Competition, where required, is to be made according to the number of competitive sources shown in Chapter 5. If two or more DMBE-certified small businesses cannot be identified to set-aside the procurement under \$50,000, then the file shall be documented with the efforts made to obtain the number of required sources.
- a. **Oral or Written.** Purchases of goods or services up to the single quote limit, requires soliciting orally or in writing, a minimum of one (1) DMBE-certified small business, if available.
  - b. **Written.** Purchases over \$5,000 and up to the small purchase dollar threshold of \$50,000 require soliciting at least four (4) DMBE-certified small business sources, if available, in writing. Estimate the total cost, including all possible renewal periods if a term contract, to determine if the procurement will not exceed \$50,000. If the procurement is expected to exceed \$50,000 over the entire term of the contract, including all possible renewal periods, use the procedures outlined in Chapter 6 on competitive sealed bidding or in Chapter 7 on competitive negotiation. The expected trade-in value of equipment shall not be considered when determining the anticipated total value of a contract.
- 5.3. **Single Quotation.** (Up to \$5,000)
- a. Where the agency's estimated cost of goods or nonprofessional services is \$5,000 or less, purchases may be made upon receipt of a minimum of one (1) written or telephone (oral) quotation (see flowchart, Annex 5-C) from a DMBE-certified small business, if available. Additional small business sources may also be solicited. If more than one quote is solicited, the award will be made to the lowest responsive and responsible DMBE-certified small business bidder. A record of the quotation must be kept with the file. If a telephone quote is solicited, a record shall be kept of the name and address of the vendor(s) contacted, the item description or service offered, price quoted, delivery dates and F.O.B. point, names of persons giving and receiving the prices and the date the information was obtained. Notation on the requisition form is considered to be an adequate record or see Annex 5-G, and 5-H, for copies of sample forms to use in recording information. When using a charge card as the payment method, solicit a minimum of one (1) DMBE-certified small business, if available.
- 5.6 **Unsealed Bidding.** (Over \$5,000 to \$50,000)
- a. Quick Quote shall be used to solicit bids or quotes for goods and nonprofessional services from \$5,000 to \$50,000 (see 14.5f). Any appropriate special conditions must be stated in or attached to the Quick Quote.
  - b. Solicit four (4) DMBE-certified small business sources, if available. If fewer than the required number of sources are solicited, the reasons shall be documented.
  - c. *VBO* advertising is not required under \$50,000 (see 3.18).
- 5.7 a. **Unsealed Proposals** (Over \$5,000 to \$50,000).  
Agencies and institutions may obtain required goods or nonprofessional services using an informal Request for Proposals up to \$50,000 (see flowchart, Annex 5-F). Unsealed proposals for professional services may be solicited by faxback or informal Request for Proposals up to \$30,000 (see Annex 5-I for Faxback form). A written determination for the use of competitive negotiation is not required for unsealed or informal RFPs. The solicitation should include a cover sheet, a general description of what is being sought, the factors and weights to be used in evaluation, the Commonwealth's General Terms and Conditions (either in full or by reference), and any special terms and conditions including unique capabilities or qualifications that will be required. The solicitation shall be open for the period of time stated in the solicitation but must be open for at least one (1) day. A reasonable amount of time should be allowed for vendors to respond based on the nature of the procurement.
1. Solicit four (4) DMBE-certified small business sources, if available, by mail, fax, or electronically.

- 5.7 b. **Unsealed Best Value Acquisition** (Over \$5,000 to \$50,000). Agencies and institutions may obtain required goods or nonprofessional services using best value concepts. A written determination for the use of competitive negotiation is not required for unsealed Best Value Acquisition.
8. Solicit four (4) DMBE-certified small business sources, if available, by mail, fax or electronically. *VBO* advertising on eVA is not required up to \$50,000. The solicitation shall be open for the period of time stated in the solicitation but must be open for at least one (1) day. A reasonable amount of time should be allowed for vendors to respond based on the nature of the procurement.

Annex 5-C, Annex 5-E and Annex 5-F are updated in the individual chapters of the *APSPM* and whole *APSPM* on [www.eva.virginia.gov](http://www.eva.virginia.gov)

6.1 **Competitive Sealed Bidding**. The goods or service to be procured when using this method must be capable of being described so that bids submitted by potential contractors can be evaluated against the description in the Invitation for Bids (IFB) and an award made to the lowest responsive and responsible bidder; however, an award may be made to a reasonably priced DMBE-certified small business that is other than the lowest priced bidder when the provision for such an award is included in the solicitation (Appendix B, Section II, 7. J). This shall include DMBE-certified women-owned and minority-owned businesses that have received the DMBE small business certification. When the terms and conditions of multiple awards are so provided in the Invitation for Bids, awards may be made to more than one bidder. Competitive sealed bidding includes the issuance of a written IFB containing the specifications or scope of work/purchase description and the contractual terms and conditions applicable to the procurement. The terms or conditions of the solicitation must include how the agency or institution will publicly post the notice of the award or make the announcement of the decision to award the contract (see Appendix B, Section I, U.). The requirements set forth in the IFB may include special qualifications required of potential contractors, life-cycle costing, value analysis, and any other criteria such as testing, quality, workmanship, delivery and suitability for a particular purpose which may help in determining acceptability. IFBs must describe the requirements accurately and completely. Unnecessarily restrictive specifications or terms and conditions that unduly limit competition must be avoided. In addition to the public notice, bids are to be solicited directly from potential bidders. Any such direct solicitations shall include businesses selected from a list made available by the Department of Minority Business Enterprise (DMBE). In the competitive sealed bid process, bids are publicly opened and read aloud (see 3.1e). The bids are evaluated based upon the requirements set forth in the IFB (if multiple awards are so provided in the solicitation, awards may be made to the lowest responsive and responsible bidders). Best value concepts may be applied when procuring goods and nonprofessional services, but not construction or professional services. Solicitations may include criteria, factors and basis for the consideration of best value and the process for the consideration of best value shall be as stated in the procurement solicitation (Best Value, defined in Appendix A).

- 6.2 e. **Sources.**
- 1) Solicit at least six (6) sources, including a minimum of four (4) DMBE-certified small businesses, if available. The list should note which vendors are small businesses. The award may be made to other than the lowest responsive and responsible bidder when the provision for such an award is included in the solicitation (Appendix B, Section II, 7. J). If fewer than the required number of sources are solicited, the reasons must be documented in writing and placed in the purchase file.
  - 2) If set-aside for small business participation only, solicit a minimum of six (6) DMBE-certified small businesses. The award to other than the lowest bidder clause may not be used.
- 6.2 f. **Small Business Subcontracting Plan.** In accordance with the Commonwealth's policy of facilitating and maximizing the participation of small businesses and businesses owned by women and minorities in its purchasing programs, in order for the bid to be considered responsive for any prime contract in excess of \$100,000 bidders shall include, as part of their bid, a Small Business Subcontracting Plan that ensures DMBE-certified small business participation as part of its efforts toward achieving the statewide goal of 40 percent of the Commonwealth's discretionary spending in combined prime and subcontracts for small businesses.

If the bidder on the contract is a DMBE-certified small business, the bidder shall indicate such in Section A of Annex 7-G. This shall include DMBE-certified women-owned and minority-owned businesses that meet the small business definition and have received the DMBE small-business certification. If the bidder is not a DMBE-certified small business, the bidder is required to identify the portions of the contract the bidder plans to subcontract to DMBE-certified small business by completing and returning Section B of Annex 7-G. Failure to meet the planned small business participation levels as documented in Section B of Annex 7-G, however, will not alone be the basis for determination of responsiveness. If the bidder is not a DMBE-certified small business and cannot practicably subcontract any portion of the requirements being solicited, in order to be considered responsive to the solicitation, the non DMBE-certified bidder must document on Annex 7-G, section C, past efforts made to provide subcontracting opportunities to DMBE-certified small businesses for other contracts within the past 24 months.

### 6.3 **Sealed Bids - Receipt, Opening, Evaluation, and Award.**

- d. **Award.** The contract is awarded to the lowest responsive and responsible bidder (see 3.21). If the provision for award to other than the lowest priced bidder was made by including the appropriate clause in Appendix B., Section II, 7. J. in the solicitation, the award may be made to a reasonably priced DMBE-certified small business bidder that is other than the lowest responsive and responsible bidder (see 3.10 f.). If the award is made to other than the lowest priced bidder, the award shall be made to the next lowest responsive and responsible DMBE-certified small business bidder.

### 6.5 **Procedure for Two-Step Competitive Sealed Bidding.**

- b. **Step Two.** Prepare an IFB to include a pricing schedule, reference the request for technical proposal title and number, and set a specific date and time for receipt of sealed bids. A public opening is held. Bids are evaluated, and the contract is awarded to the lowest responsive and responsible bidder. If the provision for award to other than the lowest priced bidder was made by including the appropriate clause in Appendix B., Section II, 7. J. in the solicitation, the award may be made to a reasonably priced DMBE-certified small business bidder that is other than the lowest responsive and responsible bidder (see 3.10 f.). The award document shall incorporate by reference the terms and conditions of the solicitation, the contractor's technical proposal, and the bid price.

- 6.6 **Combined Two-Step Competitive Sealed Bidding.** The two steps can be combined by requiring the firms who respond to the solicitation to furnish their unpriced technical proposals in one sealed envelope and their bid prices in a second sealed envelope at the same time. The instructions issued must specify that the responses are to be submitted in two separate sealed envelopes - one marked "Technical Proposal" and the other "Bid Price." If the solicitation is a combined two-step IFB, the bidders should be instructed to identify both the technical proposal and pricing envelope with the bidder's name, company name and address, and bid reference number. The technical proposals are opened and evaluated as described in 6.5a, then only the price envelopes for those technical proposals selected as acceptable are opened. The award is made to the lowest responsive and responsible bidder. If the provision for award to other than the lowest priced bidder was made by including the appropriate clause in Appendix B., Section II, 7. J. in the solicitation, the award may be made to a reasonably priced DMBE-certified small business bidder that is other than the lowest responsive and responsible bidder (see 3.10 f.). The award document will incorporate by reference the terms and conditions of the solicitation and include the contractor's technical proposal and the bid price. The envelopes containing the bid price for those proposals determined to be not acceptable will be returned unopened.

Annex 6-A, the Competitive Sealed Bidding flowchart, is updated and included in the *APSPM* on [www.eva.virginia.gov](http://www.eva.virginia.gov).

Annex 6-B

SAMPLE FORMAT AND STEP-BY-STEP PROCEDURES

INVITATION FOR BIDS (IFB)

Issue Date: IFB# \_\_\_\_\_

Title:

Commodity Code:

Issuing Agency: Commonwealth of Virginia

Using Agency And/Or Location Where Work Will Be Performed:

Period Of Contract: From \_\_\_\_\_ Through \_\_\_\_\_ (\*Renewable). (\* If contract has renewal clause)

Sealed Bids Will Be Received Until \_\_\_\_\_ (Time and Date)

For Furnishing The Goods/Services Described Herein And Then Opened In Public.

All Inquiries For Information Should Be Directed To: \_\_\_\_\_ Phone: (\_\_\_\_) \_\_\_\_\_.

IF BIDS ARE MAILED, SEND DIRECTLY TO ISSUING AGENCY SHOWN ABOVE. IF BIDS ARE HAND DELIVERED, DELIVER TO:

Street Address Building Floor Room No.

In Compliance With This Invitation For Bids And To All The Conditions Imposed Therein, The Undersigned Offers And Agrees To Furnish The Goods/Services At The Price(s) Indicated In Section VII, Pricing Schedule.

\* Virginia Contractor License No. \_\_\_\_\_ Class: \_\_\_\_\_ Specialty Codes: \_\_\_\_\_

Name And Address Of Firm:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Zip Code: \_\_\_\_\_

Date: \_\_\_\_\_  
By: \_\_\_\_\_  
( Signature In Ink)

FEI/FIN NO. \_\_\_\_\_

Name: \_\_\_\_\_  
(Please Print)

Fax Number: (\_\_\_\_) \_\_\_\_\_

Title: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

Telephone Number: (\_\_\_\_) \_\_\_\_\_

\* PREBID CONFERENCE: A (mandatory/optional) prebid conference will be held on \_\_\_\_\_ at the \_\_\_\_\_ (Reference: Paragraph \_\_\_\_ herein). (If mandatory add: "NO ONE WILL BE ADMITTED AFTER \_\_\_\_\_ (Time) ") \* If special ADA accommodations are needed, please contact \_\_\_\_\_ (Name) at (phone number) by (date) .

\* Delete if not applicable.

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.

**Annex 6-D**

**IFB SOLICITATION AND FILE CHECKLIST**

✓	<b>IFB SOLICITATION CHECKLIST</b>	✓	<b>FILE CHECKLIST</b>
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<b>Pre-Award, Receipt &amp; Evaluation, and Post-Award Activities:</b>			
	<p><u>Bidders List</u>: Unless set-aside for small businesses only, solicit six (6) sources, including a minimum of four (4) DMBE-certified small businesses, if available. The list should note which vendors are small businesses. If fewer are solicited, include reason in procurement file.</p>		<p>Bidders List: Name, addresses of Bidders solicited</p>

In this Chapter look for...

- 7-F Best Value Criteria, Evaluation Methods & Scoring
- 7-G Small Business Subcontracting Plan
- 7-H Summary of Evaluation Ratings by Criteria Worksheet

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

- g. Sources. For the purchase of material, equipment, supplies or nonprofessional services estimated to cost \$50,000 or more:
  - 1) Solicit at least six (6) sources, including a minimum of four (4) DMBE-certified small businesses, if available. The award may be made to other than the highest ranking offeror when the provision for such an award is included in the solicitation (Appendix B, Section II, 7. K). If fewer than the required number of sources are solicited, the reasons must be documented in writing and placed in the purchase file.
  - 2) If set-aside for small business participation only, solicit a minimum of six (6) DMBE-certified small businesses. The award to other than the highest ranking offeror clause may not be used.
- j. In accordance with the Commonwealth's policy of facilitating and maximizing the participation of small businesses and businesses owned by women and minorities in its purchasing programs, an evaluation criterion for all contracts in excess of \$100,000 shall be a Small Business Subcontracting Plan (see Annex 7-G). This requirement is to ensure DMBE-certified small business participation, which will assist efforts toward achieving the statewide goal of 40% of the Commonwealth's discretionary spending in combined prime and subcontracts for small businesses. When using numerical scoring, the weight for this evaluation criterion shall be at least 20% of the total evaluation points. If the weight for this criterion exceeds 20%, the weight should be based on the availability or likelihood of subcontracting opportunities for the good or services being procured.

If the offeror is a DMBE-certified small business, the offeror shall indicate such in Section A of Annex 7-G, and shall receive 100% of the points assigned to this evaluation criterion. If the offeror is not a DMBE-certified small business, the offeror is required to identify which portions of the requirement is planned to subcontract to DMBE-certified small businesses by completing and returning Section B of Annex 7-G. The maximum number of points available if the offeror is not a DMBE-certified small business is 75% of the points assigned to this evaluation criterion. Failure to meet the planned small business participation levels as documented in Section B of Annex 7-G, however, will not alone be the basis for determination of non-compliance. If the offeror is not a DMBE-certified small business and cannot practicably subcontract any portion of the requirement being solicited, in order to be eligible to receive points for this evaluation criterion, the offeror must document past efforts made to provide subcontracting opportunities to DMBE-certified small businesses for other contracts within the past 24 months. The documentation may include any good faith efforts made regarding the procurement. This shall be done by the offeror completing and returning Section C of Annex 7-G. The maximum number of points an offeror may receive for completing Section C is 50% of the points assigned to this evaluation criterion.

## 7.4 **Negotiation and Award.**

- a. Negotiations are conducted with each of the offerors so selected. Negotiation allows modification of proposals, including price. Offers and counter-offers may be made as many times with each offeror as is necessary to secure a reasonable contract. After negotiations have been conducted with each of the selected offerors, the Commonwealth selects the offeror which, in its opinion, has made the best proposal; however the contract may be awarded to a reasonably ranked DMBE-certified small business offeror that is other than the highest ranking offeror (3.10 f.). In all cases, written confirmation shall be obtained from the offeror on any modifications of the original proposal. Once an Intent to Award notice is posted, no further negotiation shall be conducted.

## 7.5 **Best Value Acquisition (over \$50,000).**

- d. Evaluation Criteria. Criteria shall be stated in the solicitation. Unless otherwise stated, each criterion will be of the same importance. If criteria are not of the same importance, then include a statement at the end of the paragraph such as: Criteria are listed in the order of importance. Examples of criteria may be Technical Approach, Qualifications of Personnel, Resource Commitment, Past Performance, Risk and Incentives. If the value of the procurement is over \$100,000 see 7.2 j.
  
- i. Sources may be solicited by mail, fax or electronically. Publicly post a copy of the solicitation on the DGS/DPS eVA web site [www.eva.virginia.gov](http://www.eva.virginia.gov). VBO advertising is required. In addition to advertising in the VBO, BVAs over \$50,000 shall be advertised in a newspaper of general circulation in the area in which the contract is to be performed.
  - 1) Solicit at least six (6) sources, including a minimum of four (4) DMBE-certified small businesses, if available. The award may be made to other than the highest ranking offeror when the provision for such an award is included in the solicitation (Appendix B, Section II, 7. K). If fewer than the required number of sources are solicited, the reasons must be documented in writing and placed in the purchase file
  - 2) If set-aside for small business participation only, solicit a minimum of six (6) DMBE-certified small businesses. The award to other than the highest ranking offeror clause may not be used.
  
- m. Award. The award will be made to the responsible Offeror(s) whose proposal, conforming to the solicitation, is the most advantageous and represents the Best Value to the Commonwealth, costs and other factors considered. An award may be made, in whole or in part, to a reasonably ranked DMBE-certified small business offeror that is other than the highest ranking offeror (see 3.10 f.). Prepare a written justification and place in contract file. Post a Notice of Award or Notice of Intent to Award in the manner prescribed in the solicitation as required in 3.18.

Annex 7-A, the Competitive Negotiation flowchart, is updated and included in the *APSPM* on [www.eva.virginia.gov](http://www.eva.virginia.gov).

Annex 7-B

SAMPLE FORMAT AND STEP-BY-STEP PROCEDURES  
REQUEST FOR PROPOSAL (RFP)

Issue Date:

RFP# \_\_\_\_\_

Title:

Commodity Code:

Issuing Agency:

Commonwealth of Virginia  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Using Agency And/Or Location  
Where Work Will Be Performed:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Initial Period Of Contract: From \_\_\_\_\_ Through \_\_\_\_\_ (\*Renewable).  
(\* If contract has renewal clause)

Sealed Proposals Will Be Received Until \_\_\_\_\_ For Furnishing The Goods/Services  
Described Herein. Time and Date

All Inquiries For Information Should Be Directed To: \_\_\_\_\_ Phone: (\_\_\_\_\_)\_\_\_\_\_.

IF PROPOSALS ARE MAILED, SEND DIRECTLY TO ISSUING AGENCY SHOWN ABOVE. IF PROPOSALS ARE  
HAND DELIVERED, THEN DELIVER TO:

\_\_\_\_\_  
Street Address Building Floor Room No.

In Compliance With This Request For Proposal And To All The Conditions Imposed Therein And Hereby Incorporated By  
Reference, The Undersigned Offers And Agrees To Furnish The Goods/Services In Accordance With The Attached Signed  
Proposal Or As Mutually Agreed Upon By Subsequent Negotiation.

\* Virginia Contractor License No. \_\_\_\_\_  
Class: \_\_\_\_\_ Specialty Codes: \_\_\_\_\_

Name And Address Of Firm:

\_\_\_\_\_ Date: \_\_\_\_\_

\_\_\_\_\_ By: \_\_\_\_\_  
(Signature In Ink)

\_\_\_\_\_ Name: \_\_\_\_\_  
(Please Print)

\_\_\_\_\_ Zip Code: \_\_\_\_\_ Title: \_\_\_\_\_

FEI/FIN NO. \_\_\_\_\_ Phone: (\_\_\_\_\_)\_\_\_\_\_

E-mail: \_\_\_\_\_ Fax: (\_\_\_\_\_)\_\_\_\_\_

\* PREPROPOSAL CONFERENCE: A (mandatory/optional) preproposal conference will be held on \_\_\_\_\_ at the  
\_\_\_\_\_. (Reference: Paragraph \_\_\_\_ herein). (If mandatory, add:) NO ONE WILL BE ADMITTED AFTER \_\_\_\_ (Time).

\* Delete if not applicable.

**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.**

Annex 7-B, Step 2, IV. B.

6. Small Business Subcontracting Plan – Summarize the planned utilization of DMBE-certified small businesses which include businesses owned by women and minorities, when they have received DMBE small business certification, under the contract to be awarded as a result of this solicitation. This is a requirement for all prime contracts in excess of \$100,000. Also summarize any good faith efforts planned to provide subcontracting opportunities to DMBE-certified small business firms. Complete Annex 7-G.

Annex 7 B., Step 2. V.

- A. **EVALUATION CRITERIA:** “Proposals shall be evaluated by the (name of issuing agency) using the following criteria:”

**Instructions to Buyers:** The basis for evaluation must be known in advance. Phrases such as “and any other criteria the State may decide to use” are not specific, violate the intent of the General Assembly expressed in § 2.2-4300C of the *Code of Virginia*, and shall not be used. Experience and qualifications not only of the firm but also of the personnel to be assigned to the contract shall be included in the “Experience and qualifications” criterion, when appropriate (e.g., services, furnish and install).

These are examples of **typical criteria** used. There is no specific number required but the number should normally be kept to no more than five criteria. The numerical weight assigned to each criterion must be determined by the agency and stated in the RFP, or they must be assigned and posted prior to the opening of proposals. The weights shown here are **only for illustration purposes, except the weight for the small business subcontracting plan shall not be less than 20% of the total point value**. A DMBE-certified small business that serves as a prime vendor will receive full credit for small business utilization. Other businesses will receive credit based on their Small Business Subcontracting Plan.

<u>FOR SERVICES</u>	<u>POINT VALUE</u>
1. Specific plans or methodology to be used to perform the services	25
2. Price	25
3. Experience and qualifications of personnel assigned to perform the services	20
4. Small Business Subcontracting Plan	20
5. References from other clients	10
TOTAL	100

<u>FOR GOODS</u>	<u>POINT VALUE</u>
1. Quality of equipment offered and suitability for the intended purpose	25
2. Experience and qualifications of personnel in providing the goods	20
3. Price	20
4. Small Business Subcontracting Plan	20
5. Maintenance Support	10
6. Scope and suitability of training offered to State personnel	5
TOTAL	100

Annex 7-B, Step 2, VI.

- G. See 3.10 h. outlining requirements for a Small Business Subcontracting Plan in solicitations where the prime contract is in excess of \$100,000. Prime contractors are required to complete Annex 7-G which should be attached to the RFP solicitation. For competitive negotiation, the Small Business Subcontracting Plan shall be used as one of the evaluation criteria. A DMBE-certified small business who serves as prime contractor will receive full credit for subcontracting for work performed by such prime. See Appendix B, Section II, 36 for the special term and condition that may be included in RFPs requiring the contractor to provide evidence of compliance with this requirement. Receipt of a small business subcontracting plan may be a condition of the award and if so, a requirement for a report from the prime contractor must be stated in the solicitation indicating the frequency of the report required in the contract.

Annex 7-B, Step 2,

- VIII. GENERAL TERMS AND CONDITIONS: Include the general terms and conditions for goods and services. See Appendix B, Section I. Use the additional general terms and conditions in Appendix B, Section III, for non capital outlay construction projects, as appropriate. Delete General Terms and Conditions that are not applicable to the instant procurement such as clauses Q, R, S which are not applicable to service contracts; clause T for goods purchases; and clause Z if the procurement is not set-aside (see 3.10g).

Annex 7-B, Step 2

- IX. Delete D. and reference to the Availability of Funds clause which is a General Term and Condition.

**Annex 7-E  
RFP SOLICITATION AND FILE CHECKLIST**

✓	<b>RFP SOLICITATION CHECKLIST</b>	✓	<b>FILE CHECKLIST</b>
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<b>Pre-award, Receipt &amp; Evaluation, and Post-Award</b>		
	<p><u>Offerors List:</u> Solicit a minimum of six (6) offerors, including a minimum of four (4) DMBE-certified small businesses if available, unless set-aside for small businesses. If set-aside, solicit a minimum of six (6) DMBE-certified small businesses, if available. If fewer are solicited, include reason in procurement file.</p>	<p>Offerors List: Name, addresses of Offerors Solicited</p>

**Annex 7-G**

**Small Business Subcontracting Plan**

**Definitions**

**Small Business:** "Small business " means an independently owned and operated business which, together with affiliates, has 250 or fewer employees, or average annual gross receipts of \$10 million or less averaged over the previous three years. Note: DMBE-certified women- and minority-owned businesses shall also be considered small businesses when they have received DMBE small business certification.

**Women-Owned Business:** Women-owned business means a business concern that is at least 51% owned by one or more women who are citizens of the United States or non-citizens who are in full compliance with United States immigration law, or in the case of a corporation, partnership or limited liability company or other entity, at least 51% of the equity ownership interest is owned by one or more women who are citizens of the United States or non-citizens who are in full compliance with United States immigration law, and both the management and daily business operations are controlled by one or more women who are citizens of the United States or non-citizens who are in full compliance with the United States immigration law.

**Minority-Owned Business:** Minority-owned business means a business concern that is at least 51% owned by one or more minority individuals or in the case of a corporation, partnership or limited liability company or other entity, at least 51% of the equity ownership interest in the corporation, partnership, or limited liability company or other entity is owned by one or more minority individuals and both the management and daily business operations are controlled by one or more minority individuals.

**All small businesses must be certified by the Commonwealth of Virginia, Department of Minority Business Enterprise (DMBE) to participate in the SWAM program. Certification applications are available through DMBE online at www.dmbv.virginia.gov (Customer Service).**

**Bidder/Offeror Name:** \_\_\_\_\_

**Preparer Name:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Instructions**

- A. If you are certified by the Department of Minority Business Enterprise (DMBE) as a small business, complete only Section A of this form. This shall include DMBE-certified women-owned and minority-owned businesses when they have received DMBE small business certification.
- B. If you are not certified by DMBE as a small business and plan to subcontract part of this contract with a DMBE certified business, complete only Section B of this form.
- C. If you are not certified by DMBE as a small business and cannot identify any subcontracting opportunities to subcontract part of this contract with a DMBE-certified business, only provide the information requested in Section C of this form.

**Section A**

If your firm is certified by the Department of Minority Business Enterprise (DMBE), are you certified as a **(check only one below)**:

- \_\_\_\_\_ Small Business
- \_\_\_\_\_ Small and Women-owned Business
- \_\_\_\_\_ Small and Minority-owned Business

Certification number: \_\_\_\_\_ Certification date: \_\_\_\_\_

**Section B**

Populate the table below to show your firm's plans for utilization of DMBE-certified small businesses in the performance of this contract. This shall include DMBE-certified women-owned and minority-owned businesses that meet the small business definition and have received the DMBE small business certification. Include plans to utilize small businesses as part of joint ventures, partnerships, subcontractors, suppliers, etc.

**B. Plans for Utilization of DMBE-Certified Small Businesses for this Procurement**

Small Business Name & Address  DMBE Certificate #	Status if Small Business is also: Women (W), Minority (M)	Contact Person, Telephone & Email	Type of Goods and/or Services	Planned Contract Involvement	Planned Annual Contract Dollar Expenditure Amount
<b>Totals \$</b>					

**Section C**

Respond to how your business has met or exceeded at least two of the following indicators within the past 24 months. Your response may include any good faith efforts made regarding this procurement.

**C. Good Faith Effort Indicators by the Bidder/Offeror**

1. Identify areas of work your business has subcontracted to DMBE-certified small businesses for other contracts. Include company names, dates, dollar amounts, and percentages on a per contract basis.
  
2. List research efforts conducted by your business in the past to locate DMBE-certified small businesses by advertising in publications or in the classified section of the newspaper where small businesses are likely to see it. List specific publications and dates.
  
3. List small business outreach meetings, conferences, or workshops conducted by your firm to locate DMBE-certified small businesses—including the dates, participation numbers, and results.
  
4. Provide documented correspondence (i.e., certified mail, email, receipt of fax transmissions, etc.) to small businesses from the lists provided by DMBE and other outreach agencies and organizations which indicates your solicitation of such for utilization of subcontracting opportunities on other contracts for which your business has competed.
  
5. List areas of work which your business has subcontracted with DMBE-certified small businesses for upcoming contracts—including the name of the business, certification number, dates, dollar amounts, and percentages on a per contract basis.
  
6. Provide documentation of any assistance offered to interested small businesses in obtaining bonds, lines of credit, and/or insurance for any present or past contracts your business has in place.
  
7. Provide documentation of follow-up on initial contacts with DMBE-certified small businesses (e.g., telephone call logs, emails, certified letters, etc.). Be sure to list the small business name and dates of contact.

### Appendix A

**Small Business Subcontracting Plan:** A completed form which bidders or offerors provide: 1) DMBE-certified small business certification status, or 2) small business utilization plan in response to a specific solicitation, or 3) past good faith efforts to gain small business participation.

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

### Appendix B, Section I.

The title page adds a listing:

#### Z. Set-Asides

Z. **SET-ASIDES.** This solicitation is designated for DMBE-certified small business participation only. DMBE-certified small businesses are those businesses that hold current small business certification from the Virginia Department of Minority Business Enterprise. Note: DMBE-certified women- and minority-owned businesses are also considered small businesses when they have received DMBE small business certification.

**\*When Used:** Include in solicitations up to \$50,000 where competition is open only to small businesses. This clause may be used in solicitations over \$50,000. Delete the clause if a written determination has been made that a set-aside is not possible up to \$50,000 or if a set-aside is not used for requirements over \$50,000.

### Appendix B, Section II

The title page is modified to change:

**36. Small Business Subcontracting and Evidence of Compliance.**

**60. Nonprofit Sheltered Workshops and Nonprofit Organizations**

4. **AUDIT:** The contractor shall retain all books, records, and other documents relative to this contract for five (5) years after final payment, or until audited by the Commonwealth of Virginia, whichever is sooner. The agency, its authorized agents, and/or state auditors shall have full access to and the right to examine any of said materials during said period.

**\* When Used: Must be included in all term contracts for goods or services and all prime vendor contracts requiring a Small Business Subcontracting Plan for contracts over \$100,000.**

7. **AWARD OF CONTRACT:** All solicitations must specify the method of award. Use the appropriate Award clause below in J. or K. if the total award including all possible renewal periods is expected to exceed \$50,000 and the purchasing agency desires the option to award to a reasonably priced or reasonably ranked DMBE-certified small business bidder or offeror that is other than the lowest priced bidder or highest ranking offeror. The wording on award to other than the lowest priced bidder or highest ranking offeror may be customized from the selection below to fit the circumstances of the purchasing agency. Select appropriate clause for the type of procurement:

H. **UNSEALED BEST VALUE AWARD(S):** Selection shall be made of the offeror(s) deemed to be fully qualified and best suited among those submitting proposals on the basis of the evaluation factors included in this solicitation, including price, if so stated. Negotiations shall be conducted with the offeror(s) so selected. Cost and price factors shall be considered in relation to the evaluation factors stated in the solicitation, but need not be the sole determining factor. The Commonwealth will make the award(s) on a best value basis to the Offeror(s) which, in its opinion, represents the most advantageous and best offer. The Commonwealth may cancel this solicitation or reject proposals at any time prior to an award, and is not required to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous (*Code of Virginia, § 2.2-4359 D*).

**\* When Used: For goods and nonprofessional services in an Unsealed Best Value Acquisition solicitation, and a single award or multiple awards are desired to meet the requirements of the agency/institution. Note: A single award shall not exceed \$50,000 and if making multiple awards, the total sum of all awards shall not exceed \$50,000.**

- I. **BEST VALUE AWARD(S)**: Selection shall be made of two or more offeror(s) deemed to be fully qualified and best suited among those submitting best value proposals on the basis of the evaluation factors included in this solicitation, including price, if so stated. Negotiations shall be conducted with the Offeror(s) whose proposal(s) represent the most advantageous and best offer. Awards may be made to a reasonably ranked DMBE-certified small business offeror that is other than the highest ranking offeror. Awards will be made on a best value basis to the Offeror(s) which, in its opinion, represents the best overall combination of quality, price, and various elements of required goods/services, as stated in this solicitation, that in total are optimal relative to the agency's needs. The Commonwealth may cancel this solicitation or reject proposals at any time prior to an award, and is not required to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous (*Code of Virginia*, § 2.2-4359 D). The award document will be a contract incorporating by reference all the requirements, terms and conditions of the solicitation and the contractor's offer as negotiated.

**\* When Used: For goods and nonprofessional services when competitive negotiation will be used in a sealed Best Value Acquisition solicitation, and a single award or multiple awards are desired to meet the requirements of the agency/institution. This clause may be used for multiple awards. This clause may be used for procurements over \$50,000 unless the requirement is set-aside exclusively for small business participation. If set-aside, delete the third sentence.**

- J. **AWARD TO OTHER THAN THE LOWEST PRICED BIDDER(S)**: An award(s) will be made to the lowest responsive and responsible bidder(s) however; the award may be made to a reasonably priced DMBE-certified small business bidder(s) that is other than the lowest priced bidder(s). Evaluation will be based on net prices. Unit prices, extensions and grand total must be shown. In case of arithmetic errors, the unit price will govern. If cash discount for prompt payment is offered, it must be clearly shown in the space provided. Discounts for prompt payment will not be considered in making awards. The right is reserved to make a separate award of each item, a group of items or all items, and to make an award either in whole or in part, whichever is deemed in the best interest of the Commonwealth. The State reserves the right to reject any and all bids in whole or in part, to waive any informality, and to delete items prior to making an award.

**\* When Used: This award clause may be used in Invitation for Bids for goods or services for competitive bidding where the award is expected to exceed \$50,000 to allow for award to a reasonably priced DMBE-certified small business bidder, other than the lowest priced responsive and responsible bidder or bidders, in the case of multiple awards. This clause may be used for procurements over \$50,000 unless the requirement is set-aside exclusively for small business participation.**

- K. **AWARD TO OTHER THAN THE HIGHEST RANKING OFFEROR(S)**: Selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals on the basis of the evaluation factors included in the Request for Proposals, including price, if so stated in the Request for Proposals. Negotiations shall be conducted with the offerors so selected. Price shall be considered, but need not be the sole determining factor. After negotiations have been conducted with each offeror so selected, the agency shall select the offeror(s) which, in its opinion, has made the best proposal(s) and shall award the contract to that offeror; however, the contract may be awarded to a reasonably ranked DMBE-certified small business offeror(s), that is other than the highest ranking offeror(s). The Commonwealth may cancel this Request for Proposals or reject proposals at any time prior to an award, and is not required to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous (*Code of Virginia*, § 2.2-4359D). Should the Commonwealth determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror. The award document will be a contract incorporating by reference all the requirements, terms and conditions of the solicitation and the contractor's proposal as negotiated.

**\* When Used: For goods and nonprofessional services when competitive negotiation will be used. This clause shall not be used in an Invitation for Bids or a professional services Request for Proposals. This clause may be used for procurements over \$50,000 unless the requirement is set-aside exclusively for small business participation.**

36. **SMALL BUSINESS SUBCONTRACTING AND EVIDENCE OF COMPLIANCE:**

- A. Where it is practicable for any portion of the awarded contract to be subcontracted to other suppliers, the contractor is encouraged to offer such subcontracting opportunities to small businesses. This shall include DMBE-certified women-owned and minority-owned businesses when they have received DMBE small business certification. If small business subcontractors are used, the prime contractor agrees to report the use of small business subcontractors by providing the purchasing office at a minimum the following information: name of small business, phone number, total dollar amount subcontracted, category type (small, women-owned, or minority-owned), and type of product/service provided.
- B. Each prime contractor who wins an award in which provision of a small business subcontracting plan is a condition of the award, shall deliver to the contracting agency or institution on a \_\_\_\_\_ (insert monthly, quarterly, or other frequency) \_\_\_\_\_ basis, evidence of compliance (subject only to insubstantial shortfalls and to shortfalls arising from subcontractor default) with the small business subcontracting plan. When such business has been subcontracted to these firms and upon completion of the contract, the contractor agrees to furnish the purchasing office at a minimum the following information: name of firm, phone number, total dollar amount subcontracted, category type (small, women-owned, or minority-owned), and type of product or service provided. Payment(s) may be withheld until compliance with the plan is received and confirmed by the agency or institution. The agency or institution reserves the right to pursue other appropriate remedies to include, but not be limited to, termination for default.

**\* When Used: Use paragraph A. if the use of small business subcontractors by a prime contractor is desired and the purchasing agency desires a report of small business subcontractors used in the performance of the contract. Use paragraph B. in solicitations for goods, nonprofessional services, or non capital outlay construction when a small business subcontracting plan is a condition of the award. Fill in the blank with period of time or occurrence when evidence of compliance is due, e.g., request for final payment, monthly, quarterly, annually, end of contract period.**

60. **NONPROFIT SHELTERED WORKSHOPS AND NONPROFIT ORGANIZATIONS:**

- A. Where it is practicable for any portion of the awarded contract to be subcontracted, the contractor is encouraged to offer such business to nonprofit sheltered workshops and nonprofit organizations serving the handicapped. A list of nonprofit sheltered workshops and nonprofit organizations of Virginia serving the handicapped can be found at [www.vadrs.org](http://www.vadrs.org).
- B. Each prime contractor who is awarded a contract where using a non profit sheltered workshop or nonprofit organization serving the handicapped is a condition of the award, shall deliver to the agency or institution, on or before request for final payment, evidence and certification of compliance. When a portion of the contract has been subcontracted to these organizations and upon completion of the contract, the contractor agrees to furnish the purchasing office, at a minimum, the following information: name of nonprofit sheltered workshop or nonprofit organization serving the handicapped, telephone number, total dollar amount subcontracted, and type of product/service provided. Final payment under the contract may be withheld until such certification is delivered or other appropriate remedies may be assessed in lieu of withholding such payment.

**\* When Used: Use paragraph A. if the solicitation involves the packaging or assemblage of goods where the individual item weighs less than 50 pounds and can be performed by a nonprofit sheltered workshop or nonprofit organization serving the handicapped. Use paragraph B. in solicitations for goods, and nonprofessional services, that involves the packaging or assemblage of goods where the individual items weighs less than 50 pounds when a use of a nonprofit sheltered workshop or nonprofit organization serving the handicapped is a condition of the award (see 2.2 c.).**