

July 3, 2007

MEMORANDUM

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

FROM: Ron Bell 
Director

SUBJECT: Procurement Information Memoranda (PIM) #98-022

Enclosed is PIM #98-022, effective immediately, representing changes to the September 1998 edition of the *Agency Procurement and Surplus Property Manual (APSPM)*. The Summary of Changes below is in the order of the changes to the *APSPM*. All changes to the *APSPM* are incorporated into a web-based *APSPM*, which is downloadable from the eVA and Division of Purchases and Supply websites at <http://www.eva.virginia.gov> and <http://dps.dgs.virginia.gov/dps/>, respectively. The version containing changes as a result of this PIM 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 98-022 number identified next to the changes except for Chapter 12, *State and Federal Surplus Property*, which was rewritten in its entirety and is updated in the on-line *APSPM* but not attached to this PIM. All arrows indicating previous changes are removed. Revised Annexes (Annexes 5-C, 5-E and 5-F) are updated within the respective chapters in the on-line *APSPM* but are not attached to this PIM. Appendix C contains a log recording the PIM number and date of revision. This memorandum and the corresponding PIM #98-022 should be filed in the back of the Appendix C log.

APSPM Cite	Summary of Changes
2.1 d.	Deletes reference to Virginia Department of Transportation (VDOT) as a source of supply for vehicle fuel and motor vehicle-related supplies. The Department of General Services (DGS) offers assistance in obtaining fuel cards for use with state vehicles. For more information contact the Office of Fleet Management at (804) 367-6525 or visit the website http://www.dgs.virginia.gov/Fleet.aspx .
2.1 e.	Updates information on the Department of General Services, Virginia Distribution Center including eVA order placement.
2.1 f.	Changes the contact phone number for the Office of Graphic Communications to 804-371-8359.
2.1 h.	Updates the DGS Office of Fleet Management (OFMS) CP-15 form formerly identified as a VDOT form that is used for approval to initiate the purchase process for the purchase or lease of motor vehicles. The use of this form for a vehicle lease has been increased to those leases that exceed 30 days. The OFMS website http://www.dgs.virginia.gov/Fleet.aspx is also included as a reference.
3.2 d.	Adds reference to bond templates in Annexes.
3.4	Updates contractor licensing levels.

3.7 b.	Expands guidance on cooperative contracts to authorize use if the contractor is a DMBE-certified small business, or the cooperative contract was awarded by a Commonwealth Agency or Institution, or approved by DPS.
3.7 b.	Updates contact and location of Virginia State Police website information on State and Local Law Enforcement Equipment Procurement Program known as the 1122 program.
3.10 b.	Deletes time reference of DMBE certification for vendors. Vendors will be considered a Small Business, a Women-Owned Business or a Minority-Owned Business if certified as such by the Department of Minority Business Enterprise by the due date for receipt of bids or proposals.
3.10 g.	Provides additional guidance for using set-asides for DMBE-certified small businesses and specifies exemptions in <i>APSPM</i> 1.5 b, c, d, and e; 14.9 b items 1-4, 6-16, and 18-28; and procurements from mandatory or non-mandatory sources identified in 2.1 and 2.2.
3.10 g. (2)	Provides instructions for identifying set-asides in solicitations. All set-aside procurements shall designate in the title of the solicitation that the procurement is set-aside for small businesses. The following format (in all capital letters) shall be used: "SET-ASIDE FOR SMALL BUSINESSES" followed by the title of the commodity or service being procured (e.g., SET-ASIDE FOR SMALL BUSINESSES - Security Services). Deletes the requirement to remove General Term and Condition Z if the procurement does not qualify for a set-aside.
3.10 g. (3)	Clarifies that procurements over \$50,000 may be set-aside for DMBE-certified small businesses, 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 from DMBE-certified small businesses. Deletes the requirement to remove General Term and Condition Z if the procurement does not qualify for a set-aside.
3.10 h.	Provides additional guidance when a Prime Contractor Small Business Subcontracting Plan is required and used. Required in solicitations valued over \$100,000 that are not set-aside for small business unless a written determination is made, signed by the chief purchasing officer and supported by factual evidence explaining in sufficient detail why no subcontracting opportunities exist. (See Annex 6-I and 7-G). See Appendix B, Section II, 36 for the Special Term and Condition that shall be included in solicitations requiring the plan and the contractor to provide evidence of compliance with this requirement.
Annex 3-B	References 3.10 g. Set-asides in the <i>Summary of Procurement Policies</i> .
Annexes 3-G, H, and I	Offers new Standard Bid Bond, Labor and Material Payment Bond, and Performance Bond templates that may be used for non-construction procurements.
5.3 a.	Provides additional guidance on use of set-asides for DMBE-certified small businesses for single quotations referencing exemptions in 3.10 g, consideration of soliciting additional DMBE-certified small businesses, and clarification that if more than one quote is received, the award shall be made to the lowest responsive and responsible DMBE-certified small business bidder. Directs that other quotes received from DMBE-certified small businesses that were not solicited shall be considered.

5.6 b.	Provides additional guidance on use of set-asides for DMBE-certified small businesses for unsealed bidding (over \$5,000 to \$50,000). Directs that set-asides for small businesses shall be required unless exempted (see 3.10 g). In this case, the procurement file shall be documented if the procurement does not qualify for a set-aside. Clarifies that if set-aside for small businesses, then a minimum of four (4) DMBE-certified small business sources shall be solicited, if available; if not set-aside for small businesses, solicit a minimum of four (4) sources, if available, including a minimum of two (2) DMBE-certified small business sources, if available.
5.7 a.1	Provides additional guidance on use of set-asides for DMBE-certified small businesses for unsealed proposals (over \$5,000 to \$50,000). Directs that set-asides for small businesses shall be required unless exempted (see 3.10 g). In this case, the procurement file shall be documented if the procurement does not qualify for a set-aside. Clarifies that if set-aside for small businesses, then a minimum of four (4) DMBE-certified small business sources shall be solicited, if available; if not set-aside for small businesses, solicit a minimum of four (4) sources, if available, including a minimum of two (2) DMBE-certified small business sources, if available. Deletes the ability to award to a reasonably ranked minority or woman-owned offeror that is other than the highest ranking offeror for procurements up to \$50,000 because of set-aside requirements.
5.7 b., b.1, and b.8	Provides additional guidance on use of set-asides for DMBE-certified small businesses for unsealed best value acquisitions (over \$5,000 to \$50,000). Directs that set-asides for DMBE-certified small businesses shall be required unless exempted (see 3.10 g). In this case, the procurement file shall be documented if the procurement does not qualify for a set-aside. Clarifies that if set-aside for small businesses, then a minimum of four (4) DMBE-certified small business sources shall be solicited, if available; if not set-aside for small businesses, solicit a minimum of four (4) sources, if available, including a minimum of two (2) DMBE-certified small business sources, if available. Deletes language about awarding to a reasonably ranked minority or woman-owned offeror that is other than the highest ranking offeror for procurements up to \$50,000 because of set-aside requirements.
5.7 b.11	Deletes language about awarding to a reasonably ranked minority or woman-owned offeror that is other than the highest ranking offeror for procurements up to \$50,000 because of set-aside requirements.
Annexes 5-C, 5-E and 5-F	Removes “competitive sealed” wording from titles. Revises instructions to require set-aside for small business unless exempted (see 3.10 g) and requires noting in the solicitation title if it is a set-aside procurement. Deletes language about awarding to a reasonably ranked minority or woman-owned offeror that is other than the highest ranking offeror for procurements up to \$50,000 because of set-aside requirements.
6.2 f.	References revised Section II, Special Term and Condition, 36 requiring the Small Business Subcontracting Plan for any prime contract in excess of \$100,000 that is not set-aside for small business unless a written determination is made, signed by the chief purchasing officer and supported by factual evidence explaining in sufficient detail why no subcontracting opportunities exist. Deletes previous Section C, Good Faith Effort Indicators by the Bidder in the plan’s requirements. This deletion requires either the bidder to be a DMBE-certified small business or subcontract with DMBE-certified small business to be considered responsive.

6.3 d.	Clarifies that if award is made to other than the lowest priced bidder for procurements over \$50,000, the award shall be made to the lowest responsive and responsible DMBE-certified small business bidder.
Annex 6-B	<p>Provides additional instructions in the <i>Sample Format and Step-By-Step Procedures for IFB format</i> to address set-asides if used and use of the Small Business Subcontracting Plan requirement. In:</p> <ul style="list-style-type: none"> • STEP TWO: <u>DO PROCUREMENT PLANNING</u>: Adds that consideration should be given if the procurement is to be set-aside for small business, etc. • STEP THREE: Section V. <u>SPECIAL TERMS AND CONDITIONS</u>: Directs use of the Special Term and Condition, 36., Small Business Subcontracting and Evidence of Compliance, in solicitations for all prime contracts in excess of \$100,000 that are not set-aside for small business. • STEP FOUR: Directs to designate if set-aside for small businesses and provides the set-aside format to be used in the title of the IFB e.g. “SET-ASIDE FOR SMALL BUSINESSES” followed by the title of the commodity or service being procured (e.g., SET-ASIDE FOR SMALL BUSINESSES - Security Services).
Annex 6-D	Adds to the <i>IFB Solicitation and File Checklist</i> the following: clarifies bidding requirements and includes use of the special Small Business Subcontracting and Evidence of Compliance. Directs if set-aside for small business participation only, solicit a minimum of six (6) DMBE-certified small businesses, if available. If fewer than the required number of sources are solicited, the reasons shall be documented. If not set-aside for small businesses, solicit a minimum of six (6) sources, including a minimum of four (4) DMBE-certified small businesses, if available. Directs use of the special term and condition, Small Business Subcontracting and Evidence of Compliance, in solicitations for all prime contracts in excess of \$100,000 that are not set-aside for small business unless a written determination is made, signed by the chief purchasing officer and supported by factual evidence explaining in sufficient detail why no subcontracting opportunities exist.
Annex 6-I	Adds a separate Small Business Subcontracting Plan form to be used as an attachment solely in solicitations for competitive sealed bids (IFBs) when a small business subcontracting plan is a condition of the award (see 3.10 h). Instruction to bidders is given that for the bid to be considered and the bidder to be declared responsive, the bidder shall indicate whether it is a DMBE-certified small business or identify the portions of the contract that will be subcontracted to DMBE-certified small business.
7.2 j.	References revised Section II, Special Term and Condition, 36 requiring the Small Business Subcontracting Plan for any prime contract in excess of \$100,000 that is not set-aside for small business unless a written determination is made, signed by the chief purchasing officer and supported by factual evidence explaining in sufficient detail why no subcontracting opportunities exist. Deletes previous Section C, Good Faith Effort Indicators by the Offeror from the plan’s requirements. This deletion requires either the Offeror to be a DMBE-certified small business or subcontract with DMBE-certified small business to receive points assigned to these evaluation criteria.

Annex 7-B	<p>Provides additional instructions in the <i>Sample Format and Step-By-Step Procedures for Request for Proposal (RFP)</i> to address set-asides if used and use of the Small Business Subcontracting Plan requirement. In:</p> <ul style="list-style-type: none"> • STEP 2 - PREPARE THE REQUEST FOR PROPOSAL (RFP): Adds that consideration should be given if the procurement is to be set-aside for small business, etc. • IV. <u>PROPOSAL PREPARATION AND SUBMISSION INSTRUCTIONS</u>, B. <u>SPECIFIC PROPOSAL INSTRUCTIONS</u>: Deletes the requirement for summarizing any good faith efforts planned to provide subcontracting opportunities to DMBE-certified small business firms. • V. <u>EVALUATION AND AWARD CRITERIA</u>. Provides an evaluation note stating that if the solicitation has been set-aside for small business, the criteria for Small Business Subcontracting Plan and the point value associated with this criteria will be deleted. The point value shall be re-allocated to the other evaluation criteria. • VIII. <u>GENERAL TERMS AND CONDITIONS</u>: Deletes reference to “instant” procurement. Deletes the requirement to remove General Term and Condition Z if the procurement does not qualify for a set-aside. • IX. <u>SPECIAL TERMS AND CONDITIONS</u>: Specifies requirement for use of the special term and condition, Small Business Subcontracting and Evidence of Compliance, in solicitations for all prime contracts in excess of \$100,000 that are not set-aside for small business unless a written determination, signed by the chief purchasing officer and supported by factual evidence explaining in sufficient detail why no subcontracting opportunities exist. • STEP 3 - ISSUING THE RFP. B. TITLE: Designate if set-aside for small businesses. Use the following format (in all capital letters): “SET-ASIDE FOR SMALL BUSINESSES” followed by the title of the commodity or service being procured (e.g., SET-ASIDE FOR SMALL BUSINESSES-Security Services). • STEP 10 - EVALUATE PROPOSALS, III. <u>COMPLETE EVALUATION BY ASSIGNING POINTS</u>. Provides methodology for evaluating the Small Business Subcontracting Plan evaluation criterion with instructions when assigning points for the Small Business Subcontracting Plan criteria. <ul style="list-style-type: none"> ○ A DMBE-certified small business, which shall not exclude women-owned and minority-owned businesses when they have received DMBE small business certification, who serves as the prime contractor, will receive the maximum number of evaluation points for this criteria. (The weight for the small business subcontracting plan shall not be less than 20% of the total point value.) ○ Other businesses that are not DMBE-certified small businesses will receive credit based on their Small Business Subcontracting Plan not to exceed 75% of the points assigned to this evaluation criterion i.e. 20 points X 75% = 15 points. Points will be assigned based on each offeror’s proposed subcontracting expenditures with DMBE-certified small businesses for the initial contract period as indicated in the offeror’s submitted subcontracting plan in relation to each offeror’s total price.
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	<ul style="list-style-type: none"> • STEP 12 - <u>SCHEDULE AND CONDUCT NEGOTIATIONS, VI.</u> Instructs that once negotiations have been finalized, complete the “Summary of Evaluation of Ratings by Criteria Worksheet” (Annex 7-H) and place in the procurement file. This worksheet should be a compilation of the evaluation committee’s ratings and not done by or for each committee member.
Annex 7-E	<p>Adds to the <i>RFP Solicitation and File Checklist</i> the following:</p> <ul style="list-style-type: none"> • Clarifies solicitation requirements and includes use of the special Small Business Subcontracting and Evidence of Compliances in the RFP Solicitation and File Checklist. Directs if set-aside for small business participation only, solicit a minimum of six (6) DMBE-certified small businesses, if available. If fewer than the required number of sources are solicited, the reasons shall be documented. If not set-aside for small businesses, solicit a minimum of six (6) sources, including a minimum of four (4) DMBE-certified small businesses, if available. • Directs use of the special term and condition, Small Business Subcontracting and Evidence of Compliance, in solicitations for all prime contracts in excess of \$100,000 that are not set-aside for small business unless a written determination is made, signed by the chief purchasing officer and supported by factual evidence explaining in sufficient detail why no subcontracting opportunities exist.
Annex 7-G	<p>Revises the Small Business Subcontracting Plan deleting previous Section C, Good Faith Indicators by the Bidder/Offeror from the plan’s requirements. This form has also been revised to be used as an attachment solely in solicitations that are competitively negotiated (RFPs) when a small business subcontracting plan is a condition of the award (see 3.10 h). Provides additional instruction to offerors advising that they must submit a small business subcontracting plan to receive credit.</p>
8.2	<p>Delegates approval authority for sole source procurements for entertainment (speakers, lecturers, musicians and performing artists) over \$50,000 to agency heads or a designee, which shall be a direct report to the agency head.</p>
10.13 a.	<p>Instructs that prior to renewing a contract that contains the requirement of small business subcontracting, the agency shall review the contractor’s compliance with their submitted plan. Failure to meet the small business participation levels as submitted in the plan shall be considered prior to executing the renewal (see 3.10 h).</p>
11.2	<p>Requires that appeal procedures established by agency heads cannot be retroactive, must be consistent with the <i>VPPA</i>, and as a minimum provide for notification in writing to the vendor of the decision and that such decision will be final unless the vendor initiates legal action as provided for in the <i>Code of Virginia</i>, § 2.2-4364.</p>
11.2 d.	<p>Clarifies that bidders or offerors have the ability to submit an appeal within ten (10) days of the written decision by invoking administrative procedures under § 2.2-4365 of the <i>Code of Virginia</i>, if the agency has established administrative appeals procedures.</p>
Chapter 12	<p><i>State and Federal Surplus Property Chapter</i> is revised in its entirety.</p>
14.5 e.	<p>Requires soliciting a minimum of four (4) DMBE-certified small business sources, if available, in <i>Quick Quote</i> and providing sufficient time for submittals.</p>
14.7	<p>Requires that if an order is placed against a term contract then the contract number shall be included on the order.</p>

14.9 b.	Adds three (3) additional eVA exclusions. eVA exclusions 26 and 27 involve contracts for on-site mentoring and practical experience for medical and pharmacy students. eVA exclusion 28 includes contracts with individuals providing instructional services in conjunction with a contract between an institution of higher education, including community colleges, and a local business or industry for non-credit workforce development classes to be provided by the institution of higher education.
Appendix A	Revises “Small Business Subcontracting Plan” definition to delete 3) Past good faith efforts to gain small business participation.
Appendix B, Section I, T.	Updates the general term and condition, <u>Insurance</u> , to increase health practice practitioner insurance limits.
Appendix B, Section I, Z.	Deletes time reference of DMBE certification for vendors in the general term and condition, <u>Set-Asides</u> . Vendors will be considered a Small Business, a Women-Owned Business or a Minority-Owned Business if certified as such by the Department of Minority Business Enterprise by the due date for receipt of bids or proposals.
Appendix B, Section II, 36	<p>Updates the special term and condition, <u>Small Business Subcontracting and Evidence of Compliance</u>, to include the Commonwealth’s goal and require submittal of the plan when required.</p> <ul style="list-style-type: none"> • Required for all prime contracts in excess of \$100,000 that are not set-aside for small business unless a written determination is made, signed by the chief purchasing officer and supported by factual evidence explaining in sufficient detail why no subcontracting opportunities exist. • Adds the requirement for prime contractors to report on use of non-DMBE-certified small business subcontractors for awards valued over \$200,000. 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, and type of product or service provided.

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 Debbie Field at 804-786-1074 or debbie.field@dgs.virginia.gov.

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d. Deleted.

- e. **Virginia Distribution Center (VDC).** The VDC purchases, stores, and distributes staple goods, canned foods, frozen foods, janitorial supplies, paper products, and other selected items for state agencies and institutions and political sub-divisions. To achieve optimal savings for the entire Commonwealth, the VDC purchases products in volume and ensures consistent quality through an extensive Quality Assurance Program, which includes an on-site VDC Laboratory. An agency may not use its local purchasing authority to purchase an item from another source that is available from the VDC without a written waiver from the VDC Director or designee.

Orders: Public bodies should submit orders directly to VDC through eVA, preferably via the VDC Punch-out Catalog. Those with special ordering needs may call the VDC Customer Service Team at 804-328-3232 ext. 0 for assistance. Additional information concerning goods and services available from VDC is contained in the VDC Dynamic Catalog (<http://shopvdc.dgs.virginia.gov/catalog/>).

Products: To view the VDC product line, please go to the VDC Dynamic Catalog at <http://shopvdc.dgs.virginia.gov/catalog/>. An up-to-date catalog can be printed at any time. Customers may contact the VDC Customer Service Team at 804-328-3232 ext. 0 to request assistance and discuss product availability and delivery.

Agency Unique Stocked Items: If the VDC stocks a high volume item solely for one agency, that agency is asked to notify the VDC immediately when there is no further demand for the product.

Waiver Requests: If an item is available from the VDC, a state agency may not use its local purchasing authority to purchase the item from another source without written approval from the VDC Director or designee. To request a mandatory source waiver from VDC, e-mail or fax requests to vdweb@dgs.virginia.gov or 804-328-3222. The request must include the following: item for which a waiver is requested, justification, time duration for which the waiver is needed and product quantity.

Specific Guidance: For VDC policies and procedures related to ordering, backorders, pickup orders, shipping and delivery, pallet exchange, exceptions and invoicing please see the sections; **Ordering and Billing Instructions, Deliveries and General Terms and Conditions** in the VDC Dynamic Catalog, <http://shopvdc.dgs.virginia.gov/catalog/>.

Special Assistance: Special assistance or problems can be discussed by calling the VDC Director at 804-328-3233 or the VDC Customer Service Team 804-328-3232 ext. 0.

- f. **DGS/DPS Office of Graphic Communications (OGC).** OGC is a full service creative group that offers: concepts and marketing strategies; creative writing and design; desktop publishing; photography direction; illustration; project management; and, printing management. Typical projects produced consist of promotional, informational and public educational campaigns; college recruitment packages; press kits; logos and identity systems; annual reports; economic development and travel publications; magazines; calendars and posters; museum catalogs and brochures, etc.

All agencies planning to procure graphic design services, desktop publishing, or preparation of camera ready artwork in excess of \$750 must first contact OGC at 804-371-8359 to determine if their requirements can be provided by that office and, if not, receive authority to procure from another source. This requirement does not apply to agencies utilizing existing in-house capabilities; however, if the intent is to contract any of these services with the private sector, or another public body, OGC must first be contacted. If OGC gives authority to contract out the service, the solicitation should specify the following vendor performance requirements, as applicable: research, layouts, design, writing, editing, desktop publishing, typesetting, proofreading, photography, illustration, pasteups, format size, number of pages, and printing specification development.

- h. **DGS/Office of Fleet Management.** For the purchase or lease (exceeding 30 days) of motor vehicles, agencies must submit OFMS Form CP-15 to the DGS Office of Fleet Management for approval to initiate the purchase process for all vehicles (*Code of Virginia* § 2.2-1176). Additional information on OFMS can be obtained at the website <http://www.dgs.virginia.gov/Fleet.aspx>.

- 3.2 d. **Bonds on Other Than Construction Contracts.** State agencies may require bid, payment, or performance bonds for contracts for goods or services if provided in the Invitation for Bids or Request for Proposal. (See Annexes 3-G, 3-H, and 3-I)

3.4 **Contractor License Requirements.**

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

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

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

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

License # _____ Type _____

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

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

Contractor License B - \$7,500 - \$120,000 or if the contractor does between \$150,000 and \$750,000 in business within a 12-month period.

Contractor License C - \$1,000 - \$7,500 or if the contractor does less than \$150,000 in business in a 12-month period. Note: The Board shall require a master tradesmen license as a condition of licensure for electrical, plumbing and heating, ventilation and air conditioning

contractors.

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

- 3.7 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, unless the contractor is a DMBE-certified small business, or the cooperative contract was awarded by a Commonwealth Agency or Institution, or approved by DPS. *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.virginia.gov. Click on "About VSP" then scroll to "Doing Business With VSP" then click on "State and Local Law Enforcement Equipment Procurement Program (1122). State. For additional information, contact the 1122 Program Manager, at 804-674-2153. 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.

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- 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 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.
- g. **Set-asides.** The goal of the Commonwealth is that 40% of its purchases be made from small businesses. Small businesses shall include businesses that have received the DMBE small business certification, which shall not exclude women-owned and minority-owned businesses when they have received DMBE small business certification. Procurements up to \$50,000 shall be set-aside exclusively for DMBE-certified small businesses. However, the procurement is exempted from the set-aside requirement if exempted from competitive requirements in 1.5 b, c, d and e; or in 14.9 b items 1-4, 6-16, and 18-28; or is available from mandatory sources or non-mandatory sources in 2.1 and 2.2, such as the Virginia Industries for the Blind, Virginia Correctional Enterprises, nonprofit sheltered workshops, as well as purchases made from existing mandatory or optional statewide contracts. Small businesses shall be identified on the vendor mailing list.
- (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 from DMBE-certified small businesses and the agency documents the procurement file that the procurement does not qualify for a set-aside. All set-aside procurements shall designate in the title of the solicitation that the procurement is set-aside for small businesses. Use the following format (in all capital letters): "SET-ASIDE FOR SMALL BUSINESSES" followed by the title of the

commodity or service being procured (e.g., SET-ASIDE FOR SMALL BUSINESSES - Security Services).

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 for DMBE-certified small businesses, 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 from DMBE-certified small businesses. 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.

3.10 h. **Prime Contractor Small Business Subcontracting Plan.** Unless the procurement has been set-aside for DMBE-certified small businesses or a determination, signed by the chief purchasing officer and supported by factual evidence explaining in sufficient detail why no subcontracting opportunities exist, all agencies and institutions shall include in the terms and conditions, the requirement for a Small Business Subcontracting Plan for the award of any prime contract in excess of \$100,000 (see Annexes 6-I and 7-G). A DMBE-certified small business, which shall not exclude 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 shall be included in solicitations requiring the plan and the contractor to provide evidence of compliance with this requirement.

Each prime contractor who wins an award in which provision of a small business subcontracting plan is a condition of the award, shall deliver to the contracting agency or institution timely reports substantiating compliance in accordance with the small business subcontracting plan (subject only to insubstantial shortfalls and to shortfalls arising from subcontractor default). See Appendix B., Section II. 36. When such business has been subcontracted to these firms, the contractor agrees to furnish the purchasing office at a minimum, the following information: name of firm, phone number, total dollar amount subcontracted, category type (small; small and women-owned; or small and minority-owned), and type of product/service provided, at the frequency required in the contract. 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. No prime contractor or subcontractor 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 for receipt of bids or proposals.

Annex 3-B

Summary of Procurement Policies

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

Thresholds	Procedures
Set-aside for Small Businesses:	
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 (See 3.10 g)	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 1.5 c & 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.virginia.gov) 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).

Annex 3-G

DGS-41-098

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

KNOW ALL MEN BY THESE PRESENTS:

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

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

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

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

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

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

which Bid is by reference expressly made a part hereof;

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

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

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

Signed and sealed this ___ day of _____, 200__.

_____(SEAL)
Principal

By: _____

Title: _____

Witness

_____(SEAL)
Surety

By: _____

Attorney-in-Fact

Typed Name: _____

AFFIDAVIT AND ACKNOWLEDGEMENT OF ATTORNEY-IN-FACT

COMMONWEALTH/STATE OF _____
CITY/COUNTY OF _____

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

Given under my hand this ___ day of _____, 200__.

_____(SEAL)
Notary Public

Print name: _____

My commission expires: _____

APPROVED AS TO FORM

Assistant Attorney General Date

Annex 3-H

DGS-41-099

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

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

KNOW ALL MEN BY THESE PRESENTS: That _____

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

as Principal, and

(Insert full legal title of the Surety)

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

(name of the Agency or Institution of the Commonwealth)

as Obligee, in the amount of

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

WHEREAS,

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

_____ for _____

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

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

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

1. A claimant is defined as one having a direct Contract with the Principal or with a subcontractor of the Principal for labor, material, or both for use in the performance of the Contract. A "subcontractor" of the Principal, for the purposes of this bond only, includes not only those subcontractors having a direct contractual relationship with the Principal, but also any other contractor who undertakes to participate in the work which the Principal is to perform under the aforesaid Contract, whether there are one or more intervening subcontractors contractually positioned between it and the Principal (for example, a subcontractor). "Labor" and "material" shall include but not be limited to, public utility services and reasonable rentals of equipment, but only for periods when the equipment rented is actually used at the work site.
2. Subject to the provisions of paragraph 3, any claimant, who has performed labor or furnished material in accordance with the Contract documents in the prosecution of the work provided in the Contract, who has not been paid in full therefore before the expiration of ninety (90) days after the day on which such claimant performed the last of such labor or furnished the last of

such materials for which he claims payment, may bring an action on this bond to recover any amount due him for such labor or material, and may prosecute such action to final judgment and have execution on the judgment. The Obligee need not be a party to such action and shall not be liable for the payment of any costs or expenses of any such suit.

- 3. Any claimant who has a direct contractual relationship with any subcontractor of the Principal from whom the Principal has not required a subcontractor payment bond, but who has no contractual relationship, express or implied, with the Principal, may bring an action on this bond only if he has given written notice to the Principal within one hundred eighty (180) days from the day on which the claimant performed the last of the labor or furnished the last of the materials for which he claims payment, stating with substantial accuracy the amount claimed and the name of the person for whom the work was performed or to whom the material as furnished. Notice to the Principal shall be served by registered or certified mail "Return Receipt Requested," postage prepaid, in an envelope addressed to the Principal at any place where his office is regularly maintained for the transaction of business. Claims for sums withheld as retainages with respect to labor performed or materials furnished shall not be subject to the time limitations stated in this paragraph 3.
- 4. No suit or action shall be commenced hereunder by any claimant:
 - a. Unless brought within one year after the day on which the person bringing such action last performed labor or last furnished or supplied materials, it being understood, however, that if any limitation embodied in this bond is prohibited by any law controlling the construction hereof, the limitation embodied within this bond shall be deemed to be amended as to be equal to the minimum period of limitation permitted by such law.
 - b. Other than in a Virginia court of competent jurisdiction, with venue as provided by statute, or in the United States District Court for the district in which the project, or any part thereof is situated.
- 5. The amount of this shall be reduced by and to the extent of any payment or payments made in good faith hereunder.

Signed and sealed this ___ day of _____, 200__.

Witness

_____ (SEAL)

Principal

By: _____

Title: _____

_____ (SEAL)

Surety

By: _____

Attorney-in-Fact

Typed Name: _____

AFFIDAVIT AND ACKNOWLEDGEMENT OF ATTORNEY-IN-FACT

COMMONWEALTH/STATE (strike one) OF _____

CITY/COUNTY (strike one) OF _____

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

Given under my hand this __ day of _____, 200__.

_____(SEAL)

Notary Public

My name (printed) is:

My commission expires:

APPROVED AS TO FORM

Assistant Attorney General

Date

Annex 3-I

DGS-41-100

COMMONWEALTH OF VIRGINIA
STANDARD PERFORMANCE BOND FOR NON-CONSTRUCTION

KNOW ALL MEN BY THESE PRESENTS: That _____, the Contractor ("Principal") whose principal place of business is located at _____, and

_____ ("Surety"), whose address for delivery of notices is located at _____, are held and firmly bound

unto the Commonwealth of Virginia, _____ ("Obligee"), in the amount of _____ dollars (\$ _____) (the "Bonded Sum") for the payment whereof Principal

and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal has by written agreement dated _____ entered into Contract No. _____ with Obligee for

_____, which contract (the "Contract") is by reference expressly made a part hereof;

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

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

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

The time required for the above conference or to complete the above actions shall not toll any Contract deadlines or operate as a waiver of any of the Obligee's rights under the Contract or under this Performance Bond. If

Surety fails to take one of the four specified actions within forty days after such written demand, Surety shall, within such time, provide Obligee with a written statement of any basis upon which it denies obligation to take such action, and at any time after such forty day period, Obligee may proceed to complete the work in any reasonable manner without further notice to Surety and recover from Surety (up to the Bonded Sum) the damages caused by Principal's breach.

No action shall be brought on this bond unless brought within one year after (a) completion of the Contract, including the expiration of all warranties and guarantees, or (b) discovery of the defect or breach of warranty that gave rise to the action. No other delay by Obligee in exercising rights under this bond shall operate as a waiver of such rights. The validity, interpretation, and enforcement of this Bond shall be governed in all respects by Virginia law. Any suit in connection with this Bond shall be brought solely in the appropriate circuit court of the Commonwealth of Virginia.

Signed and sealed this ___ day of _____, 200__.

_____(SEAL)

Principal

By

Title: _____

Witness

_____(SEAL)

Surety

By: _____

Attorney-in-Fact

Typed Name: _____

AFFIDAVIT AND ACKNOWLEDGEMENT OF ATTORNEY-IN-FACT

COMMONWEALTH/STATE (strike one) OF _____

CITY/COUNTY (strike one) OF _____

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

Given under my hand this __ day of _____, 200__.

Notary Public (SEAL)

My name (printed) is:

My commission expires:

APPROVED AS TO FORM:

Assistant Attorney General Date

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 unless exempted (see 3.10 g), 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 DMBE-certified small business sources may also be solicited. Other quotes received from DMBE-certified small businesses that were not solicited shall be considered. If more than one quote is received, the award shall 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.
- b. Agencies should seek additional competition whenever there is reason to believe a quotation is not a fair and reasonable price (see 4.10 for Price Reasonableness Determination).

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 14.5e). Any appropriate special conditions must be stated in or attached to the Quick Quote.
- b. Set-aside for DMBE-certified small businesses unless exempted (see 3.10 g). The procurement file shall be documented if the procurement does not qualify for a set-aside. If set-aside for small businesses, solicit a minimum of four (4) DMBE-certified small business sources, if available. If not set-aside for small businesses, solicit a minimum of four (4) sources, if available. Include a minimum of two (2) 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).

1. Set-aside for DMBE-certified small businesses unless exempted (see 3.10g). If set-aside for small businesses, solicit a minimum of four (4) DMBE-certified small business sources, if available, by mail, fax, or electronically. If not set-aside for small businesses, solicit a minimum of four (4) sources. Include a minimum of two (2) DMBE-certified small business sources, if available. If fewer than the required number of sources are solicited, the reasons shall be documented.
 2. *VBO* advertising is optional, but encouraged up to \$50,000. *VBO* advertising is required over \$50,000. See 3.18.
 3. Offers may be opened and evaluated upon receipt. All responses must be received at the designated location by the date and hour stated in the solicitation (see 3.1e).
 4. In lieu of an evaluation committee, the buyer or end user may solely evaluate and rank offers. Upon completion of the evaluation, negotiations shall be conducted with the offerors selected.
- 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. Set-aside for DMBE-certified small businesses unless exempted (see 3.10g). The procurement file shall be documented if the procurement does not qualify for a set-aside.

1. Procurement Planning. A purpose statement must include that the solicitation is using best value procurement procedures and shall note if set-aside for small businesses. Describe Statement of Needs in general terms. Mandatory requirements are stated. Include Subjective/Objective evaluation criteria (see Annex 7-F for sample subjective/objective evaluation criteria). If making multiple awards, the total sum of all awards shall not exceed \$50,000.
8. If set –aside for small businesses, solicit a minimum of four (4) DMBE-certified small business sources, if available, by mail, fax or electronically. If not set-aside for small businesses, solicit a minimum of four (4) sources, if available. Include a minimum of two (2) DMBE-certified small business sources, if available. If fewer than the required number of sources are solicited, the reasons shall be documented. 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.
11. 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. Prepare a written justification and place in contract file.

Annex 5-C, 5-E and Annex 5-F are updated in the individual chapters of the *APSPM* and whole *APSPM* on www.eva.virginia.gov

- 6.2 f. **Small Business Subcontracting Plan.** In accordance with the Commonwealth’s policy of facilitating and maximizing the participation of small businesses, which shall not exclude 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 unless the solicitation has been set-aside for small businesses or no subcontractor opportunities exist. (See 3.10 h). See Appendix B, Section II, 36 for the special term and condition that shall be included in solicitations requiring the plan and the contractor to provide evidence of compliance with this requirement.

If the bidder on the contract is a DMBE-certified small business, the bidder shall indicate such in Section A of Annex 6-I. This shall not exclude DMBE-certified women-owned and minority-owned businesses that have received the DMBE small-business certification. If the bidder is not a DMBE-certified small business, the bidder, to be considered responsive, 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 6-I. If no subcontracting opportunities exist see 3.10 h. No bidder or subcontractor 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 for receipt of bids.

- 6.3 d. **Award.** The contract is awarded to the lowest responsive and responsible bidder (see 3.20 and 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 lowest responsive and responsible DMBE-certified small business bidder. No bidder or subcontractor 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 for receipt of bids.

Annex 6-B, SAMPLE FORMAT AND STEP-BY-STEP PROCEDURES INVITATION FOR BIDS (IFB)

STEP TWO:

DO PROCUREMENT PLANNING: Refer to chapters within this manual for guidance in determining the following: procurement lead time available, whether the procurement is for goods or nonprofessional services, whether your agency has authority for the procurement, if approval of another agency is required, the type of specifications or scope of work to be used, need for a site visit or prebid conference, the method of procurement to be used, if the procurement is to be set-aside for small business, etc.

STEP THREE:

V. **SPECIAL TERMS AND CONDITIONS:** Select applicable special terms and conditions. Other special terms and conditions may be developed and included, as appropriate.

F. **SMALL BUSINESS SUBCONTRACTING AND EVIDENCE OF COMPLIANCE:** Required where the prime contract is in excess of \$100,000 unless the solicitation has been set-aside for small businesses or no subcontractor opportunities exist. (See 3.10 h. and Appendix B, Section II, 36.) When this term and condition is used then include Annex 6-I in solicitations to be completed by the offeror.

STEP FOUR:

A. 3. **TITLE:** Designate if set-aside for small businesses. Use the following format (in all capital letters): “SET-ASIDE FOR SMALL BUSINESSES” followed by the title of the commodity or service being procured (e.g., SET-ASIDE FOR SMALL BUSINESSES - Security Services).

COMMODITY CODE: Assign 5-digit commodity code from commodity code book.

Annex 6-D

IFB SOLICITATION AND FILE CHECKLIST

Pre-Award, Receipt & Evaluation, and Post-Award Activities:	
<u>Bidders List:</u> If set-aside for small business participation only, solicit a minimum of six (6) DMBE-certified small businesses, if available. If fewer than the required number of sources are solicited, the reasons shall be documented. If not set-aside for small businesses, solicit a minimum of six (6) sources, including a minimum of four (4) DMBE-certified small businesses, if available. Note which vendors are DMBE-certified small businesses. If fewer are solicited, include reason in procurement file.	Bidders List: Name, addresses of Bidders solicited
The following should be considered when developing the solicitation:	
<u>Small Business Subcontracting and Evidence of Compliance:</u> Use in solicitations for goods, nonprofessional services, or non capital outlay construction when a small business subcontracting plan is a condition of the award. Required in solicitations valued over \$100,000 that are not set-aside for small business unless a written determination is made, signed by the chief purchasing officer and supported by factual evidence explaining in sufficient detail why no subcontracting opportunities exist.	

Annex 6-I

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) by the due date of the solicitation to participate in the SWAM program. Certification applications are available through DMBE online at www.dmb.e.virginia.gov (Customer Service).

Bidder 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 not exclude DMBE-certified women-owned and minority-owned businesses when they have received DMBE small business certification.
- B. If you are not a DMBE-certified small business, complete Section B of this form. For the bid to be considered and the bidder to be declared responsive, the bidder shall identify the portions of the contract that will be subcontracted to DMBE-certified small business in Section B.

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 not exclude DMBE-certified women-owned and minority-owned businesses that 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 Involvement During Initial Period of the Contract	Planned Contract Dollars During Initial Period of the Contract
Totals \$					

- 7.2 j. In accordance with the Commonwealth’s policy of facilitating and maximizing the participation of small businesses, which shall not exclude businesses owned by women and minorities in its purchasing programs when they have received DMBE small business certification, an evaluation criterion for all contracts in excess of \$100,000 shall be a Small Business Subcontracting Plan (see Annex 7-G) unless the solicitation has been set-aside for small businesses or no subcontractor opportunities exist. (See 3.10 h). 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 goods or services being procured. See Appendix B, Section II, 36 for the special term and condition for submission of the Small Business Subcontracting Plan and Evidence of Compliance with this requirement.

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. No offeror or subcontractor 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 for receipt of proposals.

Annex 7-B, SAMPLE FORMAT AND STEP-BY-STEP PROCEDURES REQUEST FOR PROPOSAL (RFP)

STEP 2 - PREPARE THE REQUEST FOR PROPOSAL (RFP)

Competitive negotiation is a method of contractor selection which includes issuance of a written RFP indicating in general terms that which is sought to be procured, specifying the factors that will be used in evaluating the proposals, and containing or incorporating by reference the applicable contractual terms and conditions including any unique capabilities or qualifications which will be required of the contractor (*Code of Virginia*, § 2.2-4301). The RFP should be prepared using the sequence shown on Annex 7-B. The use of this procedure by state agencies standardizes format and makes it easier for state personnel to prepare, evaluate, award, and administer a competitive negotiation program. It also makes it easier for vendors to understand and respond to RFPs. Determine if the procurement is to be set-aside for small businesses.

IV.

B. SPECIFIC PROPOSAL INSTRUCTIONS:

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 unless the solicitation has been set-aside for small businesses or no subcontracting opportunities exist. (see 3.10 h and Appendix B, Section II, 36.) Complete Annex 7-G.

V. EVALUATION AND AWARD CRITERIA:

Note: If the solicitation has been set-aside for small business or no subcontracting opportunities exist (see 3.10 h), the criteria for Small Business Subcontracting Plan and the point value associated with this criteria will be deleted. The point value shall be re-allocated to the other evaluation criteria.

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 procurement such as clauses Q, R, S which are not applicable to service contracts; clause T for goods purchases.

IX. SPECIAL TERMS AND CONDITIONS:

D. SMALL BUSINESS SUBCONTRACTING PLAN AND EVIDENCE OF COMPLIANCE: Required where the prime contract is in excess of \$100,000 unless the solicitation has been set-aside for small businesses or no subcontracting opportunities exist. (see 3.10 h and Appendix B, Section II). When this term and condition is used then include Annex 7-G in solicitations to be completed by the offeror.

STEP 3 - ISSUING THE RFP

B. TITLE: Designate if set-aside for small businesses. Use the following format (in all capital letters): "SET-ASIDE FOR SMALL BUSINESSES" followed by the title of the commodity or service being procured (e.g., SET-ASIDE FOR SMALL BUSINESSES - Security Services).

STEP 10 - EVALUATE PROPOSALS

III. COMPLETE EVALUATION BY ASSIGNING POINTS. The proposals must be assigned points in accordance with the evaluation criteria in the RFP.

D. When assigning points for the Small Business Subcontracting Plan criteria, a DMBE-certified small business, which shall not exclude women-owned and minority-owned businesses when they have received DMBE small business certification, who serves as the prime contractor, will receive the maximum number of evaluation points for this criteria. The weight for the small business subcontracting plan shall not be less than 20% of the total point value. See Annex 7-G, Section A of the Small Business Subcontracting Plan. Example: 20 points available for Small Business Subcontracting and the Offeror is a DMBE certified small business then that Offeror would receive 20 points. No further subcontracting would be required.

E. Other businesses that are not DMBE-certified small businesses will receive credit based on their Small Business Subcontracting Plan not to exceed 75% of the points assigned to this evaluation criterion i.e. 20 points X 75%= 15 points. Points will be assigned based on each offeror's proposed subcontracting expenditures with DMBE certified small businesses for the initial contract period as indicated in the offeror's submitted subcontracting plan in relation to each offeror's total price. See Annex 7-G, Section B of the Small Business Subcontracting Plan for proposed small business subcontracting expenditures.

The Offeror's proposed subcontractor use of DMBE certified small businesses is divided by the Offeror's total proposed price. The quotient is then multiplied by the points assigned for the criteria to determine the evaluation points to be assigned.

	Offeror's proposed use of DMBE certified small businesses as subcontractors	=	% Factor	x	Available Points	=	Points Assigned
Offeror Price	<u>small businesses as subcontractors</u> Offeror's Price	=	% Factor	x	Points (15)*	=	Points
Assigned							
A	<u>15,250</u>	=	10	x	15	=	1.5
\$152,500	152,500						
B	<u>26,800</u>	=	17	x	15	=	2.5

\$158,000	158,000					
C	<u>43,251</u>	=	26	x	15	= 3.9
\$166,350	166,350					
D	<u>95,904</u>	=	54	x	15	= 8.1
\$177,600	177,600					

* Point value shown is only an example and will vary with the RFP based on points assigned to Small Business Subcontracting Plan criteria not to exceed 75% of the points assigned to this evaluation criterion i.e. 20 points X 75%= 15 points.

STEP 12 - SCHEDULE AND CONDUCT NEGOTIATIONS

VI. Once negotiations have been finalized, complete the “Summary of Evaluation of Ratings by Criteria Worksheet” (Annex 7-H) and place in the procurement file. This worksheet should be a compilation of the evaluation committee’s ratings and not done by or for each committee member.

Annex 7-E

RFP SOLICITATION AND FILE CHECKLIST

	<p><u>Offerors List</u>: If set-aside for small business participation only, solicit a minimum of six (6) DMBE-certified small businesses, if available. If fewer than the required number of sources are solicited, the reasons shall be documented. If not set-aside for small businesses, 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. Note which vendors are DMBE-certified small businesses. If fewer are solicited, include reason in procurement file.</p>	<p>Offerors List: Name, addresses of Offerors solicited</p>
	<p><u>Small Business Subcontracting and Evidence of Compliance</u>: Use in solicitations for goods, nonprofessional services, or non capital outlay construction when a small business subcontracting plan is a condition of the award. Required in solicitations valued over \$100,000 that are not set-aside for small business unless a written determination is made, signed by the chief purchasing officer and supported by factual evidence explaining in sufficient detail why no subcontracting opportunities exist.</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: This shall not exclude DMBE-certified women- and minority-owned 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) by the due date of the solicitation to participate in the SWAM program. Certification applications are available through DMBE online at www.dmbv.org (Customer Service).

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 not exclude DMBE-certified women-owned and minority-owned businesses when they have received DMBE small business certification.
- B. If you are not a DMBE-certified small business, complete Section B of this form. For the offeror to receive credit for the small business subcontracting plan evaluation criteria, the offeror shall identify the portions of the contract that will be subcontracted to DMBE-certified small business in this section. Points will be assigned based on each offeror’s proposed subcontracting expenditures with DMBE certified small businesses for the initial contract period as indicated in Section B in relation to the offeror’s total price.

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 not exclude DMBE-certified women-owned and minority-owned businesses when they 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 Involvement During Initial Period of the Contract	Planned Contract Dollars During Initial Period of the Contract
Totals \$					

8.2 **Procurements Over \$50,000.**

Sole source procurements for entertainment (speakers, lecturers, musicians and performing artists) over \$50,000 must be approved prior to commencement of the actual procurement by the agency head or designee, which shall be a direct report to the agency head, using the Sole Source Procurement Approval Request form in Annex 8-C, documenting that there is only one source practicably available for the entertainment to be procured, and must be included in the procurement file. In addition, a memorandum must be attached to the request which addresses the four points shown below.

10.13 **Contract Renewal and Extension.**

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

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

- 11.2 **Services Appeals.** *Code of Virginia*, § 2.2-4365, provides that certain agencies may establish an administrative procedure for hearing appeals from refusals to allow withdrawal of bids, appeals from disqualifications, appeals from determinations of non-responsibility, appeals of denials of protests of award or decision to award a contract, and appeals from decisions on disputes arising during the performance of a contract, or any of these which relate to contracting for services. Such administrative procedures shall provide for a hearing before a disinterested person or panel, the opportunity to present pertinent information, and the issuance of a written decision containing findings of fact. The disinterested person or panel shall not be an employee of the governmental entity against whom the claim has been filed. The findings of fact shall be final and conclusive and shall not be set aside unless the same are fraudulent, arbitrary, or capricious, or so grossly erroneous as to imply bad faith. No determination on an issue of law shall be final if appropriate legal action is instituted in a timely manner. Any party to the administrative procedure, including the public body, shall be entitled to institute judicial review if such action is brought within ten days of receipt of the written decision (*Code of Virginia*, § 2.2-4365). Appeal procedures established by agency heads cannot be retroactive, must be consistent with the *VPPA*, and as a minimum provide for notification in writing to the vendor of the decision and that such decision will be final unless the vendor initiates legal action as provided for in the *Code of Virginia*, § 2.2-4364.

11.2

- 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 public notice of the award or the announcement of the decision to award, whichever occurs first. Public notice of the award or the announcement of the decision to award shall be given by the public body in the manner prescribed in the terms or conditions of the IFB or RFP. 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 (10) days after posting or publication of the notice of such contract as provided in 3.18c. The written protest must be received in the purchasing office no 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. 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 (10) days after those records are available for inspection by such bidder or offeror, or at such later time as provided in this section. 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 (10) days stating the reasons for the action taken. This decision shall be final unless the bidder or offeror appeals within ten (10) days of receipt of the written decision by invoking administrative procedures under § 2.2-4365 of the *Code of Virginia*, if available, or in the alternative by instituting legal action under § 2.2-4364 of the *Code of Virginia*. Nothing in this subsection (§ 2.2-4364) 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.

14.5 **Small Purchase Competitive Requirements.**

- e. **Quick Quote (over \$5,000 to \$50,000):** Solicitation of bids or quotes via Quick Quote is mandatory for non-contract requirements between \$5,000 and \$50,000. Solicit a minimum of four (4) DMBE-certified small business sources, if available. Quick Quote may also be used to solicit a quote(s) for requirements under \$5,000. Quick Quote solicitations should be open for a minimum of one (1) day to allow vendors to return pricing by the closing date and time. However, a sufficient length of time should be given to all vendors to respond considering but not limited to solicitation requirements, complexity of the procurement, market trends, etc. Vendors must be registered in eVA in order to respond electronically to Quick Quotes in eVA. Electronic Quick Quote responses and other methods for vendors to respond to Quick Quotes may be used simultaneously. Provide the Standard eVA Term and Condition in Annex 14-A when providing Quick Quote information to an ad hoc vendor. The resulting order must be processed through eVA. Reference the Quick Quote number in the header cross-reference field of the eVA requisition. Quick Quote solicitations and award notices are not required to be posted on the eVA website.

14.7 **Documentation of Purchase Transactions.**

- a. **Electronic Files:** Electronic files created in eVA and any attached from other sources are acceptable as documentation to support the why, who, what, when, where and how of purchase transactions and receiving reports. If the order is against a term contract then the contract number shall be included on the order. Paper documents need not be printed and maintained. Reports are available in eVA to provide sufficient detail to support the basis and history of each purchase. Any transaction that cannot be fully documented electronically should contain a cross-reference (what and where) to any other documents, such as large drawings or other files maintained as a hard copy.

14.9 Use of eVA and Exclusions

b. Exclusions.

26. Contracts with public and private hospitals, as well as pharmacy chains and independent pharmacies, that are licensed and authorized by law to dispense controlled drugs and other medications based on prescriptions written by medical practitioners licensed to engage in the prevention, diagnosis, or treatment of human illness, injury, or physical disability, mental health, mental retardation, substance abuse, or emotional condition, when the purpose of the contract is to provide on-site mentoring and practical experience to pharmacy students enrolled in state institutions of higher education.
27. Contracts with public and private hospitals, medical practices, and medical clinics that are licensed and authorized by law to engage in the prevention, diagnosis, or treatment of human illness, injury, or physical disability, mental health, mental retardation, substance abuse, or emotional condition, when the purpose of the contract is to provide on-site mentoring and practical experience to medical students enrolled in state institutions of higher education.
28. Individuals providing instructional services in conjunction with a contract between an institution of higher education, including community colleges, and a local business or industry for non-credit workforce development classes to be provided by the institution of higher education.

APPENDIX A GLOSSARY AND ACRONYMS

Definitions

Small Business Subcontracting Plan: A completed form which bidders or offerors provide their: 1) DMBE-certified small business certification status, or 2) small business utilization plan in response to a specific solicitation.

**APPENDIX B
SECTION I
REQUIRED GENERAL TERMS AND CONDITIONS
GOODS AND NONPROFESSIONAL SERVICES**

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 coverage 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 §§ 2.2-4332 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 coverage will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

MINIMUM INSURANCE COVERAGES AND LIMITS REQUIRED FOR MOST CONTRACTS:

1. Workers' Compensation - Statutory requirements and benefits. Coverage is compulsory for employers of three or more employees, to include the employer. Contractors who fail to notify the Commonwealth of increases in the number of employees that change their workers' compensation requirements under the *Code of Virginia* during the course of the contract shall be in noncompliance with the contract.
2. Employer's Liability - \$100,000.
3. Commercial General Liability - \$1,000,000 per occurrence. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, products and completed operations coverage. The Commonwealth of Virginia must be named as an additional insured and so endorsed on the policy.

(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 coverage should include Garage Owner's Liability. Contracts with movers or truck transporters should also require motor carrier's liability. When in the judgment of a procurement officer, these limits and coverage are not warranted for the goods and services being procured, the Division of Risk Management should be contacted.

4. Automobile Liability - \$1,000,000 per occurrence. (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, Licensed Dental Hygienists, Optometrists, Registered or Licensed Practical Nurses, Pharmacists, Physicians, Podiatrists,	

Chiropractors, Physical Therapists, Physical Therapist Assistants, Clinical Psychologists, Clinical Social Workers, Professional Counselors, Hospitals, or Health Maintenance Organizations.)	\$1,925,000 per occurrence, \$3,000,000 aggregate
(Limits increase each July 1 through fiscal year 2008, as follows: July 1, 2008 - \$2,000,000. This complies with §8.01-581.15 of the <u>Code of Virginia</u> .)	
Insurance/Risk Management	\$1,000,000 per occurrence, \$3,000,000 aggregate
Landscape/Architecture	\$1,000,000 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	\$1,000,000 per occurrence, \$1,000,000 aggregate

*** When Used: FOR CONSTRUCTION, SERVICE CONTRACTS AND GOODS CONTRACTS WHEN INSTALLATION IS REQUIRED - 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 Treasury, Division of Risk Management (804-786-3152) 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.**

SECTION I

REQUIRED GENERAL TERMS AND CONDITIONS GOODS AND NONPROFESSIONAL SERVICES

- Z. **SET-ASIDES**. This solicitation is set-aside for DMBE-certified small business participation only when designated “SET-ASIDE FOR SMALL BUSINESSES” in the solicitation. DMBE-certified small businesses are those businesses that hold current small business certification from the Virginia Department of Minority Business Enterprise. DMBE-certified women- and minority-owned businesses are also considered small businesses when they have received DMBE small business certification. Small businesses must be certified by DMBE not later than the solicitation due date.

SECTION II

SPECIAL TERMS AND CONDITIONS GOODS AND NONPROFESSIONAL SERVICES

36. **SMALL BUSINESS SUBCONTRACTING AND EVIDENCE OF COMPLIANCE:**
- A. It is the goal of the Commonwealth that 40% of its purchases be made from small businesses. This includes discretionary spending in prime contracts and subcontracts. All potential bidders/offerors are required to submit a Small Business Subcontracting Plan. Unless the bidder/offeror is registered as a DMBE-certified small business and 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 DMBE-certified small businesses. This shall not exclude DMBE-certified women-owned and minority-owned businesses when they have received DMBE small business certification. No bidder/offeror or subcontractor 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 for receipt of bids or proposals. 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 with the DMBE certification number, 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 with the DMBE certification number, 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.
- C. Each prime contractor who wins an award valued over \$200,000 shall deliver to the contracting agency or institution on a _____ (insert monthly, quarterly, or other frequency) _____ basis, information on use of subcontractors that are not DMBE-certified small businesses. 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, and type of product or service provided.

* **When Used:** Use in solicitations for goods, nonprofessional services, or non capital outlay construction when a small business subcontracting plan is a condition of the award. Required in solicitations valued over \$100,000 that are not set-aside for small business unless a written determination, signed by the chief purchasing officer and supported by factual evidence explaining in sufficient detail why no subcontracting opportunities exist is made. 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.

APPENDIX C

**PROCUREMENT INFORMATION MEMORANDUM (PIM)
RECORD OF CHANGES**

PIM NUMBER	TOPIC	DATE FILED	INITIALS
98-001	26 topics, corrections and additional changes	7/1/99	
98-002	Electronic commerce	8/2/99	
98-003	Technology Access clause	1/13/00	
98-004	Prohibited Participation. Air/Rail Travel/SPCC	3/30/00	
98-005	Limitation of Liability clause #59	5/8/00	
98-006	Increased general delegation and small purchase limit to \$50,000	7/1/00	
98-007	Unsolicited Proposals	12/20/00	
98-008	Chapter 14 introduced. VDOT fuel, Faith-based term	7/1/01	
98-009	eVA General and Special Terms and Conditions	10/9/01	
98-010	Replaced Chapter 14, revised General Term X & Special Term #59	2/14/02	
98-011	Posting, Advertising VBO. Bonds changed to BCOM manual	7/1/02	
98-012	DIT/DTP Sole Source changes	7/23/02	
98-013	SWAM thresholds to 6 sources \$5K-\$15K, 8 sources \$15K-\$50K, 9 sources over \$50K. SS approval by agency head. All references to DIT and DTP throughout APSPM are no longer valid effective 7/1/03. Follow VITA Guidelines for technology purchases.	7/1/03	
98-014	Changed SS delegation to allow agency head or designee. Allows additional bids for same procurement. Describes exempt (R02) categories. Clarifies grant and medical services exemptions.	11/12/03	
98-015	Clarifies medical services exemptions and adds financing exemption.	11/21/03	
98-016	Introduces Best Value Acquisition, Alternative Dispute Resolution. Requires QQ for bids or quotes over \$5K-\$30K and processing all procurement transactions through eVA.	7/16/04	
98-017	SWAM sections revised to implement the memorandum on SWAM procurement dated July 30, 2004, from the Governor's Chief of Staff. Thresholds changed – \$0-\$5,000; \$5,000-\$50,000 & Over \$50,000. Single quote from 1 W/M; may award to other than lowest bidder or highest ranked offeror; QQ and Advertising to \$50,000.	8/4/04	
98-018	Authorizes the use of small business set-asides. If an award is made to other than the lowest bidder or best offeror under a remedial plan, the award may be made to	10/8/04	

	the next lowest responsive and responsible minority or women-owned bidder or next best minority or women-owned offeror.		
98-019	The section on Sheltered Workshops is replaced with Nonprofit Sheltered Workshops and Nonprofit Organizations; provides a link and new definition. Requirement to notify vendors of a cancelled solicitation in eVA is removed. The section on Preferences is revised to require reciprocal preferences; provides a definition of absolute preference and a link to a listing of state preference laws. Removes reference to a “remedial plan” in order to award to other than the lowest responsive and responsible bidder or highest ranking offeror. Annex 7-B is revised to provide an example of SWAM Utilization as an evaluation criteria. Annex 7-G is added, Plans for Utilization of SWAM Businesses. Information on use of the SPCC is deleted under Chapter 5 and moved to 10.11 under Payment and Invoice Processing. A new section 14.14 is added on the use of the SPCC in eVA.	7/1/05	
98-020	Regulations to implement the eVA Business, modification of existing contracts with new Gen term X., deleted requirement for TPA, Availability of Funds clause is moved to General Ts & Cs, documentation of single quote in eMall is required, and 2006 legislative changes including allowing multiple awards for professional services.	7/1/06	
98-021	Implements EO 33. Small purchases are set-aside for DMBE-certified small businesses. May award to other than the lowest bidder or highest offeror over \$50,000 if appropriate Special Term is used in the solicitation. A minimum of 20% of RFP evaluation points are awarded based on offerors’ Small Business Subcontracting Plan; revised Annex 7-G. The use of cooperative contracts is not authorized when there are Commonwealth of Virginia, DMBE-certified small businesses available to provide the goods or furnish the services at fair and reasonable prices. Set-Asides clause is moved to General Ts& Cs.	10/2/06	
98-022	Provides further guidance, changes and clarification of policy related to implementation of EO33. Bid, performance, and payment bonds for non-construction procurements are included. Chapter on Surplus is revised in its entirety.	7/3/07	