

March 30, 2000

MEMORANDUM

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

FROM: Ron Bell
Director

SUBJECT: Procurement Information Memoranda (PIM) #98-004

Enclosed is PIM #98-004 representing several changes to the September 1998 edition of the *Agency Procurement and Surplus Property Manual (APSPM)*. Please insert or replace the pages enclosed; the appropriate page numbers are shown at the bottom of the page. Other pen and ink changes should be made to the manual and are explained in the table below.

Appendix C contains a log in which to list the PIM number and date of revision. This memorandum and the corresponding PIM #98-004 should be filed in the back of the Appendix C log.

Section	Summary of Changes	Pen & Ink Changes OR Replacement Pages as Indicated
3.16 Page 3-9	Clarify Prohibited Participation from "Other Contractors" and add a new section c. on Limitation on Submitting Bid for Same Procurement.	Insert replacement pages 3-9, 3-9a.
3.25 Page 3-14	Add authorization to use charge cards and purchase through the Internet for air and rail travel.	Insert replacement pages 3-14 and 3-14a.
4.3g Page 4-4	Change the APSPM language to be consistent with the Vendors Manual language concerning Acceptance Period for bids.	Change the first sentence in the APSPM 4.3g to read, "Bids are good for a minimum of 30 days unless a longer period of time is specified in the solicitation or in the bid response."

<p>8.2 Page 8-1</p>	<p>Renewals of sole source contracts over \$10,000 must be sent to DGS/DPS for approval unless the original procurement included a renewal provision and approval was given for multi-years.</p>	<p>Change the first line of § 8.2 to read, All sole source procurements <i>and renewals</i> over \$10,000 must be submitted to DGS/DPS for review and approval. Add as the following sentence: “Sole source procurements that originally included a renewal provision for which approval for multi-years was obtained, do not need to be forwarded to DGS/DPS for approval until expiration of the term for which approval was obtained.”</p>
<p>12.7b Page 12-3</p>	<p>Guidance is provided about where the proceeds from the sale of surplus property should be deposited and reported.</p>	<p>Change the 4th sentence of 12.7b to read, “A transfer letter/document, describing the property, is prepared....” Add a sentence before the last sentence in that paragraph: “Proceeds from sale shall promptly be deposited to the sale of surplus state personal property fund for the agency and reported to the State Comptroller.”</p>

If you should have questions about the changes noted, please contact Nancy M. Davis at 804-786-0323 or ndavis@dgs.state.va.us.

- c. **Recycled Paper and Paper Products Preference.** In determining the award of any contract for paper and paper products to be purchased for use by agencies of the Commonwealth, DGS/DPS, or agencies under their delegated purchasing authority, shall procure using competitive sealed bidding and shall award to the lowest responsible bidder offering recycled paper and paper products of a quality suitable for the purpose intended, so long as the bid price is not more than 10% greater than the bid price of the low responsive and responsible bidder offering a product that does not meet the EPA Recommended Content Standards as defined in section 40, Code of Federal Regulations (CFR), Part 250 (*Code of Virginia*, § 11-47.2; see also 3.24b).
- d. **Coal.** There is a preference for Virginia-mined coal used in state facilities. In determining the award of any contract for coal purchased for use in state facilities with state funds, DGS/DPS shall procure using competitive sealed bidding and shall award to the lowest responsive and responsible bidder offering coal mined in Virginia, so long as its bid price is not more than 4% percent greater than the bid price of the low responsive and responsible bidder offering coal mined elsewhere (*Code of Virginia*, § 11-47.1).

3.15 **Procurement Methods.** Section 11-41 of the VPPA recognizes five methods of procurement:

- X Small Purchase procedures
- X Competitive Sealed Bidding (The preferred method.)
- X Competitive Negotiation
- X Sole Source
- X Emergency

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

3.16 **Prohibited Participation.**

a. **From Architect or Engineer.**

- (1) No building materials, supplies, or equipment for any building or structure constructed by or for a public body shall be sold by or purchased from any person employed as an independent contractor by the public to furnish architectural or engineering services, but not construction, for such building or structure; or from any partnership, association or corporation in which such architect or engineer has a personal interest as defined in *Code of Virginia*, § 2.1-639.2 and § 11-79A.
- (2) No building materials, supplies, or equipment for any building or structure constructed by or for a public body shall be sold by or purchased from any person which has provided or is currently providing design services specifying a sole source for such materials, supplies, or equipment to be used in such building or structure to the independent contractor employed by the public body to furnish architectural or engineering services in which such person has a personal interest as defined in *Code of Virginia*, § 2.1-639.2 and § 11-79B.
- (3) The provisions of (1) and (2) above shall not apply in cases of emergency or for transportation-related projects conducted by the Department of Transportation.
- (4) These provisions do not apply to persons supplying architectural or engineering services under design/build contracts (*Code of Virginia*, § 11-41.2).

- b. **Other Contractors.** An independent contractor employed or otherwise paid by a state agency to design a project, develop a scope of work, write specifications or otherwise define contract requirements is not eligible to compete for or receive the resulting contract, except in cases of emergency, when only one source is practicably available for both the defining of contract requirements and the performance of those requirements or when the public body determines in writing that the exclusion of such vendor would limit the number of potential qualified bidders or offerors in a manner contrary to the best interests of the public body. In addition the contractor may not be a subcontractor or supplier for the entity which is awarded the contract or any of that entity's subcontractors, however far removed (see 4.4d). A vendor may offer, without consideration, assistance to agency personnel in developing specifications for a requirement and compete on that requirement; however, it is incumbent upon the agency buying staff to assure vendor provided specifications reflect the procurement needs of the purchasing body rather than being drawn to favor a particular vendor.

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- c. **Limitation on Submitting Bid for Same Procurement.** Submission of a subsequent bid/proposal, unless specifically identified as an additional bid, shall constitute the withdrawal of any prior one submitted by the same bidder or offeror on the same IFB/RFP.

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

- a. Cost estimates relating to a proposed procurement transaction prepared by or for an agency shall not be open to public inspection (*Code of Virginia*, § 11-52B).

to the contract. This is true even though title to the property provided may pass to the government and/or the contractor may be fully and directly reimbursed by the government. The same principle applies to persons who enter into contracts with a governmental entity to perform real property construction or repair.

3.24 **Tie Bids**

- a. **Virginia Products and Firms.** In the case of a tie bid, preference shall be given to goods and services produced in Virginia or provided by Virginia firms, if such choice is available (see 3.14b); otherwise, the tie will be resolved by the toss of a coin. The coin toss must be witnessed and the results recorded by a supervisor above the level of the buyer. Award(s) are to be made in favor of the Virginia bidder for tie line items and multiple purchase orders or contracts placed as required. Copies of tie bids resulting from competitive sealed bidding shall be forwarded to the Anti Trust Section of the Office of The Attorney General.
- b. **Recycled Content.** In the case of a tie bid in instances where goods are being offered and existing price preferences have already been taken into account, preference then shall be given to the bidder whose goods contain the greatest amount of recycled content (see also 3.14c).

3.25 **Electronic Commerce**



The DGS/DPS Electronic Mall (*e-Mall*) was established to facilitate the ordering of goods and services (including air and rail travel) by agencies and institutions. The goal of the *e-Mall* is to leverage the Commonwealth's buying power, and to allow agencies and institutions the ability to place orders using either the Small Purchase Charge Card (SPCC) or an electronic purchase order (Agency or Vendor). The *e-Mall* is located on the DGS/DPS website, www.dgs.state.va.us/dps/. It includes, but is not limited to, state contracts, electronic catalogs, SPCC vendors, mandatory sources, and surplus property. In addition, agencies and institutions are authorized to do on-line buying of goods and services through the Internet. Agencies and institutions should develop policies, procedures, and internal controls to manage this process and perform audits/reviews for those employees who have been given the authority to place orders electronically. Some areas to consider when revising or developing internal policies and procedures are: purchase request approval process, how to incorporate terms and conditions, interface with finance and accounting, encumbrance process, receiving reports, and automated system interface. The following DGS/DPS policies and procedures have been developed for agencies and institutions to follow when ordering through the *e-Mall* or on-line buying through the Internet:

- a. ***e-Mall*.**
 - (1) SPCC - Agencies and institutions may purchase goods or services through the *e-Mall* up to \$5,000 from state contracts or from other sources. Existing contract terms and conditions govern purchases made from state contracts.
 - (2) Electronic Purchase Orders - When placing an electronic purchase order from state contract or mandatory sources agencies and institutions may purchase goods and services in unlimited dollar amounts, unless dollar limits are specified in the contract. For all other purchases, agencies and institutions may purchase up to their delegated procurement authority after complying with the competitive requirements and file documentation requirements in the *VPPA* and this manual.
 - (3) Vendor Participation/Registration - A Memorandum of Understanding (MOU) shall govern vendors participating in the DGS/DPS *e-Mall*. The purpose of the MOU is to verify the vendor's acceptance of the Commonwealth's terms and conditions and validate that controls are in place to accept the SPCC and electronic purchase orders. DGS/DPS will establish and manage each MOU for the *e-mall*.
- b. **On-Line Buying.** Agencies and institutions may purchase goods and services through the Internet by using the SPCC and transmitting the card number or by Electronic Purchase Order up to \$5,000.

Security Requirements - In order to procure goods or services through the Internet, the vendor must have a Secure Socket Layer (SSL) Version 2.0 or greater. It is the agency's responsibility to ensure the vendor meets the SSL 2.0 requirement before placing an order and using the SPCC as a method of payment. To ensure the vendor has a SSL, the *Address Window* must start with <https://>. This may not occur until the payment information is requested. For information about the vendor's security certification, check under *Help* on your browser's tool bar. Buying through the Internet might subject an agency or an institution to the vendor's terms

and conditions if no MOU exists. Agencies are encouraged to establish a MOU with vendors they conduct business with on a regular basis. See the DGS/DPS website for sample MOUs.



- c. **Travel.** Air and rail tickets may be purchased using the Air Travel Card, the Small Purchase Charge Card issued to agencies and institutions or the Travel Charge Card issued to individuals. Any of these methods may be used to purchase air and rail tickets, including the purchase of tickets over the Internet.