

July 1, 2000

**MEMORANDUM**

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

FROM: Ron Bell  
Director

SUBJECT: Procurement Information Memoranda (PIM) #98-006

Enclosed is PIM #98-006 representing several important changes to the September 1998 edition of the *Agency Procurement and Surplus Property Manual (APSPM)*. Many of these changes are the result of action taken by the General Assembly during the 2000 session which made changes to the *Virginia Public Procurement Act (VPPA)*. Of particular interest is a change in the small purchase threshold and in the general delegation to the agencies and institutions, from \$30,000 to \$50,000. "Best Value" purchasing has been defined by the Code of Virginia and may be implemented using competitive bidding. DGS/DPS will develop "Best Value" training and make it available during the coming year.

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 Summary of Changes table on the following pages.

Appendix C contains a log in which to list the PIM number and date of revision. This letter and the corresponding PIM #98-006 should be filed in the back of the Appendix C log. If you should have questions about the changes noted, please contact Nancy M. Davis at 804-786-0323 or [ndavis@dgs.state.va.us](mailto:ndavis@dgs.state.va.us).

Section	Summary of Changes	Pen & Ink Changes OR Replacement Pages as Indicated
Chapter 1	General delegation to agencies and institutions has been increased to \$50,000. DGS/DPS has delegated the authority for ADP state contracts to DIT. Intent of General Assembly modified.	Replace Chapter 1. Insert new pages 1-1 through 1-6a.
3.5 Page 3-6	Contract/PO Modification Restrictions limits are changed	Change 3.5 a. to read, “ Purchases Up to \$50,000” and 3.5b. to read, “ Purchases Over \$50,000.” Change the reference to \$10,000 in that paragraph to “\$50,000.”
3.11 Page 3-8	Multiple awards are authorized if so provided for in the terms and conditions of IFBs or RFPs.	Insert new pages 3.8 and 3-8a.
3.18 Page 3-11	Posting requirements for IFBs and RFPs may include DGS’s Web site and other Web sites.	Insert new pages 3-10, 3-11, and 3-11a
Annex 3-B Page 3-16	New Summary of Procurement Policies provided	Replace page 3-16 with revised Annex 3-B.
Various	Change references made to the small purchase threshold, from \$30,000 to \$50,000, in various locations throughout the manual.	<p>Change certain references to \$30,000 to \$50,000 by making pen &amp; ink changes to the text:</p> <ul style="list-style-type: none"> <li>• Annex 1-A under Virginia Business Opportunities Advertising</li> <li>• 3.1 e</li> <li>• 4.2</li> <li>• 4.16 b, c</li> <li>• 4.26</li> <li>• Annex 4-B in the “When Used” guidance</li> <li>• Annex 4-E</li> <li>• Chapter 5 under General</li> <li>• 5.1 b</li> <li>• 5.4</li> <li>• 5.6 and 5.7 in the title heading</li> <li>• 5.8</li> <li>• Annex 6-B Step 4, C.</li> <li>• Annex 7-B, Step 3, II., III., &amp; IV.</li> <li>• Index, under Bids, Conference Planning</li> </ul>
4.23e Page 4-14	Professional Services small purchase threshold remains at \$30,000	Add the following as the last sentence in 4.23e: “The small purchase threshold for the procurement of professional services is \$30,000.”

4.29 Page 4-17	Advertising in the VBO is required over \$50,000 for goods and nonprofessional services but remains at \$30,000 for the procurement of professional services and construction.	Insert replacement page 4-17.
Annexes 5-A 5-E 5-F 6-A 7-A	Flow charts were revised to reflect new thresholds.	Insert replacement pages: Annex 5-A – Page 5-5 Annex 5-E – Page 5-9 Annex 5-F – Page 5-10 Annex 6-A – Page 6-5 Annex 7-A – Page 7-5
Chapter 6	Threshold for sealed IFBs changed to \$50,000. IFBs must include how public notice of the award will be made. Multiple awards permissible if so provided in the terms and conditions of the solicitation. Advertising in VBO required for procurements over \$50,000.	Insert replacement pages 6-1, 6-1a.
Chapter 7	Threshold for sealed RFPs changed to \$50,000. RFPs must include how public notice of the award will be made. Multiple awards permissible if so provided in the terms and conditions of the solicitation. Advertising in VBO required for procurements over \$50,000.	Insert replacement pages 7-1, 7-2, and 7-3.
10.12 Page 10-4	Under \$500, a PO change or variance should be documented and relayed to the accounts payable. Formal change orders must be prepared when the change is \$500 or more.	Change the \$200 to \$500 in the next to last sentence of 10.12. Add this sentence at the end of the paragraph, “See 3.5a for change orders or modifications under the small purchase threshold.”
11.2d Page 11-3 & 11-4	How public notice of the award or announcement of the decision will be made must be included in the terms or conditions of the IFB or RFP.	Insert replacement pages 11-3 and 11-4.

<p>12.7c Pages 12-3 and 12-4</p>	<p>Includes surplus sales to charitable organization with a 501 (c) (3) designation.</p>	<p>Insert replacement pages 12-2 to 12-7.</p>
<p>12.7e (3),</p>	<p>Increases amount that may be donated from 5% to 25% of revenue generated by sales of surplus.</p>	
<p>12.7 (4), (5)</p>	<p>Addresses donation of surplus computers to schools and charitable organizations.</p>	
<p>Appendix A</p>	<p>New Definitions have been added.</p>	<p>Replace Appendix A. Insert new pages A-1 through A-11.</p>
<p>Appendix B Sections I and II</p>	<ul style="list-style-type: none"> <li>- A new General term &amp; condition has been added on Announcement of Award.</li> <li>- Special term on Drug-free Workplace has been changed to a General term. It has been revised and replaced.</li> <li>- Special term on Discrimination has been modified.</li> <li>- Two new Award clauses have been added to the Special terms to incorporate provisions for multiple awards for IFBs and RFPs for other than construction and professional services.</li> <li>- Section II, clause 16, the word “or” has been deleted, concerning contractor and subcontractor licensing requirements.</li> <li>- Section II, clause 17, corrected fourth line to read “Title 54.1-1100.”</li> <li>- Section II, clause 19, the numbers “19__” has been replaced by “20__”.</li> </ul>	<p>Replace Appendix B, Sections I &amp; II. Insert new pages B-1 through B-22a.</p>
<p>Appendix B Section III Page B-23 &amp; Page B-32</p>	<p>The Drug-free Workplace clause has been removed from Section III and is now a General term in Section I.</p>	<p>Delete by crossing out clause #26 on Page B-23 and B-32.</p>

# CHAPTER 1

## PROCUREMENT AUTHORITY AND RESPONSIBILITY



### In this Chapter look for . . .

- 1. General
  - 1.1 DGS/DPS Authority and Responsibility
  - 1.2 Agency Purchasing Authority
  - 1.3 Statutory Exemptions
  - 1.4 Administrative Exemptions
  - 1.5 Exceptions to Competitive Requirements

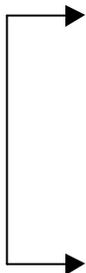
#### Annexes

- 1-A Agency Standards for Increased Delegated Procurement Authority
- 1-B Agency/Institution Request for Increased Delegated Procurement Authority
- 1-C Telecommunications Service Requisition



- 1. **General.** Public purchasing embraces a fundamental obligation to the general public to ensure that procurements are accomplished in accordance with the intent of the laws enacted by the appropriate legislative body. The intent of the Virginia General Assembly is set forth in the *Virginia Public Procurement Act*.

To the end that public bodies in the Commonwealth obtain high quality goods and services at reasonable cost, that all procurement procedures be conducted in a fair and impartial manner with avoidance of any impropriety or appearance of impropriety, that all qualified vendors have access to public business and that no offeror be arbitrarily or capriciously excluded, it is the intent of the General Assembly that competition be sought to the maximum feasible degree, that procurement procedures involve openness and administrative efficiency, that individual public bodies enjoy broad flexibility in fashioning details of such competition, that the rules governing contract awards be made clear in advance of the competition, that specifications reflect the procurement needs of the purchasing body rather than being drawn to favor a particular vendor, and that the purchaser and vendor freely exchange information concerning what is sought to be procured and what is offered. Public bodies may consider best value concepts when procuring goods and nonprofessional services, but not construction or professional services. The criteria, factors, and basis for consideration of best value and the process for the consideration of best value shall be as stated in the procurement solicitation. (*Code of Virginia*, § 11-35G).



This statement of intent by the General Assembly highlights the use of competition to the maximum feasible degree. Competitive procurement requires time and administrative effort; it does not guarantee that an agency's preferred brand or vendor will be selected. Conducted properly, competitive procurement responds to user needs, results in public confidence in the integrity of public purchasing, and generally brings the most favorable prices.

The *Virginia Public Procurement Act* applies generally to every "public body" in the Commonwealth, which § 11-37 of the *Code of Virginia* defines to include "any legislative, executive, or judicial body, agency, office, department, authority, post, commission, committee, institution, board or political subdivision created by law to exercise some sovereign power or to perform some governmental duty...."

**If there is to be a contract between a state agency and a nongovernmental vendor, the *Virginia Public Procurement Act* and the regulations set forth in this manual and the *Vendors Manual* apply regardless of the source of funds by which the contract is to be paid or which may or may not result in monetary consideration for either party. These documents also apply whether the consideration is monetary or nonmonetary and regardless of whether the public body, the contractor, or some third party is providing the consideration.**

Changes to this manual will be announced through the issuance of Procurement Information Memorandums (PIMs) by DGS/DPS and should be filed in Appendix C for future reference purposes.

- 1.1 **DGS/DPS Authority and Responsibility.** The Department of General Services, Division of Purchases and Supply (DGS/DPS). DGS/DPS is the centralized purchasing agency for materials, supplies, equipment, printing, and nonprofessional services required by any state agency or institution. All such purchases made by any department, division, officer or agency of the Commonwealth shall be made in accordance with the *Code of Virginia*, Chapter 7, Title 11, and such rules and regulations as DGS/DPS may prescribe.

DGS/DPS has the authority to make, alter, amend or repeal regulations relating to the purchase of materials, supplies, equipment, nonprofessional services, and printing, and may specifically exempt particular agency purchases below a stated amount, or specific materials, equipment, nonprofessional services, supplies, or printing (*Code of Virginia*, § 2.1-442).

DGS/DPS has the responsibility for the standardization of materials, equipment, and supplies purchased by or for any agency of the State (*Code of Virginia*, § 2.1-446). DGS/DPS also has the authority to establish criteria and procedures to assure economical operation of all state-owned printing facilities (*Code of Virginia*, § 2.1-465).

DGS/DPS is responsible for the procurement of all public printing, except as DGS/DPS may otherwise provide. This does not prohibit in-house printing. Except for purchasing from Corrections Print Shop (CORPRINT), an agency may not purchase printing from another state agency without DGS/DPS approval. To obtain approval, contact DGS/DPS State Procurement Supervisor at 804-786-5412, indicating the nature and extent of the request. In addition, DGS/DPS is authorized to establish criteria and procedures to obtain economical operation of all state printing facilities (*Code of Virginia*, § 2.1-465).

- 1.2 **Agency Purchasing Authority.** Agency heads have the ultimate responsibility to ensure that the acquisition of goods and services does not violate or circumvent state law, executive orders, appropriations, regulations, or the provisions of this manual. Agencies shall develop local written procedures implementing the provisions of this manual. They may contain more restrictive requirements, but they must conform with the provisions of this manual and shall be available for public inspection and to DGS/DPS upon request. In addition, they must identify the chief purchasing official, e.g., the individual responsible for the day to day management of the purchasing function and those having delegated authority to bind the agency in making contractual commitments.

- a. **Goods.** The general delegation threshold for the purchase of goods and printing is \$50,000. Purchases from state contracts are unlimited except for limitations on specific contracts. All agency level purchase transactions should be initiated through the use of a requisition (electronic or a standard pre-printed form). DGS/DPS will not accept requisitions estimated to be less \$5,000. Between \$5,000 and \$50,000 agencies have the option of forwarding requisitions to DGS/DPS for processing or handling them locally. Requirements for goods and printing over \$50,000 shall be forwarded to DGS/DPS for processing. This does not affect those agencies that have higher delegation specifically authorized in writing by DGS/DPS; however, they may submit requisitions to DGS/DPS for processing. Agencies may request increased authority for the procurement of goods but must meet standards established by DGS/DPS. Increased authority must be requested in writing by the agency head. All requests will be reviewed for conformance with published standards. Annex 1-A contains the Agency Standards for Increased Delegated Procurement Authority. Annex 1-B contains the Agency/Institution Request for Increased Delegated Procurement Authority. For information concerning increased delegated procurement authority, call 804-786-1600.
- b. **Services.** Agencies are authorized to contract for services up to any dollar amount subject to applicable laws, regulations, this manual and fiscal restraints; however, agencies may submit requisitions to DGS/DPS for processing.

- c. **Purchase of Goods for Resale in State Operated Bookstores, Commissaries, Canteens, Gift Shops, and Similar Retail Outlets.** Agencies are delegated the authority for direct procurement of items for retail sale such as books, magazines, novelties, paper, pens, pencils, pre-packaged edibles, school supplies, souvenirs, tobacco products, toiletries, and wearing apparel. For resale purchases, an agency may establish its own small purchase procedures, if adopted in writing, for single purchases or term contracts not expected to exceed \$50,000. Such small purchase procedures shall provide for competition wherever practicable. For purchases over \$50,000, the *Virginia Public Procurement Act* and the applicable portions of this manual shall apply (see 4.15).
- d. **Validity of Requirements.** It is the responsibility of the individual state agency to verify that items or services requisitioned or purchased are authorized and are applicable to that agency's mission and needs and have been properly funded. This includes any approvals required by law, regulation or policy.
- e. **Authority to Sign Procurement Documents.**
  - (1) **Designations.** Agencies shall designate in writing those persons authorized to approve procurement documents. Dollar thresholds should be established, as applicable, for each signature authority. A copy of the written authorization shall be on file in the agency's purchasing office. Agency personnel having "official responsibility" as defined in *Code of Virginia*, § 11-73, for procurement must comply with the *Virginia Public Procurement Act* and the policies and procedures set forth in the most recent editions of the *Vendors Manual* and this manual. Intentional violations could subject the responsible party or parties to suspension or removal from office under the provisions of *Code of Virginia*, § 2.1-456.
  - (2) **Designated signature authority is required for the following documents:** purchase requisitions submitted to DGS/DPS, agency purchase orders, contracts, *VBO* waiver, multi-colored printing, waiver of a prebid or preproposal conference, contract modification, and written determinations to support the use of emergency, sole source, and competitive negotiation procedures.

1.3 **Statutory Exemptions.** Unless otherwise ordered by the Governor, purchasing through DGS/DPS is not mandatory in the following cases; (*Code of Virginia*, § 2.1-451) **however, the purchases are subject to the *Virginia Public Procurement Act* and the policies and procedures set forth in this Manual:**

- a. Materials, equipment, and supplies as are incidental to the performance of a service contract for labor or for labor and materials (see 4.21);
- b. Manuscripts, maps, audiovisual materials, books, pamphlets and periodicals purchased for the use of The Library of Virginia or any other library in the Commonwealth supported in whole or in part by state appropriations;
- c. Perishable articles, provided that no article except fresh vegetables, fresh fish, fresh meat, fresh fruits, fresh eggs and milk shall be considered perishable within the meaning of this clause, unless so classified by DGS/DPS;
- d. Materials, equipment and supplies needed by the Commonwealth Transportation Board; however, this exception may include office stationery and supplies, office equipment, janitorial equipment and supplies, coal and fuel oil for heating purposes only when authorized in writing by DGS/DPS;
- e. Materials, equipment and supplies needed by the Virginia Alcoholic Beverage Control Board; however, this exception may include office stationery and supplies, office equipment, janitorial equipment and supplies, coal and fuel oil for heating purposes only when authorized in writing by DGS/DPS;
- f. Binding and rebinding of the books and other literary materials of libraries operated by the Commonwealth or under its authority;
- g. Printing of records of the Supreme Court; and
- h. Financial services, including without limitation, underwriters, financial advisors, investment advisors and banking services.

1.4 **Administrative Exemptions.** DGS/DPS may delegate purchasing authority or authorize exceptions from its rules and regulations for particular agencies or for specified goods, non-professional services and printing (*Code of Virginia*, § 2.1-442). One-time exemption requests must be processed using the Procurement Exemption Request form (see 13-D).

- a. **Purchase of Goods and Nonprofessional Services Under Delegated Authority.** All State agencies may purchase goods within the dollar limits and categories delegated by DGS/DPS without requisitioning through DGS/DPS. The authority to purchase nonprofessional services without regard to dollar limit is delegated to all state agencies. Agencies must comply with the *Virginia Public Procurement Act*, this manual and any revisions thereto. Any agency making purchases in violation of the procedures set forth in this manual may have a part or all of the purchasing authority delegation granted by DGS/DPS withdrawn (see 1.2).
- b. **Acquisition of Automated Data Processing (ADP) and Telecommunications Equipment Goods and Services.**

DGS/DPS has oversight and procurement responsibility for all Spot purchases of ADP goods and services, excluding telecommunications equipment. See Appendix "A" for the definition of "Spot" and "ADP Equipment" acquisitions.

Acquisition of all state term contracts for ADP goods and services, to include all telecommunications equipment and services are the responsibility of the Department of Information Technology's Acquisition Services Division (DIT/ASD) as described in subparagraphs (3) through (6) below. Procurement of these commodities, except for telecommunications services as described in subparagraphs (4) and (5) below may be made by agencies and institutions within their level of authority delegated by DGS/DPS using the methods prescribed in this manual (see Appendix B, Section IV, for special terms and conditions relating to these procurements.)

Before any public body procures any computer system, equipment or software, it shall consider whether the proposed system, equipment, or software is capable of producing products which facilitate the rights of the public to access official records under the Freedom of Information Act (§ 2.1-340 et seq.) or other applicable law.

**NOTE:** See Chapter 8 for sole source processing requirements for Information Technology (IT) goods and services. Also see 3.14b(2) for Year 2000 Remediation information.

- (1) **ADP Equipment and Software** requirements, as defined in Appendix A, that exceed \$100,000 require prior certification from the Department of Technology Planning (DTP) that the proposed procurement is in conformance with the statewide information management plan and the agency's/institution's information technology plan. DTP review is not necessary when the procurement of computer technology is an ancillary part of a major equipment purchase.
- (2) **Computer Related Services** which exceed \$100,000 require DTP's approval prior to purchase. In addition, any renewal of software or computer related maintenance services resulting from an existing contract executed on behalf of an individual agency or institution by a central purchasing authority must be approved by DGS/DPS 60 days prior to the effective renewal date. This action is necessary to verify the renewal features contained in the individual contract.
- (3) **Telecommunications Equipment** requirements, as defined in Appendix A, are the responsibility of the Department of Information Technology's (DIT's) ASD and any request that exceeds \$100,000 requires DTP's approval prior to purchase. DIT will publish minimum technical requirements and/or recommend standards for adoption by DTP, as appropriate, for telecommunications equipment, which must be incorporated into specifications for telecommunications procurements. Agencies and institutions may make spot purchases of telecommunications equipment without the prior written approval of DIT up to the delegated limits authorized by DGS/DPS. Purchases from state telecommunications equipment contracts may be made in accordance with the same delegation(s).
- (4) **Telecommunications Services** purchases, as defined in Appendix A are the responsibility of DIT's Telecommunications Division (TD) DIT/TD.

Telecommunication services, are based on contracts between the Commonwealth and various telecommunications providers and are coordinated, managed, purchased, and provided through DIT. To acquire those services under contract, agencies, institutions or localities must submit a Telecommunications Service Request (TSR), which authorizes DIT to acquire the service on the agencies, institutions or localities behalf. See Annex 1-C for a copy of DIT Form #300. All TSRs shall be submitted to DIT's Finance Division @ FAX (804) 371-6343 or e-mail to DIT via an on-line Form at <http://www.dit.state.va.us/tsrform.htm> **NOTE:** Chapter 935, Section 4-5. 06 b.1 of the Appropriations Act requires all agencies and institutions to obtain the written approval of the Secretary of Technology prior to obtaining contracts for telecommunications services. Such requests may be sent to DIT/TD via the facsimile number/web page listed above.

To acquire services that are not under a current DIT Telecommunications contract, agencies or institutions must submit a TSR to DIT's Finance Division as noted above. The TSR will describe the services (to include technical specifications) to be acquired, the length of contract requested, the approximate dollar value of the services being requested and a statement as to why the services currently available under an existing DIT contract does not meet the agencies or institutions requirements. The TSR will be reviewed by the Director, TD. If the services are approved, DIT/ASD will obtain the services on the agencies, institutions or localities behalf. If the services are not approved for the agency or institution, TSR will be returned by the Director, TD with the reason(s) why the request was denied. Requisitions exceeding \$100,000 require DTP's approval prior to issuing a solicitation.

All facilities, equipment and services requiring Federal Communications Commission (FCC) licensing, e.g. uplinks, television and radio broadcast frequencies, microwave, two-way radio, etc. are the responsibility of DIT to coordinate/acquire. Agencies must submit a TSR to the Technology Consulting Division of DIT/TD, FAX (804) 371-5184 or e-mail [phoppes.dit@state.va.us](mailto:phoppes.dit@state.va.us) with all supporting information to acquire any equipment or services. If the equipment or services are on a current DIT state contract, DIT/TD will approve the request and return the appropriate written approval. If the equipment or services are not currently available via a DIT state contract, DIT/TD will coordinate with DIT/ASD to acquire the requested goods or services on the agency's or institution's behalf.

- (5) **For open-air broadcast, satellite, microwave and other wireless telecommunications services**, DIT is responsible for coordinating the Commonwealth's approach to providing these services unless exempted by statute. Agencies and institutions should submit a TSR to the Director, TD describing the desired services. The requisition will include the technical specifications, the length of contract requested and the approximate dollar value of the services. The Director, TD will review the requisition and authorize ASD to proceed with the acquisition on behalf of the agency or institution or return the request with comments.
- (6) **State ADP Equipment Contracts.** In addition to the requirements for telecommunications goods and services referenced above, DIT is responsible for the acquisition of all state contracts for ADP goods and services. DIT will coordinate all requirements for state ADP goods and services through the Council on Technology Services (COTS) and issue solicitations/negotiate contracts on behalf of all agencies, institutions and localities of the Commonwealth. Agencies, institutions and localities of the Commonwealth may order the goods and services represented by these agreements up to the dollar limits specified by DGS/DPS or as set forth in the individual agreements. Use of DIT's state contracts are generally not mandatory. However, most telecommunications services contracts require the agency or institution to utilize DIT's contracts. Questions regarding telecommunications services contracts may be addressed to the Director, TD. If an agency or institution cannot fulfill their individual data processing requirement (excluding telecommunications) via a DIT state contract, they will be required to send all request(s), which exceed their delegated procurement authority to DGS/DPS for acquisition.

- c. **DGS/DPS has delegated the authority to agencies and institutions to make bulk purchases of the following listed commodities.** Under \$50,000 use small purchase procedures (see Chapter 5); over \$50,000 use the applicable method of procurement.

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

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

e. **Purchase of Copyrighted Books and Copyrighted Audio-Visuals.** The purchase of copyrighted material such as books, written publications, standardized tests, answer sheets, and copyrighted audio/audio-visual film, diskettes, compact discs, and tapes are not required to be requisitioned through DGS/DPS. Under \$50,000 use small purchase procedures; over \$50,000 use the applicable method of procurement.

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

a. Purchases under \$5,000.

b. The following selected categories of goods and services up to and including \$50,000:

- (1) Books, pre-printed materials, reprints and subscriptions (e.g., print or electronic), pre-recorded audio and video cassettes, compact discs, slide presentations, etc., when only available from the publisher/producer.
- (2) Academic/research consulting services.
- (3) Alcohol purchased from Alcohol Beverage Control stores.
- (4) Honoraria, entertainment (speakers, lecturers, musicians, performing artists).
- (5) Training that is specialized, proprietary, not typically available to the general public for which competition is generally unavailable, off-site, and requires a registration fee. Contact the Department of Personnel and Training, Training Specialist (804) 225-2016, to ascertain if the training being requested is available through an existing contract or another source.
- (6) Royalties and film rentals when only available from the producer or protected distributors.
- (7) Professional Organizational Membership dues.
- (8) Writers.
- (9) Artists (does not include graphic artists); original works of art; and original, or authentic antique period art frames (does not include newly created replacement or reproduction frames).
- (10) Photographers other than for graduations and yearbooks, e.g., for official photographs/portraits.

- (11) Contributions and donations made by a university.
- (12) Advertisements such as in newspapers, magazines, journals, radio, television, etc.
- (13) Utility charges.
- (14) Conference facilities (to include conference support and related lodging and meals) only when the use of a specific facility is directed by an outside donor, sponsor, or organization (see 4.16 for the purchase of conference facilities under all other conditions).
- (15) Accreditation fees and academic testing services.
- (16) Exhibition Rental Fees for exhibitions of historical artifacts or original works of art. (The rental fee may include charges other than the rental of the exhibition, such as transportation costs.)



- c. Purchases of used equipment up to and including \$50,000 (see 4.17). This also includes used equipment purchased at a public auction, if determined in writing that the purchase would be in the best interest of the public.
- d. Purchases from the federal government, other states and their agencies or institutions, and public bodies. Care must be exercised to be certain that the price is fair and reasonable.
- e. Surplus property (see Chapter 12).



- f. Purchases under \$50,000 for testing or evaluation (limited to purchases of quantities considered necessary for complete and adequate testing).
- g. Emergency purchases (competition obtained when practicable). DGS/DPS prior approval is required if personal property or safety are not impaired and the value of the procurement exceeds an agency's delegated authority (see Chapter 9).

- (1) Solicitations over \$5,000 to \$15,000 should be expanded to include a minimum of two minority and/or women-owned businesses.
- (2) Solicitations over \$15,000 to \$50,000 should be expanded to include a minimum of four minority and/or women-owned businesses.
- (3) Solicitations over \$15,000 should provide for subcontracting with minority and women-owned businesses. See Appendix B, Section II, for sample clause.

d. All procurements of goods, professional, nonprofessional services, construction, and insurance by competitive negotiation, that are expected to result in contracts exceeding \$100,000 in value over the term of the contract, including any possible renewal periods, must be accomplished in compliance with the guidance contained in the Secretary of Administration’s memorandum dated August 12, 1991, Subject: Participation in State Procurement Transactions by Small Businesses and Businesses Owned by Women and Minorities and the implementation guide applicable thereto, entitled Participation of Small Business and Business Owned by Women and Minorities in State Procurement Activities, published by DGS/DPS (copies may be obtained from the Division of Purchases and Supply). Generally, this guidance requires that each Request For Proposals (RFP) meeting the foregoing criteria shall:

- (1) state the policy concerning small businesses and businesses owned by women and minorities;
- (2) require the submission of statistical data with proposals;
- (3) prescribe the format in which data is to be submitted; and,
- (4) include evaluation criteria with a weight of between 5 and 15 (expressed as a percentage or in points out of a possible 100 points).

→ 3.11 **Multiple Awards.** When the terms and conditions of multiple awards are so provided in the Invitation for Bids or Request for Proposal for other than professional services, awards may be made to more than one bidder or offeror. Unless otherwise specified in the solicitation, purchasing offices may award a multi-line item procurement in whole or in part or on an individual line item basis. In determining whether to make separate line item awards on a multi-line item solicitation, consideration should be given to the administrative costs to the agency of processing individual purchase documents, and separate invoices and checks.

→ 3.12 **Nondiscrimination.** In the solicitation, awarding or administration of contracts, no agency shall discriminate against a bidder or offeror because of race, religion, color, sex, national origin, age, disability or any other basis prohibited by state law relating to discrimination in employment (*Code of Virginia*, § 11-44).

3.13 **Petitioning for Less Toxic Goods or Products.** Any vendor who manufactures, sells or supplies goods or products may petition purchasing offices to include requirements for less toxic goods and products into its procurement process. The vendor shall submit, prior to or during the procurement process, documentation which establishes that the goods or products meet the applicable performance standards. If agencies determine that the documentation establishes that the less toxic goods or products meet the performance standards set forth in the applicable specifications, they shall incorporate the specifications for the less toxic goods and products into their procurement process. Agencies are instructed to revise their procedures and specifications on a continuing basis to encourage the use of less toxic goods and products; however, agencies are not required to purchase, test or evaluate any particular good or product other than those that would be purchased under regular purchasing procedures (*Code of Virginia*, § 11-41.02).

3.14 **Preferences**

a. **Reciprocal Preferences.** Whenever any bidder is a resident of any other state and such state under its laws allows a resident contractor of that state a preference, a like preference may be allowed to the lowest responsible bidder who is a resident of Virginia (*Code of Virginia*, § 11-47). Purchasing offices contemplating an award wherein the price difference between a Virginia supplier and a non-Virginia low bidder is not very large should contact DGS/DPS (804-786-3846) to determine whether the non-Virginia bidder’s state has such a

preference policy which could be reciprocally applied against that purchase, thereby permitting award to the Virginia supplier.

b. **Virginia Vendors.**

- (1) **Virginia Products.** Preference is given to materials, equipment and supplies produced in Virginia or sold by Virginia firms and corporations in the event of a tie bid (see 3.24a).
- (2) **Year 2000 Remediation** (Effective until January 1, 2001). That, to obtain responses to Requests for Proposals or Invitations for Bids for goods or nonprofessional services to remediate computers, software programs, databases, networks, or information systems which are not compliant with the "Year 2000" date change and such goods or services are to be procured through competitive negotiation or competitive sealed bidding, public bodies shall strive to solicit responsible bidders or offerors who provide such remediation in Virginia and may solicit other responsible bidders or offerors to provide such remediation (*Code of Virginia*, § 11-41.4).

- b. Any bidder upon request, shall be given an opportunity to inspect bid records within a reasonable time after opening and evaluation of bids, but prior to award, except in the event the agency decides to reject all bids or offers and rebid (*Code of Virginia*, § 11-52C). Information read aloud at a public bid opening will be furnished upon request.
- c. Any offeror who responds to an RFP, upon request shall be afforded the opportunity to inspect proposal records within a reasonable time after the evaluation and negotiation of proposals are complete but prior to award, except in the event the buying agency decides not to accept any of the proposals and to resolicit.
- d. Bids and proposal records shall be open to the public only after award.
- e. Any inspection of procurement records shall be subject to reasonable restrictions to ensure the security and integrity of the records.
- f. Trade secrets or proprietary information submitted for a procurement transaction shall not be subject to public disclosure under the *Virginia Freedom of Information Act*; however, the bidder or offeror must invoke the protection of *Code of Virginia*, § 11-52D, in writing, prior to or upon submission of the data or other materials, and must identify the data or other materials to be protected and state the reasons why protection is necessary. It is an agency's responsibility to establish and enforce procedures to protect vendor proprietary information with the same degree of protection that would be provided for confidential information of the Commonwealth. The classification of an entire bid or proposal document, line item prices and/or total bid or proposal prices as proprietary or trade secrets is not acceptable. If, after being given reasonable time, the bidder or offeror refuses to withdraw an entire classification designation, the bid will be considered nonresponsive or the proposal will be rejected.
- g. To protect the Commonwealth and its employees from possible claims for damages because of the improper release of information, agencies and institutions shall not release any information that a bidder, offeror, or contractor has claimed to be a trade secret or proprietary information, unless ordered to do so by a court of competent jurisdiction. If a party seeking information disagrees with the designation of it as proprietary or a trade secret, upon concurrence of the agency's attorney advisor, the party seeking the information may be advised that they will have to obtain a court order and request to be named as a defendant in the suit involving the bidder, offeror, or contractor which designated the information as proprietary as well as the agency or institution.

3.18 **Publicly Posted Notices.** All solicitation and award actions over \$15,000 must be posted in an area that is readily accessible to the general public. The cover sheet of the solicitation, addendum, and award notice should be posted. The public posting area should be identified as a place where Procurement Notices are posted, and the location of this area should be designated in writing by the agency. Public notice may also be published on the DGS central electronic procurement Web site and other appropriate Web sites. Effective July 1, 2002, publishing by state agencies, department and institutions on the DGS central electronic procurement Web site shall be required (*Code of Virginia*, § 11-37). In rare cases, an agency may not have a satisfactory public area for posting procurement notices. If the public area is only accessible after gaining actual access to the building, a readily viewable sign in a public place at the agency shall indicate a telephone number and name of a person within the agency, who will accompany the public to the location of the public notice area. As an alternative, those agencies may elect to send or fax their procurement notices to DGS/DPS for posting at (804) 225-3707, and in addition, post a readily viewable sign in a public place at the agency advising the existence and location of the agency's public notice posting area.



- a. Written solicitation notices over \$15,000 to \$50,000 must be posted for the time period established in the solicitation, e.g., 3 days, 6 days, 10 days, etc., for receipt of unsealed bids or unsealed proposals. Notices may be in the form of a copy of the cover sheet to the solicitation, with prebid conferences or site visits indicated when applicable. When canceling or amending a solicitation, a copy of the notice or addendum must be publicly posted. In RFPs, the weights assigned to the evaluation factors shall be posted prior to the opening of proposals if they were not stated in the unsealed RFP.
- b. IFB solicitation notices over \$50,000 must be posted or published in a newspaper of general circulation, or both, at least ten (10) days prior to the date set for receipt of bids. Notices may be in the form of a copy of the cover sheet to the solicitation, with prebid conferences or site visits indicated when applicable. When canceling or amending a solicitation, a copy of the notice or addendum must be publicly posted.

- c. When issuing RFPs estimated to be over \$50,000, the notice shall be posted at least 10 days and published in a newspaper or newspapers of general circulation in the area in which the contract is to be performed. The newspaper notice need only be a brief summary of essential elements of information (*Code of Virginia*, § 11-37). Preproposal conferences or site visits should be indicated on the cover sheet of the solicitation when applicable. When canceling or amending a solicitation, a copy of the notice or addendum must be publicly posted.
- d. Award Notices over \$15,000 must be posted for a ten (10) day period immediately following the actual time of award. If used, the Notice of Intent To Award must be posted ten days prior to the actual time of award (see also 4.12d). Emergency notices must state that the contract is being issued on an emergency basis while sole source notices must state that only one source was determined to be practicably available and both must also state that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. Routine award notices may be a copy of the bid tabulation sheet revealing bidders prices and indicating the bidder receiving the award. IFB and RFP solicitations must contain the General Term and Condition on Announcement of Award (see Appendix B, Section I. U.) and the award notice shall be posted in the manner prescribed in the solicitation for a ten (10) day period immediately following the actual time of award (*Code of Virginia*, § 11-66).



**NOTE:** The procurement records must be available for review by any bidder or offeror at the time a Notice of Intent To Award or an Award Notice is posted. Vendors should be advised to submit a self-addressed, stamped envelope to obtain award results (see *Vendors Manual*, 6.3).

- e. It is not necessary to date/time stamp routine award notices or to file them when they are removed from posting; however, the agency or institution must ensure that the posting requirement is met and be able to withstand protest/challenge pertaining to compliance with the posting requirement. It is recommended that the procedure for posting and removing notices be made a part of the agency's or institution's written internal policies and procedures (see 1.2). If a protest is anticipated, the Notice of Intent to Award should be date/time stamped when it is posted and removed, and it should be made part of the procurement file.

3.19 **Recycled Goods Purchase Program.** Agencies are encouraged to promote the use of recycled goods. Through its programs, the Department of Environmental Quality shall increase agency awareness of the benefits of using such products. Information on the availability of recycled goods, including those which use post-consumer and other recovered materials processed by Virginia-based companies may be obtained from the DGS/DPS Printing Manager (804) 786-5412. Agencies shall, to the greatest extent possible, adhere to any recycled products procurement guidelines established by DGS (*Code of Virginia*, § 11-47.01).

3.20 **Responsible Bidder or Offeror.** In determining a responsible bidder or offeror, a number of factors, including but not limited to the following, are considered. The vendor should:

- a. be a regular dealer, supplier, or when required in the solicitation an authorized dealer of the goods or services offered;
- b. have the ability to comply with the required delivery or performance schedule, taking into consideration other business commitments;
- c. have a satisfactory record of performance;
- d. have a satisfactory record of integrity; and
- e. have the necessary facilities, organization, experience, technical skills, and financial resources to fulfill the terms of the purchase order or contract (see *Vendors Manual*, 3.7).

Assistance in making this determination (preaward surveys, etc.) is available from DGS/DPS Contract Compliance Section (804) 786-1602.

- 3.21 **Responsive Bid** To be considered for an award, a bid must comply in all material respects with the Invitation for Bids. Responsiveness relates to compliance with the provisions of the solicitation, including specifications and terms and conditions. Failure to comply with the requirements set forth in the Invitation for Bids may result in a bid being declared nonresponsive, e.g., failure to sign a bid, failure to return the required bid documents, substitution of vendor's terms, deletion of terms and conditions stated in the Invitation for Bids, failure to offer a product or service that meets the requirements of the Invitation for Bids, etc. A bidder who fails to provide prices for all categories of labor in the pricing schedule of a time and materials service contract is considered nonresponsive. This is true whether the price was left blank or the bidder entered a figure of \$0. To avoid inconsistent treatment of bidders the following statement should be included in the pricing schedule of such solicitations, "Any bidder who enters \$0 on a pricing blank or leaves it blank shall be considered nonresponsive." Bidders who provide multiple prices for performing a service where a single price was solicited are also nonresponsive. For bid evaluation and award procedure guidance see Annex 6-B, Step three, V. (continued top of page 3-12)

**Annex 3-B**

**Summary of Procurement Policies**

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

Thresholds	Procedures
Up to \$5,000	One documented quote required. (Use of the Small Purchase Charge Card is encouraged up to \$5,000.)
Over \$5,000 to \$15,000	Solicit a minimum of three valid sources (by telephone or in writing).
Over \$15,000 to \$50,000	Solicit a minimum of four valid sources (by facsimile with written description furnished by agency/institution or unsealed written IFB/RFP).  Advertising in the <i>Virginia Business Opportunities (VBO)</i> is optional up to \$50,000, but encouraged over \$15,000. (Professional services must be advertised over \$30,000.)

**II. Competitive Sealed Bidding or Competitive Negotiation (Code of Virginia, § 11-37 and § 11-41A)**

Threshold	Procedures
Over \$50,000; may be used for lesser amounts.	Solicit a minimum of six valid sources in writing. Use one of the following methods: 1 - Competitive sealed bidding. 2 - Two-step competitive sealed bidding. 3 - Competitive negotiation. A written justification is required for use of #3. Required for purchases over \$50,000 unless an exception (see III below)

**III. Exceptions To Competitive Procurement (Code of Virginia, § 11-41 D&E)**

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)	Obtain and document a quote to \$15,000. Over \$15,000, a written quotation must be obtained from the vendor. Requires written justification approved in advance by the agency/institution head. Over \$10,000 requires approval from DGS/DPS. Agencies and institutions may make contract awards after appropriate approval. Purchase using noncompetitive negotiation.
Used Equipment up to \$50,000	Competition not required. See 1.5c & 4.17.

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

Thresholds	Procedures
Various	See 1.5.

**Note:** Public posting required for all solicitation and award actions exceeding \$15,000 (see 3.18).

indicated in the IFB (see *Vendors Manual*, 5.6). Samples should be properly labeled, stored, and controlled until no longer needed. Those not destroyed during testing may be returned at the bidder's expense. If, after 60 days, the samples have not been picked up and bidders fail to provide disposition instructions, samples may be offered to other agencies or internal operating departments for use. If the items have significant reusable utility value, they should be disposed of using established property disposal procedures (see Chapter 12). The file must be properly documented as to disposition of samples (see DGS/DPS Inspection and Quality Control Manual).

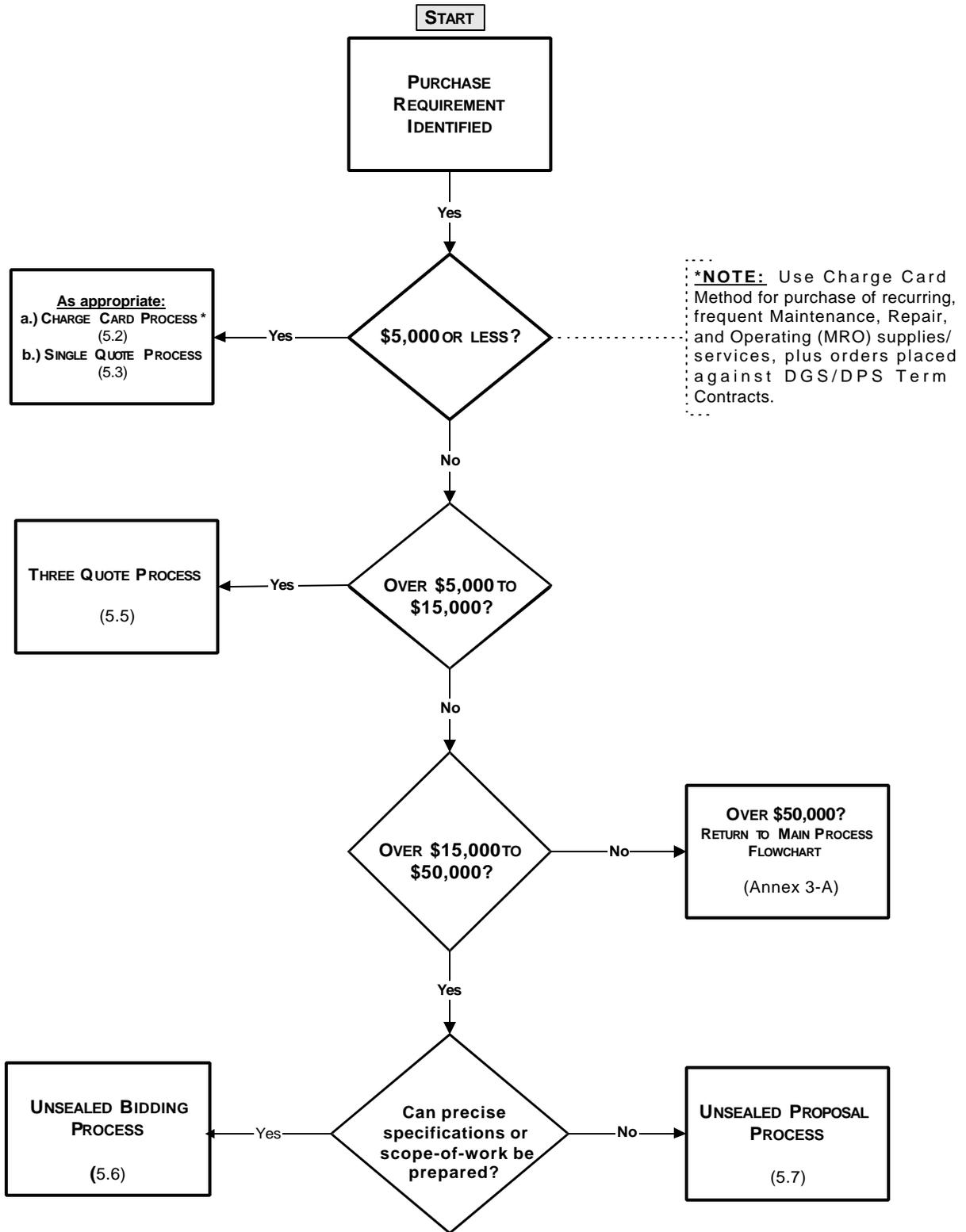
4.28 **Vendor Advertising Prohibition**. Advertising or promotional literature stating that a Commonwealth agency or institution has purchased or used a vendor's products or services is prohibited. Exceptions may only be granted by an agency or institution's chief purchasing official after consultation with its attorney advisor.

→ 4.29 **Virginia Business Opportunities Advertising**. Agencies shall advertise all procurements for goods and services other than professional services if the aggregate or the sum of all phases is expected to exceed \$50,000 in the *Virginia Business Opportunities (VBO)*; however, it is encouraged that any such procurement over \$15,000 be advertised in the *VBO*. Agencies shall advertise professional service procurements if the aggregate or the sum of all phases is expected to exceed \$30,000. The intent of this policy is to broaden vendor participation and help Virginia companies, particularly small, women-owned, and minority-owned businesses, to know what bidding opportunities are available in state government. It also carries out the provision of § 11-35G of the *Code of Virginia*, "that all qualified vendors have access to state business and no offeror be arbitrarily or capriciously excluded."

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- a. **Advertising Forms**. Agencies shall submit procurement information to the DGS/DPS electronic database or on Form DGS-42-033. Each IFB or RFP shall be listed on a separate form. A sample form and instructions for completing it may be found in Annex 4-D.
  - b. **Advertising Deadlines**. *VBO* advertising forms must be received in the *VBO* office by noon on Monday to be included in the following Friday's publication. If an official holiday falls on Monday, notices are due at noon the Friday before. Responsibility for getting information to the *VBO* office rests with the procuring agency. Agencies should take adequate precautions against events that may delay the process, such as official holidays, slow mail delivery, etc. Agencies are strongly encouraged to submit ads to the electronic database or fax forms as required. Forms not received by noon on Monday will be held for publication the following week. The agency will be required to change the bid return date, if necessary, to comply with the new publication cycle.
  - c. **Assigning Bid or Proposal Due Dates**. Bid or proposal return due dates shall be scheduled no earlier than 14 calendar days from the publication date, with the publication date counting as the first day. Agencies may easily meet this requirement by allowing 24 days between the day the advertising form is mailed to the *VBO* office and the bid or proposal closing date. Forms faxed, electronically transmitted, or hand-carried to the *VBO* office on Monday cuts this lead time to 17 days. Prebid or preproposal conferences or site visits set for a particular day shall be scheduled no earlier than 10 days from the publication date. This scheduling gives *VBO* subscribers adequate time to find out about the conference and make plans to attend. The bid opening date shall be no less than 10 days after the scheduled prebid or preproposal conference. These are the minimum number of days required. Good purchasing practices indicate that longer times may be necessary depending upon the complexity and commodity being purchased and the travel requirements and other scheduling conflicts of those attending prebid or preproposal conferences.
  - d. **Waiver of advertising requirement**. Agencies may, on a case by case basis, waive the advertising requirement if extenuating circumstances exist. Reasons for the waiver must be documented in writing and approved by the agency head or his or her designee. The signed waiver shall be included in the procurement file.
  - e. **Exemptions**. The following types of procurements are exempt from the advertising requirement:
    - X emergency procurements of all types (documentation required);
    - X sole source procurements;
    - X procurements from Corrections, Industries for the Blind, the Office of Graphic Communications, and sheltered workshops; and
    - X purchases of items exempted by law from competitive procurement.
  - f. **Record keeping**. Written evidence of the *VBO* advertisement shall be included in the procurement file.

Annex 5-A

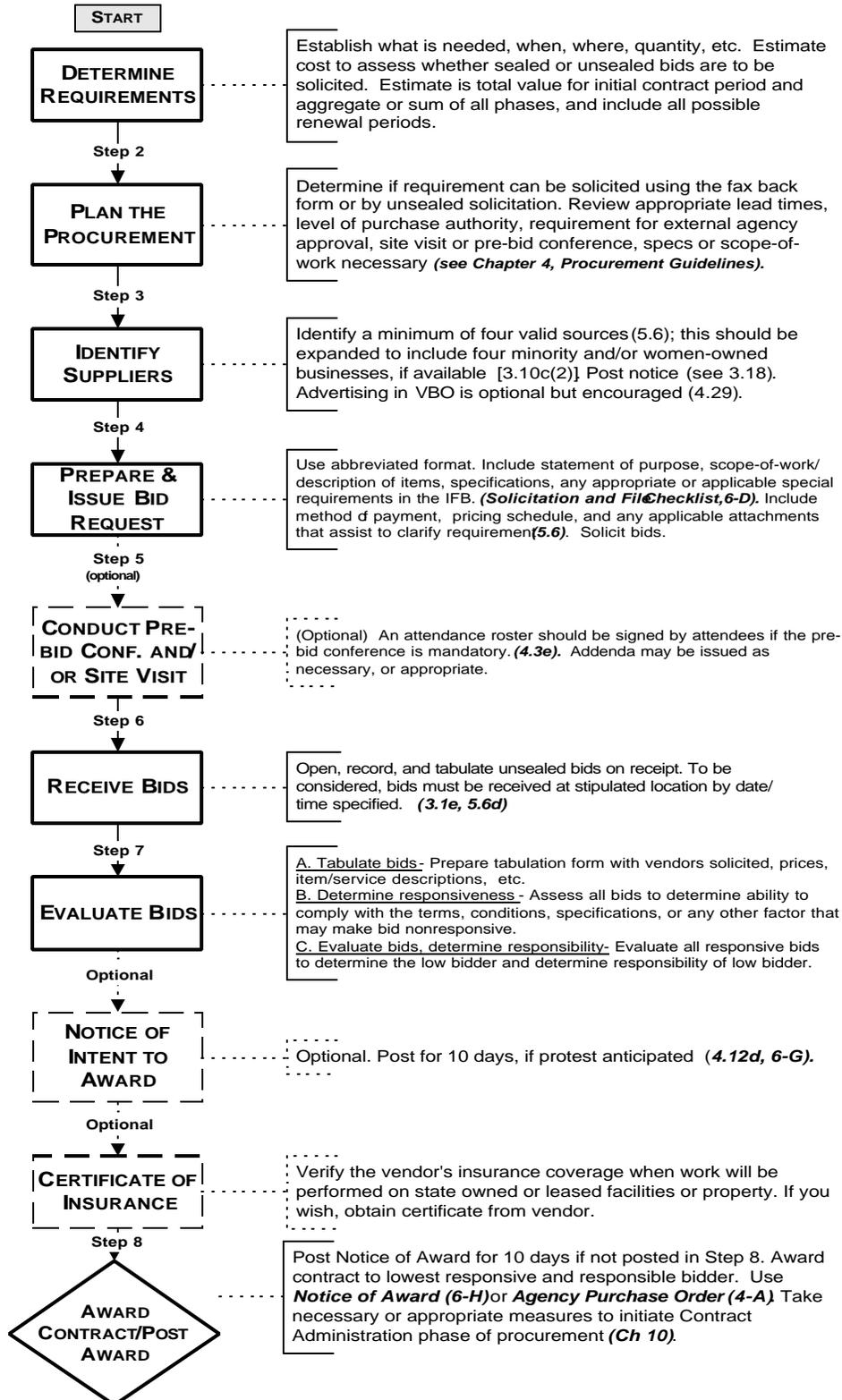
**SMALL PURCHASE PROCEDURES (CODE OF VA § 11-41F)**  
 Small Purchase Process (up to \$50,000)



Annex 5-E

**UNSEALED BIDDING PROCESS**

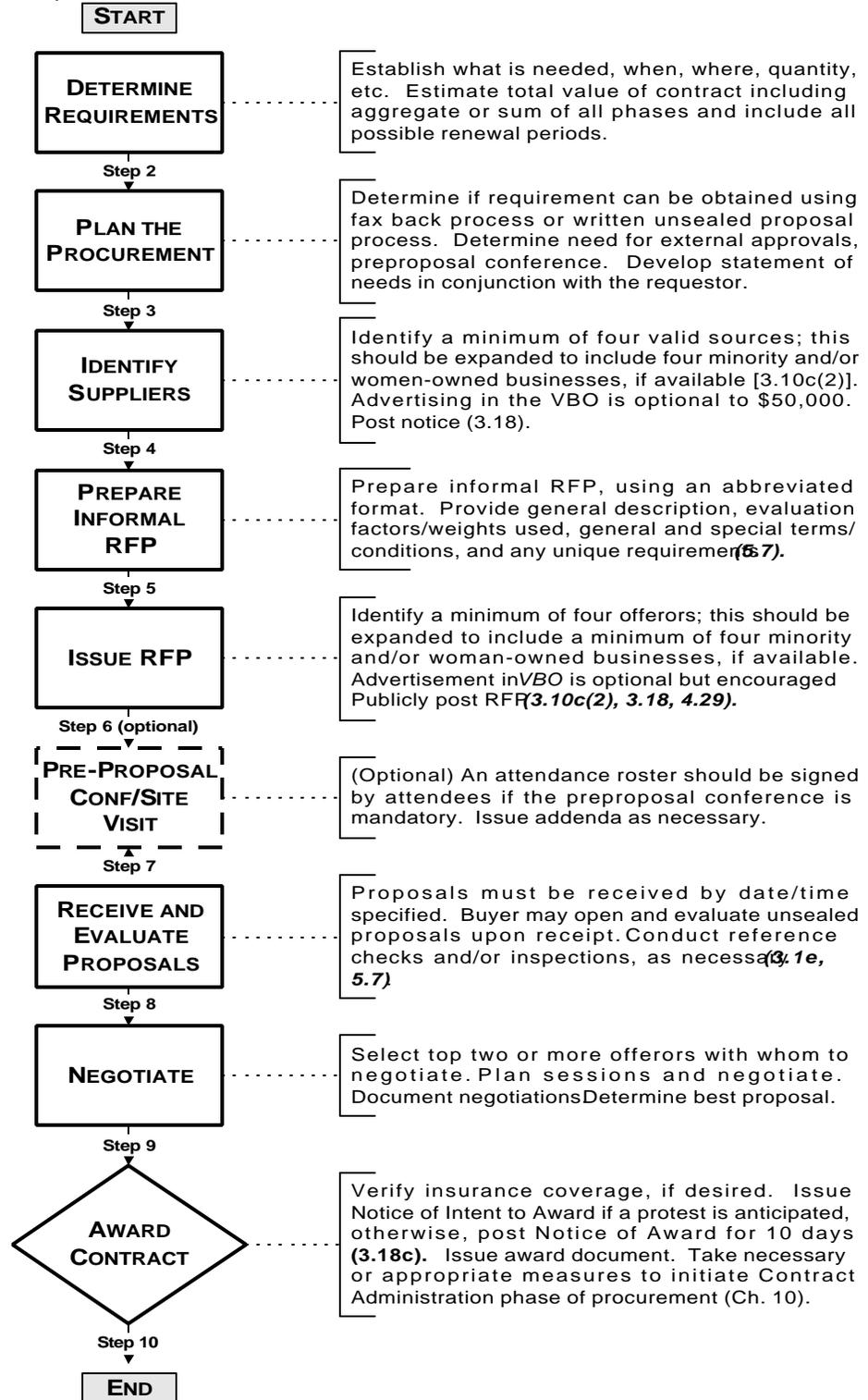
For Goods and Non-professional Services over \$15,000 to \$50,000



Annex 5- F

**UNSEALED PROPOSAL PROCESS**

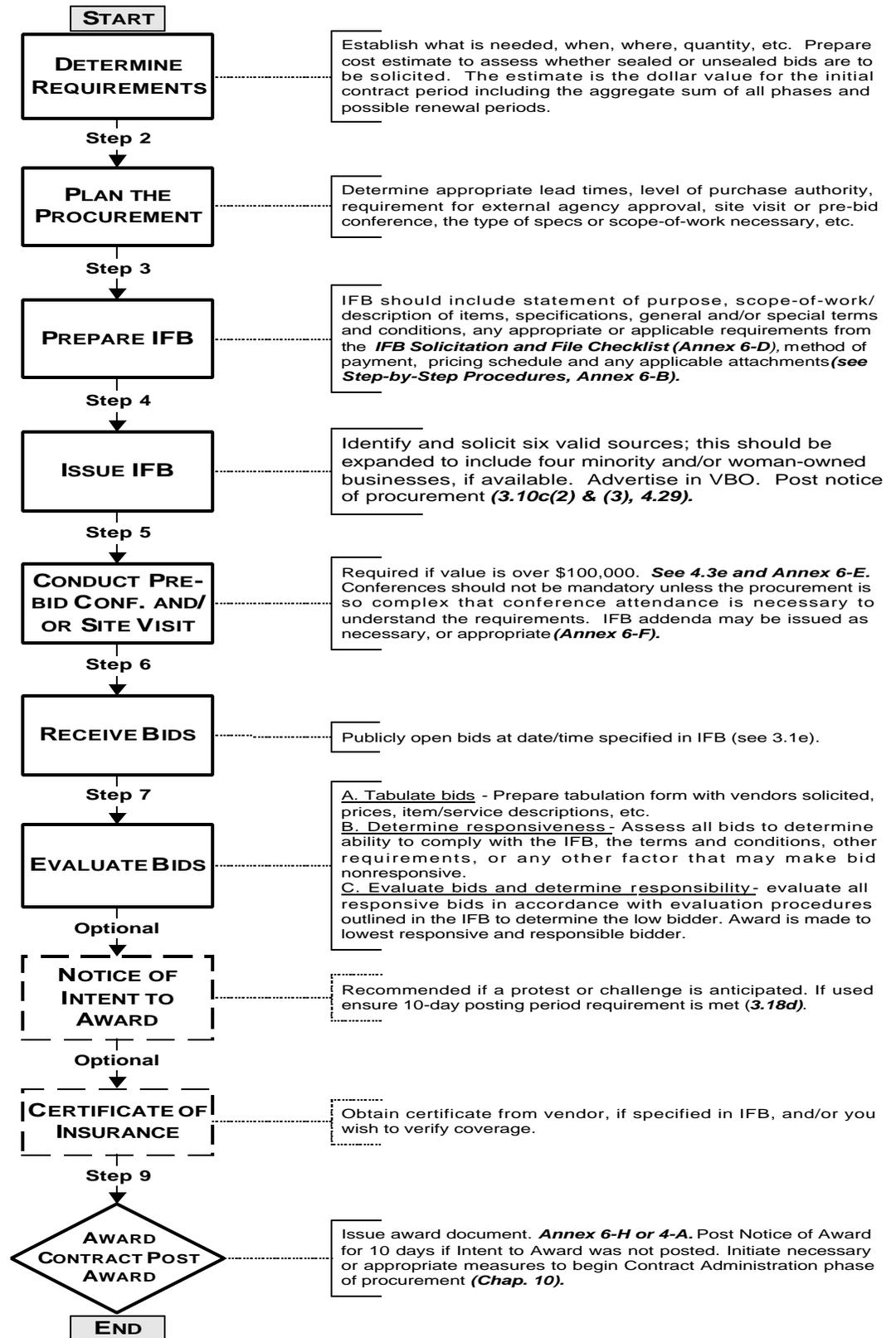
For Goods and Non-professional Services over \$15,000 to \$50,000



Annex 6-A

**COMPETITIVE SEALED BID PROCESS (CODE OF VA §§ 11-37, 11-41 A)**

For Goods and Non-professional Services (Over \$50,000)



# CHAPTER 6

## COMPETITIVE SEALED BIDDING

In this Chapter look for . . .

- 6 General
- 6.1 Competitive Sealed Bidding
- 6.2 Preparation and Issuance of IFBs
- 6.3 Sealed Bids - Receipt, Opening, Evaluation, and Award
- 6.4 Two-Step Competitive Sealed Bidding
- 6.5 Procedure for Two-Step Competitive Sealed Bidding
- 6.6 Combined Two-Step Competitive Sealed Bidding
- 6.7 Negotiation with the Lowest Responsible Bidder

Annexes

- 6-A Competitive Sealed Bid Process Flowchart
- 6-B Sample Format and Step-by-Step Procedures
- 6-C Vendor Data Sheet
- 6-D IFB Solicitation and File Checklist
- 6-E Prebid or Preproposal Conference Checklist
- 6-F IFB/RFP Addendum Format
- 6-G Notice of Intent to Award
- 6-H Notice of Award

6. **General.** Competitive sealed bidding is the preferred method for acquiring goods, printing, and nonprofessional services for public use when the estimated cost is over \$50,000. The competitive sealed bidding process is depicted in the flowchart in Annex 6-A.

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

6.2 **Preparation and Issuance of IFBs.**

- a. **Format.** Prepare the IFB using the format and contents shown in Annex 6-B. Establish a due date and time that will allow sufficient time for potential bidders to seek clarification and for the issuance of an addendum, if necessary. The due date shall not be less than 10 days from the issue date of the IFB.

# CHAPTER 7

## COMPETITIVE NEGOTIATION

In this Chapter look for . . .

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

### Annexes

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

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

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

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

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

- a. Upon a determination made in advance by the public body and set forth in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to the public, goods, services, or insurance may be procured by competitive negotiation (*Code of Virginia*, § 11-41C.1). The writing shall document the basis for this determination. This document must be signed by the agency head or his/her designee, and be retained in the purchase file.

- b. A written RFP is issued to describe in general terms that which is to be procured (see Annex 7-B for format and contents). The RFP must specify and list the specific requirements to be addressed by the offerors that will be used in evaluating the proposals and will contain other applicable contractual terms and conditions, including any unique capabilities or qualifications required of the contractor. When the terms and conditions of multiple awards are so provided in the RFP, awards may be made to more than one offeror. The terms or conditions of the RFP must state the manner in which public notice of the award or the announcement of the decision to award shall be given by the public body (see 3.18 and Appendix B, Section I. U.).
- c. If the method for receiving “Best and Final Offers” (BAFO) is to be used in the negotiation and evaluation process, then this must be stated in the RFP for the offerors’ notification and consideration.
- d. Mandatory requirements should be kept to a minimum and refer only to those areas that are required by law or regulation or are such that they cannot be waived and are not subject to negotiation. The use of “shall” or “must” indicates a mandatory requirement. Specify any optional information desired. The factors for use in evaluation shall be stated in the RFP, and the weights assigned to them must be included in the RFP or shall be posted in the location used for public posting of procurement notices prior to the receipt and evaluation of proposals. A breakout of subcomponent weights need not be listed. Price shall be one of the factors considered, but need not be the determining one. Include a pricing schedule in the RFP (see Annex 7-B).
- e. Review the RFP Solicitation and File Checklist (Annex 7-E) to assure that all specific requirements applicable to the procurement have been met (see 3.18 for posting requirements). In writing the scope of work and/or technical specifications for an RFP, use the term “contractor” to describe the person/firm that is to perform the requirements of the contract after award. Use the term “offeror” to describe who is the submit a response to the RFP.
- f. Establish a proposal submission due date and time which provide sufficient time for potential offerors to develop a proposal. The minimum time period is ten (10) days from issue date of the RFP. The time period used may be greater than the required ten (10) days based on the complexity of the requirement and whether or not a preproposal conference is required.
- g. For the purchase of material, equipment, supplies or nonprofessional services estimated to cost \$50,000 or more, RFPs shall be sent to at least six potential sources. This should be expanded to include a minimum of four minority and/or women-owned businesses, if available. If fewer than the required number of sources are solicited, the reasons must be stated in writing and placed in the purchase file.
- h. All preproposal conferences or site visits must be mentioned in the RFP and any advertisement of it. If attendance at such a conference or site visit is a prerequisite for submitting a proposal, the public notice period must be at least ten (10) days after issuance to provide adequate opportunity for potential offerors to obtain a copy of the RFP and attend. Preproposal conferences scheduled during a period of suspended State business operations must be rescheduled by the purchasing agency to a date and time which will permit proper notification to all potentially interested participants (Annex 6-E).
- i. Purchase actions requiring advertisement in the *Virginia Business Opportunities* should be forwarded to DGS/DPS in accordance with section 4.29. In addition to advertising in the VBO, RFPs over \$50,000 shall be advertised in a newspaper of general circulation in the area in which the contract is to be performed. The advertisement should be a brief statement about the requirement and information on how to receive a copy of the solicitation.

7.3 **Sealed Proposals - Receipt and Evaluation**

- a. Public openings of proposals are not required. If a public opening is held, the names of the individuals, or the names of firms submitting proposals in a timely manner, is the only information read aloud and made available to the offerors and general public (see 3.1e for further guidance on the receipt and opening of proposals).
- b. The proposals are evaluated by the buyer, contracting officer, or an evaluation team. As an option, evaluators may request presentations or discussions with offerors, as necessary, to clarify material in the offerors proposals, to help determine those fully qualified and best suited. Proposals are then evaluated on the basis of

the criteria set forth in the RFP, using the scoring weights previously determined. All RFP responses are to be evaluated. Proposals not meeting requirements should be scored lower. Only bids in response to an IFB may be determined to be nonresponsive. Offerors may be given an opportunity to correct a deficiency in their proposals, within an appropriate period of time, as determined by the purchasing office. Offerors who fail to submit required documentation or meet mandatory requirements, in such time, for evaluation purposes may be eliminated from further consideration. Two or more offerors determined to be fully qualified and best suited are then selected for negotiation. Price is considered, but need not be the sole determining factor.

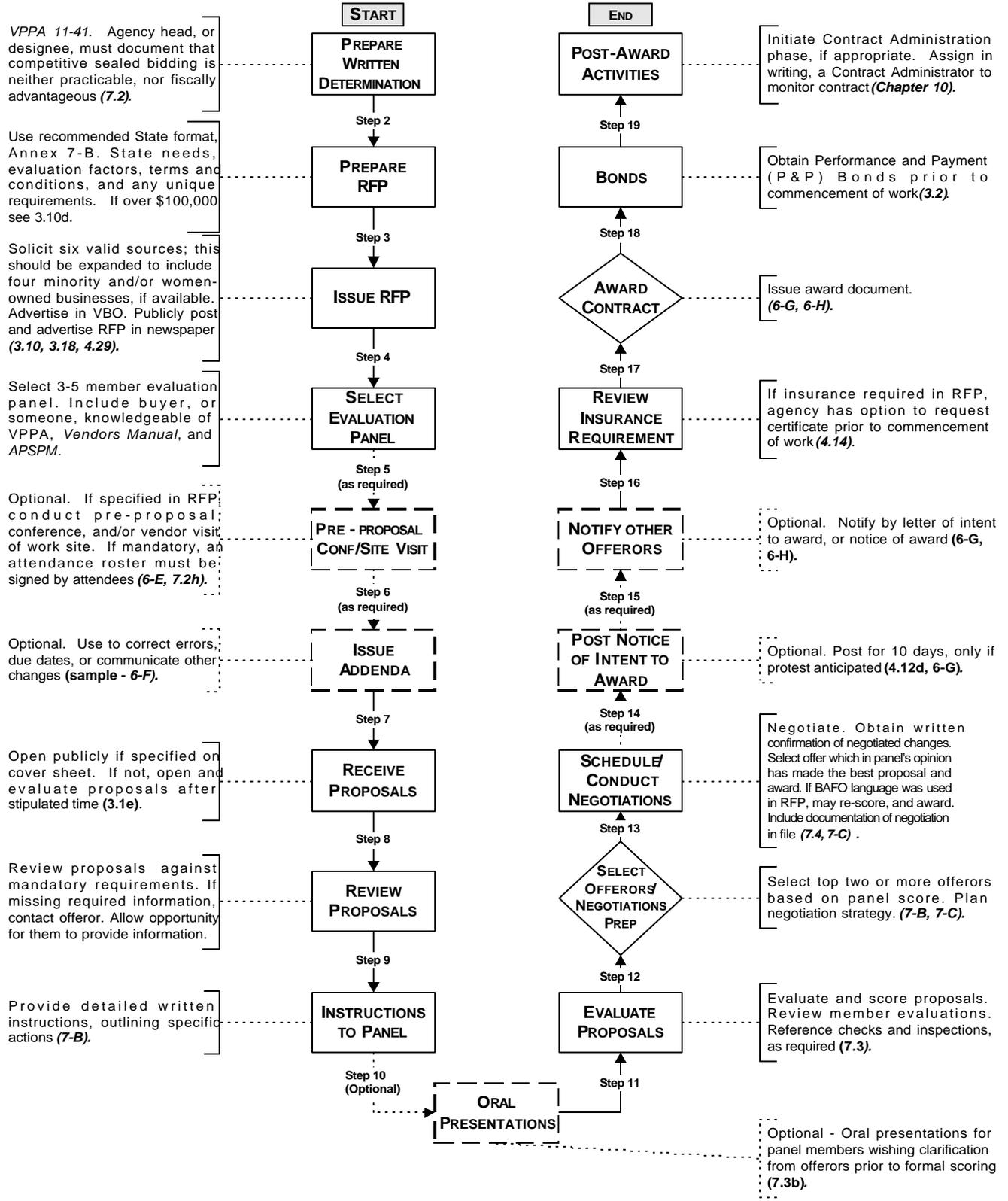
- c. During the evaluation phase it may be determined that only one offeror is fully qualified, or that one offeror is CLEARLY more highly qualified than the others under consideration. A written determination shall be prepared and retained in the contract file to document the meaningful and convincing facts supporting the decision for selecting only one offeror and negotiating with that offeror. The determination shall be signed by the agency head or his/her designee.

#### 7.4 **Negotiation and Award.**

- a. Negotiations are conducted with each of the offerors so selected. Negotiation allows modification of proposals, including price. Offers and counter-offers may be made as many times with each offeror as is necessary to secure a reasonable contract. After negotiations have been conducted with each of the selected offerors, the Commonwealth selects the offeror which, in its opinion, has made the best proposal, and the contract is awarded to that offeror. In all cases, written confirmation shall be obtained from the offeror on any modifications of the original proposal. Once an intent to award notice is posted, no further negotiation shall be conducted.
- b. When a provision for receiving best and final offers (BAFO) is included in the RFP, after negotiations, offerors are given the opportunity to submit a best and final offer. After the offeror submits a BAFO, no further negotiation shall take place with that offeror. The offeror's proposal, if already received and scored, may be rescored to combine and include the information contained in the BAFO with the technical evaluation score previously assigned, and the award decision made. The contract file shall be documented to show the basis for the award, and include the final rescoring of the proposals following negotiation and receipt of best and final offers.
- c. Agencies are not required to furnish a statement of the reason why a particular proposal was not deemed to be the most advantageous (*Code of Virginia*, § 11-65D). Offerors may inspect the proposal records after evaluation and negotiations are complete, but prior to award (see 3.17 and *Code of Virginia*, §11-52 C.1).
- d. Agencies may cancel a RFP, or reject proposals at any time prior to making an award (*Code of Virginia*, § 11-42 and 3.1d in this manual).
- e. The award documents shall incorporate, by reference, the terms and conditions of the RFP and the contractor's proposal, together with all written modifications thereof (see 4.12, Annex 6-G, and 6-H).

Annex 7-A

**COMPETITIVE NEGOTIATION PROCESS (CODE OF VA §§ 11-37, 11-41 c)**  
For Goods and Non-professional Services over \$50,000



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

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

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

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

- e. **Effect of Appeal Upon Contract.** Pending final determination of a protest or appeal, the validity of a contract awarded and accepted in good faith in accordance with this manual shall not be affected by the fact that a protest or appeal has been filed (*Code of Virginia*, § 11-67).
- f. **Stay of Award During Protest.** An award need not be delayed for the period allowed a bidder or offeror to protest, but in the event of a timely protest or the filing of a timely legal action, no further action to award that contract will be taken unless there is a written determination that proceeding without delay is necessary to protect the public interest or unless that bid or offer would expire (*Code of Virginia*, § 11-68).
- g. **Legal Actions.** If injunctive relief is granted, the court, upon request of the public body, shall require the posting of reasonable security to protect the public body. In the event the apparent low bidder, having been previously determined by the public body to be not responsible in accordance with § 11-37, is found by the court to be a responsible bidder, the court may direct the public body to award the contract, forthwith, to such bidder in accordance with the requirements of this section and the Invitation for Bids. A contractor may bring an action involving a contract dispute with a public body in the appropriate circuit court. A bidder, offeror, or contractor need not utilize administrative procedures meeting the standards of § 11-71 of the Code, if available, but if those procedures are invoked by the bidder, offeror, or contractor, the procedures shall be exhausted prior to instituting legal action concerning the same procurement transaction unless the public body agrees otherwise. Nothing herein shall be construed to prevent a public body from instituting legal action against a contractor (*Code of Virginia*, § 11-70).

### 11.3 Disputes.

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

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

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

## State Surplus Property

12. **General.** DGS/DPS has statutory responsibility for administering the Surplus Property Program for state-owned personal property and the Federal Surplus Property Program which makes surplus material/equipment available to states for distribution to eligible participants. This chapter contains guidance and instructions for agencies in identifying, disposing, documenting and obtaining state-owned personal property and for agencies in obtaining, use requirements, documenting, and disposing of surplus federal property. Information about surplus property, including the auction and competitive bid schedule, is listed on the DGS/DPS Internet Home Page ([www.dgs.state.va.us/dps](http://www.dgs.state.va.us/dps)).
- 12.1 **Definition.** Surplus materials means personal property including, but not limited to, materials, supplies, equipment, and recyclable items, but does not include property as defined in *Code of Virginia*, § 2.1-504 (real property), that is determined to be surplus. Surplus materials shall not include finished products that a mental health or mental retardation facility sells for the benefit of its patients or residents, provided that most of the supplies, equipment, or products have been donated to such facility, and whose patients or residents have substantially altered such supplies, equipment, or products in the course of occupational or other therapy, and such substantial alterations have resulted in a finished product.
- 12.2 **Classification.** State-owned surplus property may be classified as:
- a. Items of value for transfer, trade-in, or sale.
  - b. Scrap items which have sale value for material content only.
  - c. Items classified as toxic or hazardous and require special handling [see section 12.7e(4)].
  - d. Items for destruction or abandonment that are unusable and have very little or no commercial value.
- 12.3 **DGS/DPS Authority and Responsibility for State Surplus Property.** The *Code of Virginia*, § 2.1-457.2B, directs DGS/DPS to establish procedures for the disposition of surplus materials from agencies and institutions of the Commonwealth. These procedures include the transfer, donation, and public sale of surplus property as discussed below.
- 12.4 **Other Agency Authority & Responsibility.** The following agencies have authority for disposal of the commodities shown:
- a. **Timber/Pulpwood.** Management of the state's forest has been assigned to the Division of Forestry per *Code of Virginia*, § 10.1-1120 through 10.1-1123, and sale or disposal shall be through them.
  - b. **Real Property.** Sale or disposal of real property land, buildings, and/or other improvements as defined in Department of General Services, Division of Engineering and Buildings Directive No. 1 (06-20-84) and the Department of General Services, Division of Engineering and Buildings *Real Property Management Manual* shall be handled through DGS/DEB.
  - c. **Unclaimed or Abandoned Property at Agency.** All tangible and intangible property that is held and has remained unclaimed by the owner for more than five years after it became payable or distributable is presumed abandoned (for full legal definition see *Code of Virginia*, § 55.210.2:1). Such property that is unclaimed or abandoned must be reported to the Unclaimed Property Division, Department of the Treasury, which is responsible for implementing the provisions of *The Uniform Disposition of Unclaimed Property Act*. Contact (804) 225-2393 for additional information.
- 12.5 **Designation of Surplus Property Officer.** Agency heads should designate a state surplus property officer who is responsible for all matters pertaining to agency surplus property using Signature Form DGS-44-004. Contact the Surplus Property Administrator (SPA) for the form. In the absence of a delegation of this authority, the head of the agency possessing the property must sign the required documents. The representative may authorize additional persons to sign documents and/or be an agency contact. The Agency Surplus Property Officer should distribute information concerning disposal procedures and related surplus property information to agency operation elements.

12.6 **Delegation of Disposal Authority.** Upon written request to the DGS/DPS SPA, delegation may be granted to an agency to dispose of surplus materials when this appears to be in the Commonwealth's best interest. Blanket, general, or one time delegation may be requested as follows:

- a. **Blanket Commodity Based Delegation.** Certain low dollar value commodities will be delegated by DGS/DPS for sale action by all agencies and institutions. This list will be published by the issuance of a Procurement Information Memorandum (PIM). Agencies shall follow the revised provisions of the *Code of Virginia* and Chapter 12 of the *APSPM*. Suggestions for items to be included may be submitted to the SPA in writing or FAX to 804-236-3663.
- b. **General Delegation.** Agencies may also request general delegation. To receive general delegation, a written plan must be submitted to the SPA. The agency will also abide by and follow the provisions of the *Code of Virginia* and the *APSPM*. The general delegation shall be effective 90 days after approval of the plan and will be renewed on an annual basis. The plan shall address the following:
  - X Determination of cost effectiveness
  - X Transfer of property to other agencies
  - X Direct sale to local governments
  - X Marketing property effectively
  - X Selling property using competitive methods
  - X Revenue handling procedures
  - X Appropriate internal controls
  - X Reports
- c. **One Time Local Sale Authority.** Agencies may request one-time authority to sell low dollar value property locally. The sale method must be competitive and follow all provisions of the *Code of Virginia* and the *APSPM*. Revenue generated shall be promptly deposited into the state treasury and such deposit reported to the State Comptroller as well as include a reconciliation of the sale action to the DGS/DPS SPA.

12.7 **Disposal Methods.**

- a. **Transfer Within Same Agency.** Agencies are encouraged to transfer needed property from one activity to another within the agency. This does not require notification of DGS/DPS or the use of the surplus Property Report DGS-44-001.
- b. **Transfers and Sales to Another State Agency.** Utilization of surplus property between state agencies is encouraged. It is especially appropriate for surplus clothing for subsequent distribution by another state agency to needy individuals by and through local social services boards. Items may be transferred to another agency with or without the transfer of funds. A transfer letter/document, describing the property, is prepared by the owning agency and forwarded to the receiving agency. If there is a charge for the property being transferred, the owning agency bills the receiving agency for the agreed amount. 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. Documentation supporting the property transfer with appropriate signatures must be maintained in the files of the owning and receiving agencies.
- c. **Sales to Political Subdivisions and School Divisions.** Prior to initiating any public sale or auction, surplus materials must first be offered to political subdivisions of the Commonwealth. Sales should be made to political subdivisions and schools at the items' fair market value. Sales may also be made to Virginia charitable organizations with a 501 (c) (3) tax-exempt status that operate as children homes, public television stations located in the state and other nonprofit organizations approved for the distribution of federal surplus materials at fair market value. Sale prices of less than market value may be considered with the submission of written justification supporting a reduced price. Attach copies of letters reflecting acceptable prices offered. Upon DGS/DPS approval, a Surplus Property Sales Award DGS-44-006 will be issued.
- d. **Public Sales or Auctions (only after having been first offered to political subdivisions).** Public sales or auctions shall be conducted by DGS/DPS unless otherwise delegated to designated state agencies or institutions.



- (1) **Auction.** Generally, the preferred method of sale to the general public is by auction. These are scheduled throughout the state. Advertisements are placed in major state and area newspapers in the vicinity of the auction sale, and notices are sent to persons or firms on mailing lists maintained by the SPA.
  - (2) **Sales by Competitive Bid** Property may also be sold by competitive bid. The list of property to be sold will be mailed to those persons or firms which requested to be placed on the mailing list for the particular commodity.
  - (3) **Negotiated Sale.** Under exceptional circumstances, surplus property may be sold through negotiation, such as when property has not been sold despite efforts at public auction and/or sealed bid. Sales may be concluded only by DGS/DPS upon receipt of written documentation of the circumstances.
  - (4) **Set Price.** Surplus property may be offered to the public at a set price. The sales price of an item is based on known sales experience and/or estimated current market value. Set price sales are publicly advertised.
  - (5) **Contracts.** Contracts may be established for certain surplus items generated on a continuing basis. DGS/DPS may offer the property on a single sale, or a term, or open-end contract basis. Once a contract is established, items will be sold in accordance with its terms and conditions and a Surplus Property Report is usually not required. Examples of commodities of this nature include scrap metal, paper, wood, tires, textiles, fats, bones, and hides.
- e. **Donations.** Departments, divisions, institutions, or agencies of the Commonwealth or the Governor may donate surplus materials only under the following circumstances:
- (1) Emergencies declared in accordance with *Code of Virginia*, § 44-146.18:2 or § 44-146.28.
  - (2) As set forth in the budget bill as defined by *Code of Virginia*, § 2.1-399, provided that
    - (a) The budget bill contains a description of the surplus materials, the method by which the surplus materials shall be distributed, and the anticipated recipients, and
    - (b) Such information shall be provided by the Department to the Department of Planning and Budget in sufficient time for inclusion in the budget bill.
  - (3) When the market value of the surplus materials, which shall be donated for a public purpose, is less than \$500; however, the total market value of all surplus materials so donated by any department, division, institution, or agency shall not exceed twenty-five (25) percent of the revenue generated by such department's, division's, institution's, or agency's sale of surplus materials in the fiscal year.
  - (4) Within donation limits are described in section 12.7e. (3), surplus computers and related equipment may be donated to public schools in the Commonwealth and Virginia charitable organizations granted 501(c) (3) status and providing services to persons with disabilities, at-risk youths, or low-income families. Agencies are responsible for determining eligibility for donations of those eligible organizations not participating in the federal surplus program.
  - (5) During a local emergency, upon written request of the head of a local government or a political subdivision in the Commonwealth to the head of a department, division, institution, or agency.
- f. **Trade-Ins and Other Methods of Disposal.**
- (1) **Trade-ins.** Trade-in items are not required to be declared surplus on the Surplus Property Report and may be traded in on the purchase of equipment of the same general three-digit commodity class code without prior DGS/DPS approval. Trade-in procedures should not be used if the monetary allowance offered is substantially below the known current sales range. If market values are not known, recent sales prices may be obtained by calling or writing the State Surplus Property Office. Items for trade-in must

be fully described on the requisition, and a purchase order prepared with the credit amount shown on it. State property may not be used as credit on future purchases or to pay for a service provided to a state agency. Bartering (the trade or exchange of one commodity for another) is not authorized unless approved in advance by DGS/DPS. Consignment of surplus property to a nongovernmental entity is not permitted. All transfers of surplus property between governmental agencies must be in accordance with subparagraphs (2) and (3) below.

**Notice:** Prior to trading in or declaring surplus, licensed or copyrighted materials, a review of the license or copyright agreement needs to be made to determine what right, if any, the licensee has to the property.

- (2) **Destruction or Abandonment.** Property which is unusable and determined to have no commercial value, or cost of sale would exceed expected returns may be destroyed or abandoned with prior written approval from DGS/DPS. Burning is an example of destruction; dumping at a certified landfill is an example of abandonment. These are necessary methods of disposal, but the actions must be carefully controlled and documented to conform to good property management and avoid abuse. All property is to be identified in a property listing with signatures and dated by at least two agency officials. One signature is to be the person who determines the property classification and witnesses the disposal. The second signature is an agency reviewing and approving authority. The completed document will be the agency's authority for removing items from inventory and will serve as an audit trail.

In certain circumstances, it is appropriate for DGS/DPS to grant Blanket Disposal Authority. This may include the disposal of property that is damaged and for health and safety reasons needs immediate disposal. Agencies must write to the state surplus property administrator's office to initiate this action.

- (3) **Insurance Claim - Salvage.** This type of sale is authorized when DGS/Division of Risk Management (DGS/DRM) advises DGS/DPS that a claim will involve salvage. The sale price of an item(s) will be set as the result of the claim adjusting firm's securing three (3) or more, written bids, or justifying why three bids could not be obtained. The claims adjuster will secure a cashier's or certified check from the highest bidder for the amount of the bid. Upon delivery of the written bids and the check to the state agency's representative, the agency's representative may release the item(s) getting a delivery receipt for same from the highest bidder. The agency's representative shall then see that a Surplus Property Report, DGS-44-001, is processed according to state policy, along with bids, check, and copy of the delivery receipt, if item(s) has been picked up, to DGS/DPS. Upon receipt of Form DGS-44-001, bids, and check, DGS/DPS will issue a paid Surplus Property Sale Award, DGS-44-006, except a copy will be sent to DGS/Division of Risk Management. In this instance, the DGS-44-006, Sale Proposal Number will be AIns. Salvage Claim No. \_\_\_\_\_ ≡ The Claim Number will be that number assigned by DGS/DRM. DGS/DPS will consider this an occasional sale because of its anticipated infrequent use and its being handled by an insurance claims adjustor; therefore, no State Sales and Use Tax will be involved.
- (4) **Hazardous Material.** The DGS/DPS Surplus Distribution Centers do not normally accept hazardous materials. Some products, generally classified as hazardous, may be considered for acceptance. Examples would be janitorial cleaning supplies, paint, developer and toner for copy machines, automotive antifreeze, etc. Call the State Surplus Property Manager at 804-236-3667 for specific guidance regarding the acceptability of a product classified as a hazardous material at the distribution centers.
- (a) **Disposal of Hazardous Material.** Federal and State laws have been enacted placing strict compliance requirements on the disposal of hazardous materials. Any agency that generates 220 pounds or 25 gallons of hazardous materials in one month is considered to be a Generator by federal definition and is required to comply with these statutes. Agencies are advised to contact the Department of Environmental Quality (DEQ) for technical assistance, copies of applicable regulations, permit applications for registering with the Environmental Protection Agency (EPA), and for obtaining information to prepare appropriate manifests used in transporting materials.

Hazardous materials must be disposed of by contracting with contractors qualified in the proper identification, packaging/labeling and transporting of materials to EPA authorized storage sites. Agencies that generate substantial quantities should have a hazardous waste management plan in

effect under the responsibility of a qualified staff specialist. Under current federal statutes, agencies are held responsible for all hazardous materials, even after having been delivered to an EPA authorized storage facility. It is important, therefore, that careful and thorough planning be conducted prior to entering into a contractual arrangement. Costs can be minimized by agencies that have an effective program established with all waste materials fully identified and properly stored pending final packaging and delivery by an EPA-registered transporter.

- (b) **Special Handling.** Some surplus items require special handling and/or documentation for disposal. The special handling or documentation may be required by law, regulations, or a management decision. Example of such items would be stills, certain containers (i.e., drums, drugs, drug apparatus), firearms, etc.

- (5) **Police Dogs.** Any dog especially trained for police work may be sold at an appropriate price to the handler who was last in control of such dog, which sale shall not be deemed a violation of the State and Local Government Conflict of Interest Act, § 2.1-639.1 et seq.

- g. **Recycling.** The recycling of paper products, beverage containers, and used motor oil is strongly encouraged. Coordination of the activity should be made with the DEQ and DPS's SPA.

12.8 **Security of Property.** Agencies are accountable and responsible for reasonable care and security of items declared surplus during the entire disposal process (i.e., the time frame covering reporting, sale preparation, inspection, payments, release, and final pickup). If items are deleted as surplus, the agency must notify DGS/DPS immediately. Failure to report deletions or misplaced property creates inconveniences and unnecessary expenses for all parties. Items advertised and/or sold and not available for inspection or pickup could result in the agency becoming liable to the bidder. Except as otherwise authorized on an individual case basis, surplus items should not be released by the owning agency without the recipient displaying the white copy of the Surplus Property Sale Award carrying the DGS/DPS signed paid stamp. The owning agency is responsible for the release of the correct item(s) to the proper party. Transfer or sale of surplus to another state agency does not require the display of a Surplus Property Award; however, the receiving agency should have DGS/DPS Surplus Property Transfer Document. The owning agency should obtain the receiving agency's representative's signature for receipt of the item(s). Once an agency turns property over to a SSP Distribution Center as set forth in section 12.12 the accountability and responsibility for reasonable care and security, etc., transfers to SSP. DGS/DPS-SSP, however, has no financial liability.

12.9 **State Surplus Property Documentation.** The following is a listing summarizing the documentation associated with State Surplus Disposal:

- a. Surplus Property Report DGS-44-001 (see Annex 12-A). This is used by the agency to report surplus to DGS/DPS.
- b. Surplus Property Transfer Document DGS-44-012 (see Annex 12-B). Used to transfer surplus items between state agencies.
- c. Surplus Property Tag DGS-44-014 (see Annex 12-C). Identifies agency ownership for items stored at DGS/DPS distribution centers.

12.10 **Distribution Centers.**

- a. Agencies may transfer surplus property to the distribution centers. The distribution centers are located at 1910 Darbytown Road in Richmond and 135 2 Street in Wytheville. The centers are open Monday to Friday, except official state holidays, from 8:00 a.m. to 4:00 p.m.
- b. Agencies desiring to transfer property to the centers can accomplish this by filling out the 4-part Surplus Property Tag, (DGS-44-014) found in Annex 12-C. **To avoid duplication, Do Not Fill Out The Pink Surplus Form DGS-44-001.** The 4-part tag replaces the Surplus Report for property being transferred to the centers.

- (1) Fill out tag, and sign.
- (2) To schedule delivery, call the appropriate center - Richmond (804) 236-3664; Wytheville (540) 228-6803.
- (3) Remove and keep top copy (white).
- (4) Attach tag to item.
- (5) Upon receipt of the property, the SSP center personnel will sign the yellow copy and return it to the agency. Receipt of the yellow copy will signify the property has been transferred to the Surplus Property Program at no charge. The agency may then remove the property from the agency inventory records. No further documentation will be submitted to the agency.
- (6) Property located at the centers is made available to state agencies, political subdivisions and public schools.

12.11 **Purchases by State Employees.** The *Conflict of Interest Act, Code of Virginia*, § 2.1-639 et seq. establishes conditions under which state employees may enter into contracts. This would include contracts for surplus materials. It is recommended that employees contact their agency attorney advisor with specific facts of the transaction for guidance.

12.12 **Proceeds from the Sale or Recycling of Surplus Materials.** The proceeds from the sale or recycling of surplus materials pursuant to § 2.1-457.2 shall promptly be deposited into the state treasury by the SPA, or by agencies receiving disposal authority. Such deposits are to be reported to the State Comptroller and to DPS's SPA, along with a statement of total proceeds and the amount of such proceeds derived from the sale or recycling of surplus materials purchased in whole or in part from general fund appropriations.

12.13 **Reporting.** Surplus property must be reported on the Surplus Property Report DGS-44-001 (see Annex 12-A). It is suggested that agencies not report surplus items until an internal agency review has been conducted to determine if items could be used by internal activities. The original of this report must be forwarded to DGS/DPS. This report forms the basis for publicizing surplus characteristics to other agencies that may have a need for the items; therefore, its complete and accurate preparation is essential. Each item or group of items must be listed with the 5-digit Procurement Commodity Code. Only one vehicle or other titled equipment may be on a report, and title must be attached unless prior approval is obtained from the SPA manager. Agencies are encouraged to submit these reports on a continuing basis to aid in the timely movement of surplus property. Items may be reported surplus when still in use as long as an estimated release date is provided and buyer inspection can be arranged during the interim use period. Agencies are invited to submit special requests for property such as furniture, office equipment, and special equipment, such as construction equipment, trucks and cars.

Agencies will be required to file an annual report, at the end of the fiscal year, in a format prescribed by the SPA, that will include the following areas:

- a. Property donated in accordance with Section 12.7e(3).
- b. Amount of property disposed of with prior written approval for blanket disposal authority.
- c. Amount of property transferred and/or sold to another state agency.
- d. Amount of property sold to political subdivisions.
- e. Amount sold to the public.

## APPENDIX A

### GLOSSARY AND ACRONYMS

→ **Acquisition Services Division (ASD):** The Acquisition Services Division is a division of the Department of Information Technology (DIT). ASD is responsible for the establishment of all state contracts for ADP goods and services and all telecommunications equipment and services. In addition, ASD provides unlimited support to DIT's Data Center in its role as a Service Bureau to all agencies, institutions and localities of the Commonwealth of Virginia.

→ **Administrative Lead Time:** Administrative lead time is that period of time from initiation of the requirement by the user to issuance of an award.

**Agency:** For the purpose of this manual, agency means any department, authority, board, post, commission, division, institution, or office of the Commonwealth.

**Agency Purchase Order (APO):** An Agency Purchase Order is a form used by an agency to order goods, services and printing available on a State or term contract, or to procure goods or services from non-contract sources within its delegated purchase authority.

**Appeal:** Action taken by a bidder, offeror (actual or prospective) or by a contractor to seek a hearing before a disinterested person or panel or in an appropriate circuit court challenging a decision in accordance with Sections 11-70 or 11-71 of the *Virginia Public Procurement Act*.

**Automated Data-Processing Equipment (ADPE):** Computers and processors, including microcomputers, array processors and floating point processors; memory boards and systems; disk and magnetic tape devices, including disk packs and data modules; CRT display equipment, including graphics terminals, printers and teleprinters; plotters and digitizers; encoders, punches and readers; peripheral controllers, data converters, interface boards and tape certifiers; and data communications equipment, including communications controllers or front-end processors and network analyzers, testers, diagnostic systems, acoustic couplers, disk cartridges and diskettes.

**Bartering:** The act of exchanging one good or service for another, without the exchange of money.

**Benchmark:** A standard or point of reference used in measuring or judging quality, value, performance, price, etc.

**Best and Final Offer (BAFO):** The last offer provided by an offeror in response to a Request For Proposal and all further negotiation ceases. When the provision for receiving best and final offers is included in an RFP, offerors are given the opportunity to submit a best and final offer after negotiations have been held. After the best and final offers are submitted, no further negotiations shall be conducted with any of the offerors and the decision to award is based on rescoring of the best and final offers.

→ **Best Value:** The overall combination of quality, price, and various elements of required services that in total are optimal relative to a public body's needs, as predetermined in a solicitation. Best value concepts may be applied when procuring goods and nonprofessional services, but not construction or professional services. The criteria, factors, and basis for the consideration of best value and the process for the consideration of best value shall be as stated in the procurement solicitation (*Code of Virginia*, § 11-37).

→ **Bid:** A competitively priced offer made by an intended seller, usually in reply to an Invitation for Bids (IFB). A price offer made at a public auction.

**Bid Bond:** An insurance agreement in which a third party agrees to be liable to pay a certain amount of money in the event a selected bidder fails to accept the contract as bid.

**Bidder:** One who submits a competitively priced offer in response to an Invitation for Bids (IFB).

**Blanket Purchase Agreement (BPA):** An arrangement under which a purchaser contracts with a vendor to provide for a purchaser's frequent, repetitive, small-order requirements for an item(s) or a service, on an as-required and over-the-counter

basis. Properly prepared, such an arrangement sets a limit on the period of time it is valid and the maximum amount of money which may be spent at one time, or within a specified period, and specifically identifies those persons authorized to order or accept goods. The BPA may also contain other terms and conditions, such as the discount or the specific price list that applies to purchases made under the agreement and what items and services are included (or excluded) under the agreement.

**Boiler Plate:** General Terms and Conditions.

**Broker:** A person or agent acting as an independent manufacturer's or distributor's representative dealing in products or goods normally sold through the brokerage process in which there is a previously established relationship with the supplier before the bid is submitted.

**Charge Card:** In the context of this manual, the state-approved Small Purchase Charge Card (SPCC), used for small purchases (\$5,000 or less) of frequent, over-the-counter, Maintenance, Repair, and Operating (MRO) items used in the daily operations of any state activity, and for placing orders up to \$5,000 against term contracts.

**Collusion:** A secret agreement or cooperation between two or more parties to accomplish a fraudulent, deceitful, or unlawful purpose.

**Collusive Bidding:** An unethical and illegal practice in which suppliers act in collusion to fix their bids in a collectively advantageous manner.

**Commodity Code:** A system of symbols (alpha, numeric or other) used to represent words to describe a commodity, e.g., Class 410 Furniture, Hospital - Specialized, Item 36, Incubators, Infant (410-36); 904 Services, Client, Item 02, Ambulance Service (904-02), to facilitate data sort capabilities of purchased goods/services for the purpose of analysis.

**Competitive Bidding:** The offer of firm bids by individuals or firms competing for a contract, privilege, or right to supply specified services or goods.

**Competitive Negotiation:** A method for purchasing goods and services, usually of a complex and technical nature whereby qualified individuals or firms are solicited by means of a Request For Proposal (RFP). Negotiations are conducted with selected offerors and the best proposal, as judged against criteria contained in the Request For Proposal, is accepted and an award issued.

→ **Competitive Sealed Bid:** A bid submitted in a sealed envelope to prevent disclosure of its contents before the deadline set for the receipt of all bids. Sealed bidding procedures are required on procurements of \$50,000 or more. Competitive sealed bidding shall not be used to contract for professional services.

**Confirming Purchase Order:** A purchase order issued after the fact by a procuring agency to a vendor for goods or services ordered orally or by some other informal means. The order should be marked "CONFIRMING ORDER. DO NOT DUPLICATE".

**Consideration:** Something of value given for a promise to make the promise binding. One of the essential elements of a contract.

**Construction:** Construction shall mean building, altering, repairing, improving or demolishing any structure, building or highway, and any draining, dredging, excavation, grading or similar work upon real property (*Code of Virginia*, § 11-37).

**Construction Management Contract:** A contract in which a party is retained by the owner to coordinate and administer contracts for construction services for the benefit of the owner, and may also include, if provided in the contract, the furnishing of construction services to the owner.

**Consulting Services:** Advice or assistance of a purely advisory nature provided for a predetermined fee to an agency by an outside individual, firm, or organization under contract to that agency.

**Consumer Price Index (CPI):** The Consumer Price Index is a measure of the average change in prices over time in a fixed market basket of goods and services. Two CPIs are published: 1) the CPI for All Urban Consumers (CPI-U) which covers about 80% of the total populations and 2) the CPI for Urban Wage Earners and Clerical Workers (CPI-W) which covers 32% of the total population. The CPI is based upon prices of food, clothing, shelter, transportation, medical care, and other goods and services that people buy for day-to-day living.

**Contract:** When used as a noun in this Manual, contract refers to an agreement enforceable by law, between two or more competent parties, to do or not to do something, not prohibited by law, for a consideration. A contract is any type of agreement or order for the procurement of goods or services. As a verb, contract has its usual legal sense, signifying the making of an agreement for consideration.

**Contract Administration:** The management of all facets of a contract to assure the Contractor's total performance is in accordance with the contractual commitments and that the obligations of the Contractor under the terms and conditions of the contract are fulfilled.

**Contract Management:** The management of the organization's contracts and contract-related activities which may include accounting, administration, auditing, grants management, law, negotiation, logistics, price-structure compensation, delegation of purchasing authority, program management, termination and other business activities.

**Contract, Cost-Plus-A-Fixed-Fee:** A cost-reimbursement type contract that provides for the payment of a fixed fee to the contractor. The fixed fee, once negotiated, does not vary with the actual cost but may be adjusted as a result of any subsequent changes in the scope of work or services to be performed under the contract.

**Contract, Cost-Plus-A-Percentage-Of-Cost:** A form of contract which provides for a fee or profit at a specified percentage of the contractor's actual cost of accomplishing the work. Except in case of emergency affecting the public health, safety or welfare and for some insurance contracts, no public contract shall be awarded on the basis of cost plus a percentage of cost (*Code of Virginia, § 11-43*).

**Contract, Design-Build:** A contract between a public body and another party in which the party contracting with the public body agrees to both design and build the structure, roadway or other item specified in the contract.

**Contract, Fixed Price:** A contract that provides for a firm unit or total price to be established at the time of order placement or contract award. The contractor bears the full risk for profit or loss.

**Contract, Fixed Price, Incentive:** A fixed price is agreed upon with a target cost/profit, a ceiling price, and a profit formula. Below target, the contractor and state share savings. Above ceiling, the contractor must assume all costs.

**Contract, Fixed-Price With Escalation/Deescalation:** A fixed price type of contract that provides for the upward and downward revision of the stated contract price upon the occurrence of certain contingencies (such as fluctuations in material costs and labor rates) specifically defined in the contract.

**Contract, Requirements Type:** A form of contract covering long-term requirements used when the total quantity required cannot be definitely fixed, but can be stated as an estimate or within maximum and minimum limits, with deliveries on demand. Such contracts are usually for one year or more in duration.

**Contract, Service:** A contract for work to be performed by an independent contractor wherein the service rendered does not consist primarily of the acquisition of equipment or materials, or the rental of equipment, materials and supplies.

**Contract, Time and Material:** A contract providing for the procurement of supplies or services on the basis of direct labor hours at specified fixed hourly rates (which include direct and indirect labor, overhead, and profit) and material at cost, or at some bid percentage discount from manufacturer's catalog or list prices.

**Contract Officer, Purchase Officer, Buyer:** A State employee whose primary assignment is purchasing goods or services.

**Contractor:** An individual or firm that has entered into an agreement to provide goods or services to the Commonwealth.

**Cooperative Procurement:** A procurement by a public body with one or more other public bodies, for the purpose of combining requirements for the purchase of like goods and/or services in order to increase efficiency and/or reduce administrative expenses.

**CORPRINT:** Department of Corrections, Industrial Enterprises, Printing Facilities.

**Cure Notice:** A notice, either oral or in writing, that informs the Contractor that he or she is in default and states what the Contractor has to do to correct the deficiency. If the notice is oral it shall be confirmed in writing.

**Debarment:** An action taken by the Director of the Division of Purchases and Supply (DPS), or designee (debaring officials), within the scope of their procurement authority, to exclude individuals or firms from contracting with state agencies for particular goods or nonprofessional services for specified periods of time (*Code of Virginia*, § 11-46.1).

**Default:** Failure to comply with the terms and conditions of a contract.

**Design Specification:** A purchase specification setting forth the essential characteristics that an item bid must possess to be considered for award.

**Designated Public Area:** An area that is available to the public during normal business hours and is the area designated by an agency for the posting of procurement solicitations and notices.

**Division of Purchases and Supply (DPS):** The Division of Purchases and Supply is a division of the Department of General Services. DGS/DPS is the State's centralized purchasing agency for materials, equipment, supplies, nonprofessional service and printing. DGS/DPS prescribes the rules and regulations for the purchase of materials, supplies, equipment, nonprofessional services, and printing (*Code of Virginia*, § 2.1-435 et al).



**Drug-free Workplace:** A site for the performance of work done in connection with a specific contract awarded to a contractor in accordance with the VPPA, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of a contract.



**Emergency:** An occurrence of a serious and urgent nature that demands immediate action.

**Ethics:** Pertaining to or relative to moral action, conduct, motive or character; as ethical emotion; professionally right or befitting; conforming to professional standards of conduct. The *Virginia Public Procurement Act* covers "Ethics in Public Contracting" (*Code of Virginia*, §§ 11-72 through 11-80).

**Evaluation of Bids:** The process of examining a bid after opening to determine the bidder's responsibility, responsiveness to requirements, and other characteristics of the bid relating to selection for award.

**Expedite:** The act of contacting a supplier or carrier with the goal of *speeding up* the delivery date (see also Follow-Up).

**Fair Market Value:** Lowest purchase price paid by the state for like items or services purchased in a similar quantity within the last six months. If this information is not available, then the lowest of three phone quotes verified by price indices or purchases made by other government entities will be used.

**Follow-Up:** An activity that monitors the status of a purchase to ensure that specified delivery schedules are met.

**Force Majeure:** An irresistible or extraordinary force, natural event, or effect that cannot be reasonably anticipated or foreseen, prevented, or controlled. An act of God.

**General Terms and Conditions:** Standard clauses and requirements incorporated into all solicitations (IFB/RFP) and resulting contracts which are derived from laws, or administrative procedures of the government agency. (Also called "Boiler Plate.")

**Goods:** Material, equipment, supplies, printing, and automated data processing hardware and software (*Code of Virginia*, § 11-37).

**Grant (or Grant-in-Aid):** For the purposes of this manual, these are fund transfers made by one party to another (e.g., Federal to state or local government) for the procurement of goods and/or services, that may be undertaken for the purpose of a public interest, benefit, or undertaking, as specified under the terms of the agency granting the use of funds.

**Hazardous Material:** A substance or material which has been determined by the U.S. Secretary of Transportation to be capable of posing an unreasonable risk to health, safety, and property when transported in commerce.

**Informality:** A minor defect or variation of the bid or proposal from the exact requirements of the Invitation for Bid or the Request for Proposal, which does not affect the price, quality, quantity, or delivery schedule for the goods, services or construction being procured (*Code of Virginia*, § 11-37).

**Inspection:** Examination and testing of goods and services to determine whether the goods and services furnished conform to contract requirements.

**Invitation for Bids (IFB):** A document, containing or incorporating by reference the specifications or scope of work and all contractual terms and conditions, that is used to solicit written bids for a specific requirement for goods or nonprofessional services. This type of solicitation is also referred to as an Invitation to Bid.

**Late Bid or Proposal:** A bid or proposal which is received at the place designated in the Invitation for Bids or Request for Proposal after the deadline established by the solicitation.

**Latent Defect:** A deficiency or imperfection that impairs worth or utility that cannot be readily detected from visual examination of a product. Examples would be the use of non-specification materials in manufacture, or missing internal parts such as a gasket, gear, or electrical circuit, etc.

**Logistics:** The process of planning, implementing, and controlling the efficient, effective flow and storage of goods, services, and related information from point of origin to point of consumption for the purpose of conforming to customer requirements.

**Life Cycle Costing:** A cost-analysis tool which incorporates not only the purchase price of a piece of equipment, but all operating and related costs over the life of the item, including maintenance, down time, energy costs, etc., as well as salvage value.

**Liquidated Damages:** A sum stated in a contract to be paid as ascertained damages for failure to perform in accordance with the contract. The damage figure stipulated must be a reasonable estimate of the probable loss to the agency, and not calculated simply to impose a penalty on the contractor.

**Minority-owned/controlled Business:** A business enterprise that is owned or controlled by one or more socially or economically disadvantaged persons. Such disadvantage may arise from cultural, racial, chronic economic circumstances or background or other similar cause. Such persons include, but are not limited to Blacks, Hispanic Americans, Asian Americans, American Indians, Eskimos, and Aleuts.

→ **Multiple Award:** The award of multiple contracts for goods or services other than professional services, meeting the same specifications, resulting from one solicitation. When a Multiple Award clause is included in an Invitation for Bids/Request for Proposal, awards may be made to more than one bidder/offeror (*Code of Virginia*, § 11-37). This is appropriate in situations where the award of a single contract would be impractical and awards are limited to the least number of suppliers necessary for a workable contract program.

**Negotiation:** A bargaining process between two or more parties, each with its own viewpoints and objectives, seeking to reach an agreement, or settlement of, a matter of common concern, on terms that are mutually beneficial and satisfactory to both.

**Non-Competitive Negotiation:** The process of arriving at an agreement through discussion and compromise, when only one source is practicably available.

**Nonprofessional Services:** Any services not specifically identified as professional services in the definition of professional services (*Code of Virginia*, § 11-37).

**Notice of Award:** A Notice of Award is written notification stating that a vendor has received an award by the State.

**Notice of Intent to Award:** The Notice of Intent to Award is a written notice, or bid tabulation sheet publicly displayed, prior to award, that shows the selection of a vendor for the award of a specific contract or purchase order. This decision may be changed prior to the actual award of a contract or purchase order.

**Offeror:** A person who makes an offer in response to a Request for Proposals.

**Order/Ship Time (OST):** Order/Ship Time is the time after award required by suppliers to fill an order and ship by designated means (truck, rail, or air) to the delivery point.

**Payment Bond, For Labor and Material:** A bond required of a contractor to assure fulfillment of the contractor's obligation to pay all persons supplying labor or materials in the performance of the work provided for in the contract.

**Performance Bond:** A contract of guarantee executed in the full sum of the contract amount subsequent to award by a successful bidder to protect the government from loss due to his/her inability to complete the contract in accordance with its terms and conditions.

**Performance Specification:** A specification setting forth performance requirements that have been determined to be necessary for the item involved to perform and last as required.

**Potential Bidder or Offeror:** A person who, at the time an agency awards or proposes to award a contract, is engaged in the sale or lease of goods, or the sale of services, insurance or construction of the type to be procured under such contract, and who at such time is eligible and qualified in all respects to perform that contract, and who would have been eligible and qualified to submit a bid or proposal had the contract been procured through competitive sealed bidding or competitive negotiation (*Code of Virginia*, § 11-37).

**Pre-bid or Pre-proposal Conference:** Meeting held with prospective bidders or offerors prior to submission of bids or proposals, to review, discuss, and clarify technical considerations, specifications, and standards relative to the proposed procurement.

**Prequalification:** A procedure to prequalify products or vendors and limit consideration of bids or proposals to only those products or vendors which have been prequalified.

**Printing:** The process or business of producing printed material by means of a printing press, copier or similar means or all copies of a publication produced by such means.

**Procurement:** The procedures for obtaining goods or services, including all activities from the planning steps and preparation and processing of a requisition, through receipt and acceptance of delivery and processing of a final invoice for payment.

**Professional Services:** Shall mean work performed by an independent contractor within the scope of the practice of accounting, actuarial services, architecture, land surveying, landscape architecture, dentistry, law, medicine, optometry, pharmacy, or professional engineering. "Professional Services" shall also include services of an economist procured by the State Corporation Commission (*Code of Virginia*, § 11-37).

**Proposal:** An offer made by one party to another as a basis for negotiations, prior to the creation of a contract.

**Proprietary Specification:** A specification that restricts the acceptable product(s) or service(s) to that of one or more manufacturer(s) or vendor(s). A common example would be the use of a "brand name" specification that would exclude consideration of proposed "equals." Although all sole source specifications are proprietary, all proprietary specifications are not sole source. Proprietary items may be available from several distributors through competitive bidding.

**Protest:** A written complaint about an administrative action or decision brought by a bidder or offeror to the appropriate administrative section with the intention of receiving a remedial result.

**Public Bid Opening:** The process of opening and reading bids at the time and place specified in the Invitation for Bids and in the presence of anyone who wishes to attend.

**Public Body:** In the context of this manual, any state-funded agency that is required to follow the provisions of the *Code of Virginia* and the *Virginia Public Procurement Act (VPPA)*, in the course of their procurement activities.

**Public Posting:** The display of procurement notices in an area or on a board designated and regularly used for that purpose that is available to the public during normal working hours.

**Public Telecommunications Services:** Public telecommunications are non-commercial educational or cultural radio and television programs and related instructional or informational material that may be transmitted by means of electronic communications (see also “Telecommunications Services”).

**Purchase Order:** A document used by DGS/DPS to execute a purchase transaction with a vendor. It serves as notice to a vendor that an award has been made and that performance can be initiated under the terms and conditions of the contract.

**Purchasing Agency:** A state agency or institution purchasing goods or services.

**Qualified Contractors List (OCL):** A list of contractors whose capability to provide a service has been evaluated and approved based on written prequalification procedures.

**Qualified Products List (OPL):** A list of products that have been tested and approved based on written prequalification procedures.

**Regular Dealer:** A person or firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles, or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and sold to the public in the usual course of business.

**Request for Information (RFI):** An informal document issued when an agency is not aware of the products available in the market which may satisfy its requirements. The use of an RFI does not require a purchase requisition, however a RFI may result in the development of a requisition, or the issuance of an IFB or RFP after an agency determines the types of products that are available which will satisfy its requirements. An RFI cannot be made into an agreement.

**Request for Proposal (RFP):** All documents, whether attached or incorporated by reference, utilized for soliciting proposals; the RFP procedure requires negotiation with offerors (to include prices) as distinguished from competitive bidding when using an Invitation for Bids.

**Responsible Bidder or Offeror:** A person or firm who has the capability, in all respects, to perform fully the contract requirements and the moral and business integrity and reliability which will assure good faith performance, and who has been prequalified, if required (*Code of Virginia*, § 11-37).

**Responsive Bidder:** A person or firm who has submitted a bid which conforms in all material respects to the Invitation for Bids (*Code of Virginia*, § 11-37).

**Restocking Charge:** Charges incurred by a purchasing agency for any material goods that are returned to a vendor or seller and are associated with the normal cost and expense that must be incurred by the vendor for accepting the return of an item to inventory (see section 10.8).

**Sealed Bid:** A bid which has been submitted in a sealed envelope to prevent its contents from being revealed or known before the deadline for the submission and opening of all bids.

**Services:** Services are any activities performed by an independent contractor wherein the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials and supplies (*Code of Virginia*, § 11-37).

**Sheltered Workshops:** A work-oriented rehabilitative facility with a controlled working environment and individual goals which utilizes work experience and related services for assisting the handicapped person to progress toward normal living and a productive vocational status (*Code of Virginia*, § 11-37).

**Single Source:** A single response to a competitive solicitation wherein competition was available but only one response was received (see paragraph 2.4i).

**Small Business:** Corporation, partnership, sole proprietorship, or other legal entity formed for the purpose of making a profit, which is independently owned and operated, has either fewer than 100 employees or less than \$1,000,000 in annual gross receipts.

**Software:** All applications software, whether packaged or requiring development, and all systems software such as assemblers, compilers, CPU performance measurement systems, data base management systems, file back-up and recovery, job accounting, operating systems, programming aids and development systems and soft-merge utilities.

**Sole Source:** A product or service which is practicably available only from one source.

**Solicitation:** An Invitation for Bids (IFB), a Request for Proposals (RFP), telephone calls, or any other document issued by the state to obtain bids or proposals for the purpose of entering into a contract.

**Special Terms and Conditions:** Special clauses pertaining to a specific procurement which may supplement or in some cases supersede one or more general terms and conditions, e.g., Award Clause, Extension of Contract.

**Specification:** A description of the technical requirements for a material, product, or service that includes the criteria for determining whether these requirements are met. a specification may describe the performance parameters which a supplier has to meet, or it may provide a complete design disclosure of the work or job to be done. Specifications for service contracts normally take the form of a statement of work.

**Spot Purchase:** A one-time purchase made in the open market. If it is under the small purchase threshold, it will be made in accordance with the applicable small purchase procedures. If it is over the small purchase threshold, it will be made by competitive sealed bidding or by an exception thereto authorized by law.

**State ADP Contracts:** State ADP contracts are executed by the Department of Information Technology's (DIT) Acquisition Services Division (ASD) on behalf of all agencies, institutions and localities of the Commonwealth of Virginia. With the exception of Telecommunications Services Contracts, unless otherwise stated in an individual contract, state ADP agreements executed by DIT are not mandatory.

**Surplus Property:** Property which is in excess of the needs of an agency and which is not required for its foreseeable need. The property may be used or new, but possess some usefulness for the purpose for which it was intended or for some other purpose. It includes scrap, which is material that is damaged, defective, or deteriorated to the extent that it has no value except for its basic material content. Surplus Property must be disposed of in accordance with *Code of Virginia*, § 2.1-457.2.

**Technical Proposal:** An unpriced proposal which sets forth in detail that which a vendor proposes to furnish in response to a solicitation.

**Technical Specifications:** Specifications that establish the material and performance requirements of goods and services.

**Telecommunications Equipment:** Defined as, but not limited to: channel service units, data compression units, line drivers, bridges, routers, and Asynchronous Transfer Mode switches (ATM), multiplexors and modems. Also, private branch exchanges (PBX), Integrated Services Digital Network (ISDN) terminal equipment, voice mail units, automatic call distribution (ACD), voice processing units and key systems. Video communications products such as: coders, multi-point conferencing units and inverse multiplexors.

**Telecommunications Services:** These services include, but are not limited to; data communication services, such as point-to-point and multipoint circuits, Internet, Frame Relay SMDS, ATM, and dial up lines, and voice communications services such as Centrex, business/private lines and WATS lines including 800 services, tie and access lines, long distance services, voice mail, pay phones, wireless communications and cellular services (see also "Public Telecommunications Services").

**Term Contracting:** A technique by which a source of supply is established for a specific period of time. Term contracts are established based on indefinite quantities to be ordered "as needed," although such contracts can specify definite quantities with deliveries extended over the contract period. Also see Contract Requirements Type.

**Termination For Convenience:** The termination by a Commonwealth purchasing office, at its discretion, of the performance of work in whole or in part and makes settlement of the contractor's claims in accordance with appropriate policy and procedures.

**Termination For Default:** Action taken by a purchasing office to order a contractor to cease work under the contract, in whole or in part, because of the contractor's failure to perform in accordance with the contract's terms and conditions.

**Unsealed Bid:** An unsealed written offer conveyed by U.S. Mail, commercial courier service, facsimile, e-mail, or other means. The bids are normally opened and recorded as received.

**Used Equipment:** Equipment which has been previously owned and used and is offered "where is" "as is." It does not include demonstration, factory rebuilt or remanufactured equipment marketed through normal distribution outlets.

**Value Analysis:** A systematic and objective evaluation of the value of a good or service, focusing on an analysis of function relative to the cost of manufacturing or providing the item or service. Value analysis provides insight into the inherent worth of the final good or service, possibly altering specification and quality requirements that could reduce costs without impairing functional suitability.

**Vendor:** One who sells goods or services.

**Virginia Public Procurement Act:** Chapter 7 of Title 11, *Code of Virginia*, which enunciates the public policies pertaining to governmental procurement from nongovernmental sources.

**Will:** As used in an Invitation for Bids or Request for Proposals, the word "will" is normally used to convey an obligation incurred by the agency or owner.

**Woman-owned/controlled Business:** Business enterprise at least 50 percent of which is owned by females or in the case of a publicly owned business at least 51 percent of the stock of which is owned by females.

## ABBREVIATIONS & ACRONYMS

ITEM	DESCRIPTION
ADPE	Automatic Data Processing Equipment
AG	Attorney General
APO	Agency Purchase Order
APSPM	Agency Procurement and Surplus Property Manual
BPA	Blanket Purchase Agreement
CAM	Compliance Assurance Manual (DOA)
CAPA	Capital Area Purchasing Association
CAPP	Commonwealth Accounting Policies and Procedures
CARS	Commonwealth Accounting & Reporting System
CFR	Code of Federal Regulations
CIM	Council on Information Management
CO	Change Order
→ COTS	Council on Technology Services
COIA	Conflict Of Interest Act
CORPRINT	Corrections Print Shop
CPI	Consumer Price Index
C.P.M.	Certified Purchasing Manager
CPM	Critical Path Modeling (or Method)
CPPB	Certified Professional Public Buyer
CPPO	Certified Public Purchasing Officer
C/S	Chief of Staff
DEQ	Department of Environmental Quality
DGS	Department of General Services
DIT	Department of Information Technology
→ DIT/ASD	Department of Information Technology/Acquisition Services Division
→ DIT/TD	Department of Information Technology/Telecommunications Division
DMBE	Department of Minority Business Enterprise
DOA	Department Of Accounts
DPB	Department of Planning and Budget
DPS	Division of Purchases and Supply
EPA	Environmental Protection Agency
FAACS	Fixed Asset Accounting & Control System
FCC	Federal Communications Commission
F.O.B.	Free On Board
FOIA	Freedom Of Information Act
FTE	Full Time Equivalent (Employees)
GSA	General Services Administration
HVAC	Heating, Ventilation, and Air Conditioning
IFB	Invitation For Bid



**APPENDIX B**

**TERMS & CONDITIONS**

<b>SECTION I</b>	<b>GENERAL TERMS &amp; CONDITIONS</b>	<b>B-2 to B-6a</b>
<b>SECTION II</b>	<b>SPECIAL TERMS &amp; CONDITIONS: GOODS &amp; NONPROFESSIONAL SERVICES</b>	<b>B-7 to B-22a</b>
<b>SECTION III</b>	<b>ADDITIONAL CONDITIONS: NON-CAPITAL OUTLAY CONSTRUCTION PROJECTS</b>	<b>B-23 to B-32</b>
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**APPENDIX B**

**SECTION I**

**REQUIRED GENERAL TERMS AND CONDITIONS  
GOODS AND NONPROFESSIONAL SERVICES**

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These General Terms and Conditions are required for use in written solicitations issued by state agencies for procurements that are subject to this manual unless changed, deleted or revised by the legal advisor to your agency. You should edit the wording to fit the type of solicitation (IFB or RFP) by either deleting or lining out the inappropriate words in all parenthesis. For service contracts clauses, Q, R, and S are normally not applicable and may be omitted. For goods contracts, omit clause T.

- A. **VENDORS MANUAL:** This solicitation is subject to the provisions of the Commonwealth of Virginia *Vendors Manual* and any revisions thereto, which are hereby incorporated into this contract in their entirety. A copy of the manual is normally available for review at the purchasing office and in addition, a copy can be obtained by calling the Division of Purchases and Supply (804) 786-3842.
- B. **APPLICABLE LAWS AND COURTS:** This solicitation and any resulting contract shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth. The contractor shall comply with all applicable federal, state and local laws, rules and regulations.
- C. **ANTI-DISCRIMINATION:** By submitting their (bids/proposals), (bidders/offerors) certify to the Commonwealth that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and § 11-51 of the *Virginia Public Procurement Act*.

In every contract over \$10,000 the provisions in 1. and 2. below apply:

- 1. During the performance of this contract, the contractor agrees as follows:
  - a. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except there is a bona fide occupational qualification reasonably necessary to

the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

- b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.
- c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.

2. The contractor will include the provisions of 1. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

D. **ETHICS IN PUBLIC CONTRACTING:** By submitting their (bids/proposals), (bidders/offerors) certify that their (bids/proposals) are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other (bidder/offeror), supplier, manufacturer or subcontractor in connection with their (bid/proposal), and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

E. **IMMIGRATION REFORM AND CONTROL ACT OF 1986:** By submitting their (bids/proposals), (bidders/offerors) certify that they do not and will not during the performance of this contract employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986.

F. **DEBARMENT STATUS:** By submitting their (bids/proposals), (bidders/offerors) certify that they are not currently debarred by the Commonwealth of Virginia from submitting bids or proposals on contracts for the type of goods and/or services covered by this solicitation, nor are they an agent of any person or entity that is currently so debarred.

G. **ANTITRUST:** By entering into a contract, the contractor conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Commonwealth of Virginia under said contract.

H. **MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS FOR IFBs AND RFPs** (Insert wording below appropriate to the solicitation type as indicated):

1. (For Invitation For Bids:) Failure to submit a bid on the official state form provided for that purpose shall be a cause for rejection of the bid. Modification of or additions to any portion of the Invitation for Bids may be cause for rejection of the bid; however, the Commonwealth reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a bid as nonresponsive. As a precondition to its acceptance, the Commonwealth may, in its sole discretion, request that the bidder withdraw or modify nonresponsive portions of a bid which do not affect quality, quantity, price, or delivery. No modification of or addition to the provisions of the contract shall be effective unless reduced to writing and signed by the parties.

2. (For Request For Proposals :) Failure to submit a proposal on the official state form provided for that purpose may be a cause for rejection of the proposal. Modification of or additions to the General Terms and Conditions of the solicitation may be cause for rejection of the proposal; however, the Commonwealth reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a proposal.

I. **CLARIFICATION OF TERMS :** If any prospective (bidder/offeror) has questions about the specifications or other solicitation documents, the prospective (bidder/offeror) should contact the buyer whose name appears on the face of the solicitation no later than five working days before the due date. Any revisions to the solicitation will be made only by addendum issued by the buyer.

J. **PAYMENT:**

1. To Prime Contractor:

- a. Invoices for items ordered, delivered and accepted shall be submitted by the contractor directly to the payment address shown on the purchase order/contract. All invoices shall show the state contract number and/or purchase order number; social security number (for individual contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations). b. Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.
- c. All goods or services provided under this contract or purchase order, that are to be paid for with public funds, shall be billed by the contractor at the contract price, regardless of which public agency is being billed.
- d. The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or the date of offset when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act.
- e. **Unreasonable Charges.** Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges which appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, the Commonwealth shall promptly notify the contractor, in writing, as to those charges which it considers unreasonable and the basis for the determination. A contractor may not institute legal action unless a settlement cannot be reached within thirty (30) days of notification. The provisions of this section do not relieve an agency of its prompt payment obligations with respect to those charges which are not in dispute (*Code of Virginia*, § 11-69).

2. To Subcontractors :

- a. A contractor awarded a contract under this solicitation is hereby obligated:
  - (1) To pay the subcontractor(s) within seven (7) days of the contractor's receipt of payment from the Commonwealth for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or
  - (2) To notify the agency and the subcontractor(s), in writing, of the contractor's intention to withhold payment and the reason.
- b. The contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all amounts owed by the contractor that remain unpaid seven (7) days following receipt of payment from the Commonwealth, except for amounts withheld as stated in (2) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier contractor performing under the primary contract. A contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Commonwealth.

K. **PRECEDENCE OF TERMS:** Paragraphs A-J of these General Terms and Conditions shall apply in all instances. In the event there is a conflict between any of the other General Terms and Conditions and any Special Terms and Conditions in this solicitation, the Special Terms and Conditions shall apply.

L. **QUALIFICATIONS OF (BIDDERS/OFFERORS):** The Commonwealth may make such reasonable investigations as deemed proper and necessary to determine the ability of the (bidder/offeror) to perform the services/furnish the goods and the (bidder/offeror) shall furnish to the Commonwealth all such information and data for this purpose as may be requested. The Commonwealth reserves the right to inspect (bidder's/offeror's) physical facilities prior to award to satisfy questions regarding the (bidder's/offeror's) capabilities. The Commonwealth further reserves the right to reject any (bid/proposal) if the evidence submitted by, or investigations of, such (bidder/offeror) fails to satisfy the Commonwealth that such (bidder/offeror) is properly qualified to carry out the obligations of the contract and to provide the services and/or furnish the goods contemplated therein.

- M. **TESTING AND INSPECTION:** The Commonwealth reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.
- N. **ASSIGNMENT OF CONTRACT:** A contract shall not be assignable by the contractor in whole or in part without the written consent of the Commonwealth.
- O. **CHANGES TO THE CONTRACT:** Changes can be made to the contract in any of the following ways:
1. The parties may agree in writing to modify the scope of the contract. An increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.
  2. The Purchasing Agency may order changes within the general scope of the contract at any time by written notice to the contractor. Changes within the scope of the contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The contractor shall comply with the notice upon receipt. The contractor shall be compensated for any additional costs incurred as the result of such order and shall give the Purchasing Agency a credit for any savings. Said compensation shall be determined by one of the following methods:
    - a. By mutual agreement between the parties in writing; or
    - b. By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the contractor accounts for the number of units of work performed, subject to the Purchasing Agency's right to audit the contractor's records and/or to determine the correct number of units independently; or
    - c. By ordering the contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The contractor shall present the Purchasing Agency with all vouchers and records of expenses incurred and savings realized. The Purchasing Agency shall have the right to audit the records of the contractor as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the Purchasing Agency within thirty (30) days from the date of receipt of the written order from the Purchasing Agency. If the parties fail to agree on an amount of adjustment, the question of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the procedures for resolving disputes provided by the Disputes Clause of this contract or, if there is none, in accordance with the disputes provisions of the Commonwealth of Virginia *Vendors Manual*. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this contract shall excuse the contractor from promptly complying with the changes ordered by the Purchasing Agency or with the performance of the contract generally.
- P. **DEFAULT:** In case of failure to deliver goods or services in accordance with the contract terms and conditions, the Commonwealth, after due oral or written notice, may procure them from other sources and hold the contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the Commonwealth may have.
- Q. **TAXES:** Sales to the Commonwealth of Virginia are normally exempt from State sales tax. State sales and use tax certificates of exemption, Form ST-12, will be issued upon request. Deliveries against this contract shall usually be free of Federal excise and transportation taxes. The Commonwealth's excise tax exemption registration number is 54-73-0076K.  
**(NOT NORMALLY REQUIRED FOR SERVICE CONTRACTS)**
- R. **USE OF BRAND NAMES:** Unless otherwise provided in this solicitation, the name of a certain brand, make or manufacturer does not restrict (bidders/offerors) to the specific brand, make or manufacturer named, but conveys the general style, type, character, and quality of the article desired. Any article which the public body, in its sole discretion, determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. The (bidder/offeror) is responsible to clearly and specifically identify the product being offered and to provide sufficient descriptive literature, catalog cuts and technical detail to enable the

Commonwealth to determine if the product offered meets the requirements of the solicitation. This is required even if offering the exact brand, make or manufacturer specified. Normally in competitive sealed bidding only the information furnished with the bid will be considered in the evaluation. Failure to furnish adequate data for evaluation purposes may result in declaring a bid nonresponsive. Unless the (bidder/offeror) clearly indicates in its (bid/proposal) that the product offered is an equal product, such (bid/proposal) will be considered to offer the brand name product referenced in the solicitation.

**(NOT NORMALLY REQUIRED FOR SERVICE CONTRACTS)**

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

**(NOT NORMALLY REQUIRED FOR SERVICE CONTRACTS)**

T. **INSURANCE:** By signing and submitting a bid or proposal under this solicitation, the bidder or offeror certifies that if awarded the contract, it will have the following insurance coverages at the time the contract is awarded. For construction contracts, if any subcontractors are involved, the subcontractor will have workers' compensation insurance in accordance with §§ 11-46.3 and 65.2-800 et seq. of the *Code of Virginia*. The bidder or offeror further certifies that the contractor and any subcontractors will maintain these insurance coverages during the entire term of the contract and that all insurance coverages will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

**INSURANCE COVERAGES AND LIMITS REQUIRED:**

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

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

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

**\* When Used: FOR CONSTRUCTION AND/OR SERVICE CONTRACTS - Required in all solicitations where a contractor will perform work or services in or on state facilities. The limits are minimums and may be**

increased. The Department of General Services, Division of Risk Management (804-786-3943) should be contacted when other types of coverage may be required or when in doubt as to the need for other limits. When soliciting one of the Professions/Services listed above include the Professional Liability/Errors and Omissions coverage and limits as shown. When not soliciting one of these Professions/Services, omit the required coverages section from the General Terms and Conditions boilerplate.

- U. **ANNOUNCEMENT OF AWARD:** Upon the award or the announcement of the decision to award a contract as a result of this solicitation, the purchasing agency will publicly post such notice on \_\_\_\_\_ for a minimum of 10 days.

**\* When Used:** For all procurements involving solicitation using an Invitation for Bids or Request for Proposal, include how the notice of the award or the announcement of the decision to award will be made. Fill in the blank with the location or manner of posting used by the public body, e.g., on the public body’s public posting notice board, on the DGS/DPS Web site, on another Web site or posting board, or other location.

- V. **DRUG-FREE WORKPLACE:** During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor’s employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor’s workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, “*drug-free workplace*” means a site for the performance of work done in connection with a specific contract awarded to a contractor in accordance with this chapter, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

**\* When Used:** This clause shall be included in every contract over \$10,000. If procuring by unsealed solicitation, the Commonwealth’s General Terms and Conditions may be incorporated by reference.

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

**SECTION II****SPECIAL TERMS AND CONDITIONS  
GOODS AND NONPROFESSIONAL SERVICES**

The following is an index of special terms and conditions clauses that are to be used at the buyer's discretion in IFBs and RFPs as the individual procurement may dictate. These clauses cover a broad spectrum of goods, printing, and services and are followed by a brief explanation (indicated by an asterisk \*) of when each should be used. Other special terms and conditions may be developed and included in the solicitation when appropriate.

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1. **ADVERTISING:** In the event a contract is awarded for supplies, equipment, or services resulting from this bid/proposal, no indication of such sales or services to the (name of institution) will be used in product literature or advertising. The contractor shall not state in any of its advertising or product literature that the Commonwealth of Virginia or any agency or institution of the Commonwealth has purchased or uses its products or services.

**\* When Used: This provision is for use in solicitations for goods or services when the Commonwealth wants to ensure that the use of the goods or services by the state is not used in advertising or product literature.**

2. **ASBESTOS:** Whenever and wherever during the course of performing any work under this contract, the contractor discovers the presence of asbestos or suspects that asbestos is present, he shall stop the work immediately, secure the area, notify the building owner and await positive identification of the suspect material. During the downtime in such a case, the contractor shall not disturb any surrounding surfaces but shall protect the area with suitable dust covers. In the event the contractor is delayed due to the discovery of asbestos or suspected asbestos, then a mutually agreed extension of time to perform the work shall be allowed the contractor but without additional compensation due to the time extension.

**\* When Used: For use in service contracts or furnish and install goods contracts when it is possible that the contractor may encounter asbestos during performance of the contract.**

3. **AS BUILT DRAWINGS:** The contractor shall provide the Commonwealth a clean set of reproducible “as built” drawings and wiring diagrams, marked to record all changes made during installation or construction. The contractor shall also provide the Commonwealth with maintenance manuals, parts lists and a copy of all warranties for all equipment. All “as built” drawings and wiring diagrams, maintenance manuals, parts lists and warranties shall be delivered to the Commonwealth upon completion of the work and prior to final payment.

**\* When Used: For furnish and install and construction and renovation projects; i.e., fire alarm systems, heating and air conditioning systems, refrigeration rooms, building modifications, major equipment installations, etc.**

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

**\* When Used: Must be included in all term contracts for goods or services. Do not use in spot purchases.**

5. **AUTHORIZED USERS:** (Name of State agency, institutions and/or public body) is issuing this solicitation in cooperation with other agencies and institutions. Requirements of (name specific agencies or institutions that are part of this cooperative agreement) have been combined, and the total estimated usage is shown within this solicitation. (Name of issuing agency) is responsible for administering the program; therefore, correspondence should be directed to the (name of issuing agency). The contractor shall provide a volume purchase report prior to contract expiration or renewal action.

**\* When used: Used in cooperative purchasing solicitations where requirements of two or more public bodies have been combined to increase efficiency or reduce administrative expenses. Public bodies must be specifically identified and their expected combined usage shown in the solicitation or use of the contract is not authorized.**

6. **AVAILABILITY OF FUNDS:** It is understood and agreed between the parties herein that the agency shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this agreement.

**\* When Used: Term contracts only or if the contract performance will overlap fiscal years.**

7. **AWARD OF CONTRACT:** (Note: All solicitations must specify the method of award. Select one of the following clauses, as appropriate, for the type of procurement:)

- A. **AWARD:** An award will be made to the lowest responsive and responsible bidder. Evaluation will be based on net prices. Unit prices, extensions and grand total must be shown. In case of arithmetic errors, the unit price will govern. If cash discount for prompt payment is offered, it must be clearly shown in the space provided. Discounts for prompt payment will not be considered in making awards. The State reserves the right to reject any and all bids in whole or in part, to waive any informality, and to delete items prior to making an award.

**\* When Used: This award clause can be used in invitation for bids for goods or services.**

- B. **AWARD:** The Commonwealth will make the award(s) on \_\_\_\_\_ basis to the lowest responsive and responsible bidder. The purchasing office reserves the right to conduct any test it may deem advisable and to make all evaluations. The Commonwealth also reserves the right to reject any or all bids, in whole or in part, to waive informalities and to delete items prior to making the award, whenever it is deemed in the sole opinion of the procuring public body to be in its best interest.

**\* When Used: For goods or nonprofessional services by filling in the blank, i.e., line item, total sum, lot, etc. This clause shall not be used in a Request for Proposals.**

- C. **AWARD:** The right is reserved to make a separate award of each item, a group of items or all items, and to make an award either in whole or in part, whichever is deemed in the best interest of the Commonwealth. The award or awards will be made to the lowest responsive, responsible bidder or bidders as applicable.

**\* When Used: For use when multiple line items are involved, provided that multiple awards may result in a savings to the Commonwealth.**

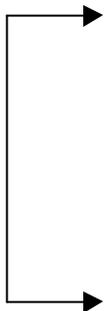
- D. **AWARD TO MULTIPLE BIDDERS:**

1. The Commonwealth will make awards on a \_\_\_\_\_ basis to the lowest responsive and responsible bidders, provided that the next lowest bidders are within \_\_\_% of the lowest bidder and provided that different brands are offered. Due consideration will be given to price, quality as judged by tests and previous experience, and of the ability of the bidder to render required services. The Commonwealth reserves the right to conduct any tests it may deem advisable and to make all evaluations. The Commonwealth also reserves the right to reject any or all bids, in whole or in part, to waive informalities and to delete items prior to making the award, whenever it is deemed in the sole opinion of the procuring public body to be in its best interest.

**\* When Used: For goods term contracts only when multiple awards will be made based on different brands being offered. Specify how the award will be made, i.e., line item, total sum, lot, etc. plus the number of awards and the percentage figure. This clause shall not be used in a Request for Proposals.**

2. **AWARD TO MULTIPLE BIDDERS:** The Commonwealth reserves the right to make multiple awards as a result of this solicitation. The award(s) will be made to the lowest responsive and responsible bidder(s) meeting the requirements of the solicitation. The Commonwealth reserves the right to conduct any tests it may deem advisable and to make all evaluations. The Commonwealth also reserves the right to reject any or all bids, in whole or in part, to waive informalities and to delete items prior to making the award, whenever it is deemed in the sole opinion of the procuring public body to be in its best interest.

**\* When Used: For goods or nonprofessional services when multiple awards may be made in order to meet the requirements of the purchasing agency. This clause shall not be used for construction or professional services.**



E. **AWARD:** Selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals on the basis of the evaluation factors included in the Request for Proposals, including price, if so stated in the Request for Proposals. Negotiations shall be conducted with the offerors so selected. Price shall be considered, but need not be the sole determining factor. After negotiations have been conducted with each offeror so selected, the agency shall select the offeror which, in its opinion, has made the best proposal, and shall award the contract to that offeror. The Commonwealth may cancel this Request for Proposals or reject proposals at any time prior to an award, and is not required to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous (*Code of Virginia*, § 11-65D). Should the Commonwealth determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror. The award document will be a contract incorporating by reference all the requirements, terms and conditions of the solicitation and the contractor's proposal as negotiated.

**\* When Used: For goods and nonprofessional services when competitive negotiation will be used. This clause shall not be used in an Invitation for Bids or a professional services Request for Proposals.**

F. **AWARD TO MULTIPLE OFFERORS:** Selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals on the basis of the evaluation factors included in the Request for Proposals, including price, if so stated in the Request for Proposals. Negotiations shall be conducted with the offerors so selected. Price shall be considered, but need not be the sole determining factor. After negotiations have been conducted with each offeror so selected, the agency shall select the offeror which, in its opinion, has made the best proposal, and shall award the contract to that offeror. The Commonwealth reserves the right to make multiple awards as a result of this solicitation. The Commonwealth may cancel this Request for Proposals or reject proposals at any time prior to an award, and is not required to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous (*Code of Virginia*, § 11-65D). Should the Commonwealth determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror. The award document will be a contract incorporating by reference all the requirements, terms and conditions of the solicitation and the contractor's proposal as negotiated.

**\* When Used: For goods and nonprofessional services when competitive negotiation will be used and multiple awards are desired to meet the requirements of the agency/institution. This clause shall not be used in an Invitation for Bids or a professional services Request for Proposals.**

G. **AWARD:** The Commonwealth shall engage in individual discussions with two or more offerors deemed fully qualified, responsible and suitable on the basis of initial responses and with emphasis on professional competence, to provide the required services. Repetitive informal interviews shall be permissible. Such offerors shall be encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project, as well as alternative concepts. At the discussion stage the public body may discuss non-binding estimates of total project costs, including, but not limited to, life-cycle costing, and, where appropriate, non-binding estimates of price for services. Proprietary information from competing offerors shall not be disclosed to the public or to competitors. At the conclusion of the informal interviews, on the basis of evaluation factors published in the Request for Proposals and all information developed in the selection process to this point, the purchasing agency shall select, in the order of preference, two or more offerors whose professional qualifications and proposed services are deemed most meritorious. Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract satisfactory and advantageous to the purchasing agency can be negotiated at a price considered fair and reasonable, the award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first shall be formally terminated and negotiations conducted with the offeror ranked second, and so on, until such a contract can be negotiated at a fair and reasonable price. Should the Commonwealth determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that offeror.

**\* When Used: Professional services only. This clause shall not be used in an Invitation for Bids or to procure non-professional services.**

8. **BEST AND FINAL OFFER (BAFO):** At the conclusion of negotiations, the offeror(s) may be asked to submit in writing, a best and final offer (BAFO). After the BAFO is submitted, no further negotiations shall be conducted with

the offeror(s). The offeror's proposal will be rescored to combine and include the information contained in the BAFO. The decision to award will be based on the final evaluation including the BAFO.

**\* When Used:** Used only in Request for Proposals. This clause should not be used as a matter of routine. If it is anticipated that because of the nature of the requirement, the negotiations could linger, this provision should be used to show clearly when negotiations would end or to cut off negotiations at a particular point called for by the contract officer. See 7.4 for further guidance.

9. **BID ACCEPTANCE PERIOD:** Any bid in response to this solicitation shall be valid for ( ) days. At the end of the ( ) days the bid may be withdrawn at the written request of the bidder. If the bid is not withdrawn at that time it remains in effect until an award is made or the solicitation is canceled.

**\* When Used:** The *Vendors Manual 6.2* states that bids must be valid for the number of days stated.

10. **BID BOND OR GUARANTEE:** Each bid shall be accompanied by a bid bond or guarantee of five percent (5%) of the amount of the bid, which shall be a certified check, cash escrow or a bid bond payable to the Treasurer of the Commonwealth of Virginia. The sureties of all bonds shall be of such surety company or companies as are approved by the State and are authorized to transact business in the Commonwealth of Virginia. Such bid bond or check shall be submitted with the understanding that it shall guarantee that the bidder will not withdraw such bid during the period of \_\_\_\_\_ days following the opening of bids; that if such bid is accepted, the bidder will accept and perform under the terms of the Invitation for Bid and purchase order or contract. The bid guarantee will be returned upon award of contract.

**\* When Used:** Must be used in all solicitations for construction type contracts over \$100,000. Insert the same number of days in the space provided as entered in the Bid Acceptance Period Clause. This clause may also be used for construction type services under \$100,000, as well as for goods or services of any dollar amount. Do not use in RFPs.

11. **BID PRICES:** Bid shall be in the form of a firm unit price for each item during the contract period.

**\* When Used:** In annual goods contracts without a price escalation/de-escalation clause. A different version of this clause, specifically worded to fit the situation, should be used in solicitations for various types of services, and in solicitations for the lease or rental of equipment.

12. **BLANKET FIDELITY BOND:** Contractor shall maintain a blanket fidelity bond obtained from an insurance company licensed to conduct fidelity business in the home state of the contractor and which has earned an A.M. Best Company, Inc. rating of A or better, as reflected in their most current publication, covering all personnel under contract to the Commonwealth of Virginia, with a penalty amount of not less than \$\_\_\_\_\_, naming the Commonwealth of Virginia as co-obligee. Certificate of such protection must be presented to the purchasing agency prior to the start of the service showing name of surety, limit and type of coverage, term of coverage, co-obligee provision and name and address of licensed Virginia insurance agent. The contractor agrees to maintain such bond until one year after the completion of the contract.

**\* When Used:** Debt collection type services. The amount to be inserted in the blank space should be based on the total value of accounts expected to be turned over to the contractor at any one time for collection and not the entire amount of the agency's outstanding accounts.

13. **CANCELLATION OF CONTRACT:** The purchasing agency reserves the right to cancel and terminate any resulting contract, in part or in whole, without penalty, upon 60 days written notice to the contractor. In the event the initial contract period is for more than 12 months, the resulting contract may be terminated by either party, without penalty, after the initial 12 months of the contract period upon 60 days written notice to the other party. Any contract cancellation notice shall not relieve the contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation.

**\* When Used:** Include in all term contracts for goods or services. This clause is not appropriate for use in spot purchases.

- 14. **CERTIFICATION OF MEAT PRODUCTS:** By my signature on this solicitation, I hereby certify and warrant that all products offered for delivery meet or exceed the requirements of the Federal Institutional Meat Purchase Specifications (IMPS), Virginia Department of Agriculture Regulations, Federal Food, Drug and Cosmetic Act, and the Federal Wholesome Meat Act. All products awarded and delivered against this solicitation shall be subject to inspection at destination for specification compliance.

**\* When Used: All solicitations for meat products.**

- 15. **CERTIFIED TEST REPORT:** Each bidder shall provide a copy of a certified test report with their bid. The certified test report shall be from a recognized independent testing laboratory or manufacturer’s quality control laboratory showing all test results and full compliance with the appropriate specifications indicated herein. However, the Commonwealth reserves the right to perform any tests or inspections when and as deemed necessary to verify the certified test report.

**\* When Used: For solicitation of goods where a certified test report may be the only method of determining an item offered would meet specifications.**

- 16. **CONTRACTOR/SUBCONTRACTOR LICENSE REQUIREMENT:** By my signature on this solicitation, I certify that this firm/individual and subcontractor is properly licensed for providing the goods/services specified.

Contractor Name : \_\_\_\_\_ Subcontractor Name: \_\_\_\_\_

License # \_\_\_\_\_ Type \_\_\_\_\_

**\* When Used: Include in all solicitations for specific types of services for which State statutes or regulatory agencies require contractors to be properly registered, licensed or hold a permit prior to performing such work. See 3.4.**

- 17. **CONTRACTOR REGISTRATION:** If a contract for construction, removal, repair or improvement of a building or other real property is for seventy thousand dollars (\$70,000) or more, or if the total value of all such contracts undertaken by bidder/offeror within any twelve-month period is five hundred thousand dollars (\$500,000) or more, the bidder/offeror is required under Title 54.1-1100, Code of Virginia (1950), as amended, to be licensed by the State Board of Contractors a “CLASS A CONTRACTOR.” If such a contract is for seventy five hundred dollars (\$7,500) or more but less than seventy thousand dollars (\$70,000), (one thousand dollars [\$1,000] for electrical, plumbing and HVAC work) the bidder is required to be licensed as a “CLASS B CONTRACTOR.” If such a contract is for one thousand dollars (\$1,000) or more but less than seventy five hundred dollars (\$7,500) and is not for electrical, plumbing and HVAC work, the bidder is required to be licensed as a “CLASS C CONTRACTOR.” The bidder/offeror shall place on the outside of the envelope containing the bid/proposal and shall place in the bid/proposal over his signature whichever of the following notations is appropriate, inserting his contractor license number:

Licensed Class A Virginia Contractor No. \_\_\_\_\_

Specialty \_\_\_\_\_

Licensed Class B Virginia Contractor No. \_\_\_\_\_

Specialty \_\_\_\_\_

Licensed Class C Virginia Contractor No. \_\_\_\_\_

Specialty \_\_\_\_\_

If the bidder/offeror shall fail to provide this information on his bid/proposal or on the envelope containing the bid/proposal and shall fail to promptly provide said contractor license number to the Commonwealth in writing when requested to do so before or after the opening of bids/proposals, he shall be deemed to be in violation of § 54.1-1115 of the *Code of Virginia* (1950), as amended, and his bid/proposal will not be considered.

If a bidder/offeror shall fail to obtain the required license prior to submission of his bid/proposal, the bid/proposal shall not be considered.

**\* When Used: Required to be used in all solicitations by the *Code of Virginia* for all construction, removal, repair or improvements to facilities to be performed by a contractor and its subcontractors. This includes almost all specialty trades, i.e., glue down carpet, painting, fencing, roofing, mechanical, plumbing, electrical, carpentry,**

etc. (NOTE: Class C contractors shall not include electrical, plumbing, and heating, ventilation or air conditioning [HVAC] contractors.) When in doubt as to whether or not this clause should be included in the solicitation, contact the Department of Professional and Occupational Regulation, State Board for Contractors, (804)367-2785.

18. **CONTRACTOR=TITLE TO MATERIALS:** No materials or supplies for the work shall be purchased by the contractor or by any subcontractor subject to any chattel mortgage or under a conditional sales or other agreement by which an interest is retained by the seller. The contractor warrants that he has clear title to all materials and supplies for which he invoices for payment.

\* **When Used:** For use in solicitations for construction and for furnish and install equipment.

➔ 19. **DELIVERY:** State your earliest firm delivery or performance date: \_\_\_\_\_ 20\_\_\_\_. This date may be a factor in making the award.

\* **When Used:** When delivery time is critical for either goods or services.

20. **DELIVERY AND STORAGE:** It shall be the responsibility of the contractor to make all arrangements for delivery, unloading, receiving and storing materials in the building during installation. The owner will not assume any responsibility for receiving these shipments. Contractor shall check with the owner and make necessary arrangements for security and storage space in the building during installation.

\* **When Used:** For furnish and install solicitations, if applicable.

21. **DELIVERY NOTIFICATION:** The Agency shall be notified \_\_\_\_\_ hours prior to delivery of any items so that personnel may be available to allow access to the building and verify items received. Notification shall be made to :

\_\_\_\_\_ .  
Name Phone

\* **When Used:** Use in solicitations for goods if the receiving facility is not staffed at all times during normal working hours.

22. A. **PROMPT PAYMENT DISCOUNTS:** Agency will pay within \_\_\_\_ days after acceptance. A prompt payment discount offered for prompt payment of ( ) calendar days or longer will be calculated in determining net low bid.

\* **When Used:** When the agency knows payments can be made within the time frame specified.

B. **SPECIAL EDUCATIONAL OR PROMOTIONAL DISCOUNTS:** The contractor shall extend any special educational or promotional sale prices or discounts immediately to the Commonwealth during the term of the contract. Such notice shall also advise the duration of the specific sale or discount price.

\* **When Used:** This clause should be considered for use when soliciting bids for products where it is known that vendors or manufacturers have promotional sales opportunities.

23. **EXTRA CHARGES NOT ALLOWED:** The bid price shall be for complete installation ready for the Commonwealth's use, and shall include all applicable freight and installation charges; extra charges will not be allowed.

\* **When Used:** For furnish and install solicitations. Also may be used for inside delivery by changing the wording.

24. **FINAL INSPECTION:** At the conclusion of the work, the contractor shall demonstrate to the authorized owners representative that the work is fully operational and in compliance with contract specifications and codes. Any deficiencies shall be promptly and permanently corrected by the contractor at the contractor's sole expense prior to final acceptance of the work.

\* **When Used:** For furnish and install solicitations.

25. **FLAME RETARDANT CERTIFICATE:** Each bidder/offeror shall submit a certification in writing with their bid/proposal that all materials used in fabricating draperies or curtains are inherently flame retardant or have been treated to meet NFPA Standard 701 (latest version), large or small scale test.

**\* When Used: Must be used in solicitations for draperies or curtains that will be installed in office spaces and dormitories, but not state-owned housing.**

26. **IDENTIFICATION OF BID/PROPOSAL ENVELOPE:** If a special envelope is not furnished, or if return in the special envelope is not possible, the signed bid/proposal should be returned in a separate envelope or package, sealed and identified as follows:

From: _____	_____	_____
Name of Bidder/Offeror	Due Date	Time
_____	_____	
Street or Box Number	IFB No./RFP No.	
_____	_____	
City, State, Zip Code	IFB/RFP Title	

Name of Contract/Purchase Officer or Buyer

The envelope should be addressed as directed on Page 1 of the solicitation.

If a bid/proposal not contained in the special envelope is mailed, the bidder or offeror takes the risk that the envelope, even if marked as described above, may be inadvertently opened and the information compromised which may cause the bid or proposal to be disqualified. Bids/proposals may be hand delivered to the designated location in the office issuing the solicitation. No other correspondence or other bids/proposals should be placed in the envelope.

**\* When Used: For use in solicitations for which the purchasing agency has not furnished a special bid/proposal return envelope or the envelope furnished is not adequate. If the solicitation is a combined two-step IFB, the bidders should be instructed to identify the outside of both the technical proposal and the pricing envelopes to show the bidder's name, company name and address, and bid reference number.**

27. **INDEMNIFICATION:** Contractor agrees to indemnify, defend and hold harmless the Commonwealth of Virginia, its officers, agents, and employees from any claims, damages and actions of any kind or nature, whether at law or in equity, arising from or caused by the use of any materials, goods, or equipment of any kind or nature furnished by the contractor/any services of any kind or nature furnished by the contractor, provided that such liability is not attributable to the sole negligence of the using agency or to failure of the using agency to use the materials, goods, or equipment in the manner already and permanently described by the contractor on the materials, goods or equipment delivered.

**\* When Used: For all contracts involving substantial risk of third party injuries/claims. Authorization to use this clause must be granted by the Department of General Services, Division of Risk Management or be directed by your Assistant Attorney General.**

28. **INSPECTION OF JOB SITE:** My signature on this solicitation constitutes certification that I have inspected the job site and am aware of the conditions under which the work must be accomplished. Claims, as a result of failure to inspect the job site, will not be considered by the Commonwealth.

**\* When Used: Should be used in furnish and install, services and non-capital outlay construction projects.**

29. **INSTALLATION:** All items must be assembled and set in place, ready for use. All crating and other debris must be removed from the premises.

**\* When Used: For inside delivery of goods which require unpacking and assembly.**

30. **INSURANCE, MONEY AND SECURITIES:** Contractor shall maintain a Broad Form Money and Securities Insurance Policy obtained from an insurance company licensed to conduct crime insurance business in the home state of the contractor and which has earned an A.M. Best Company, Inc. rating of A or better, as reflected in their most current publication, covering all money and property entrusted to the contractor by the Commonwealth of Virginia, with limits of coverage of not less than \$\_\_\_\_\_ for Loss Inside the Premises Coverage and not less than \$\_\_\_\_\_ for Loss Outside the Premises Coverage, naming the Commonwealth of Virginia as additional named insured with respect to this contract. Certificate of such protection must be presented to the purchasing agency prior to the start of the service showing name of insurance company, limits and type of coverage, term of coverage, additional insured provision and name and address of licensed insurance agent. The contractor agrees to maintain such policy until the completion of the contract and all money and property of the Commonwealth is remitted to the Commonwealth.

**\* When Used: Required for contracts covering the collection, handling, safekeeping, and/or transporting state monies or securities. The amounts to be entered by the agency should be equal to the estimated maximum amount of monies or securities that would be in the contractor's possession at any one time.**

31. **LABELING OF HAZARDOUS SUBSTANCES:** If the items or products requested by this solicitation are "Hazardous Substances" as defined by § 1261 of Title 15 of the United States Code (U.S.C.) or "Pesticides" as defined in § 136 of Title 7 of the United States Code, then the bidder/offeror, by submitting his bid/proposal, certifies and warrants that the items or products to be delivered under this contract shall be properly labeled as required by the foregoing sections and that by delivering the items or products the bidder/offeror does not violate any of the prohibitions of Title 15 U.S.C. § 1263 or Title 7 U.S.C. § 136.

**\* When Used: Must be included in all solicitations for the purchase of chemicals or compounds which may contain toxic or hazardous substances, i.e., cleaning, janitorial supplies, pesticides, chemicals of all types, etc. (see clause #35).**

32. **LIMITATION OF LIABILITY:**

A. To the maximum extent permitted by applicable law, the contractor will not be liable under this contract for any indirect, incidental, special or consequential damages, or damages from loss of profits, revenue, data or use of the supplies, equipment and/or services delivered under this contract. This limitation of liability will not apply, however, to liability arising from: (a) personal injury or death; (b) defect or deficiency caused by willful misconduct or negligence on the part of the contractor; or (c) circumstances where the contract expressly provides a right to damages, indemnification or reimbursement.

**\* When Used: *This clause should be used on an exception basis* and only when it is anticipated that liability may be an issue and the risk and liability to the Commonwealth is negligible. In such cases, the above clause should be included in written solicitations and contracts, as well as procurements made on a sole source or emergency basis. Examples are: office supplies and equipment, paper products, printing, furniture, audio/visual equipment, consultant services, media services, equipment maintenance, etc. Prior review by risk management and/or legal counsel is recommended before including in a solicitation or contract. Note: The clause may be modified, as applicable, depending on the intended use of the goods and/or services.**

B. **LIMITATION OF LIABILITY:** To the maximum extent permitted by applicable law, the contractor's liability under this contract for loss or damages to government property caused by use of any defective or deficient supplies, products, equipment and/or services delivered under this contract shall not exceed the greater of \$\_\_\_\_\_ or \_\_\_\_\_ times the amount of money paid to the contractor under this contract during the twelve month period preceding the event or circumstance giving rise to such liability. The contractor will not be liable under this contract for any indirect, incidental, special or consequential damages, or damages from loss of profits, revenue, data or use of the supplies, equipment and/or services delivered under this contract. The above limitation of liability is per incident. The limitation and exclusion of damages in the foregoing sentences will not apply, however, to liability arising from: (a) personal injury or death; (b) defect or deficiency caused by willful misconduct or negligence on the part of the contractor; or (c) circumstances where the contract expressly provides a right to damages, indemnification or reimbursement.

**\* When Used: *This clause should be used on an exception basis* and only when it is anticipated that liability will be an issue and the risk to the Commonwealth may be extensive. In such cases, the above clause should be included in written solicitations and contracts, as well as procurements made on a sole source or**

emergency basis. Examples are: software; hardware; two-way communication devices; telephone equipment; medical, dental and laboratory equipment and supplies; elevator maintenance and inspection services; food service; medical service, etc. Caution: The potential risk must be calculated in dollars and indicated in the first blank. Delete the remaining part of the sentence. If the risk value cannot be determined within a reasonable amount and the contract is for indefinite quantity (e.g., annual contract), estimate the approximate annual value and fill in the dollar amount. Enter a multiplication factor in the second blank, such as two (2) or some other reasonable number. Prior review by risk management and/or legal counsel is recommended before including in a solicitation or contract. The clause may be modified, as applicable, depending on the intended use of the goods and/or services.

33. **LIQUIDATED DAMAGES:** (Note: Review the guidance contained in the General Comments and Procedures below before deciding to include one of the following clauses in a solicitation.

- A. **LIQUIDATED DAMAGES, GOODS AND NONPROFESSIONAL SERVICES:** Delivery is required not later than \_\_\_\_\_. It is understood and agreed by the bidder/offeror that time is of the essence in the delivery of supplies, services, materials, or equipment of the character and quality specified in the bid/proposal document. In the event these specified supplies, services, materials, or equipment are not delivered by the date specified there will be deducted, not as a penalty but as liquidated damages, the sum of \$\_\_\_\_\_ per day for each and every calendar day of delay beyond the time specified; except that if the delivery be delayed by any act, negligence, or default on the part of the Commonwealth, public enemy, war, embargo, fire, or explosion not caused by the negligence or intentional act of the contractor or his supplier(s), or by riot, sabotage, or labor trouble that results from a cause or causes entirely beyond the control or fault of the contractor or his supplier(s), a reasonable extension of time as the procuring public body deems appropriate may be granted. Upon receipt of a written request and justification for any extension from the contractor, the purchasing office may extend the time for performance of the contract or delivery of goods herein specified, at the purchasing office's sole discretion, for good cause shown.

**\* When Used:** For critical delivery of goods or services. The required delivery date and the dollar amount must be filled in by the agency.

- B. **LIQUIDATED DAMAGES, FURNISH AND INSTALL:** Work shall begin \_\_\_\_ calendar days after receipt of purchase order or contract and all work shall be completed in \_\_\_\_ calendar days. It is hereby understood and agreed by the bidder that time is of the essence in the delivery of supplies, services, materials, or equipment of the character and quality specified in the bid document. In the event these specified supplies, services, materials, or equipment are not delivered by the date specified, there will be deducted, not as a penalty but as liquidated damages, the sum of \$\_\_\_\_\_ per day for each and every calendar day of delay beyond the time specified; except that if the delivery be delayed by any act, negligence, or default on the part of the Commonwealth, public enemy, war, embargo, fire, or explosion not caused by the negligence or intentional act of the contractor or his supplier(s), or by riot, sabotage, or labor trouble that results from a cause or causes entirely beyond the control or fault of the contractor or his supplier(s), a reasonable extension of time as the procuring public body deems appropriate may be granted. Upon receipt of a written request and justification for an extension from the contractor, the purchasing office may extend the time for performance of the contract or delivery of goods herein specified at the purchasing office's sole discretion for good cause shown.

**\* When Used:** For furnish and install contracts covering modifications, repair and other non-capital outlay construction-type contracts. The dollar amount must be filled in by the agency. The two blanks for the number of calendar days may be filled in by the agency prior to issuing the solicitation or the bidder/offeror may be required to fill in the number of days with the bid/proposal. The dollar amount must be reasonable.

**NOTE: GENERAL COMMENTS:**

These clauses are not to be used as a penalty, but as a means to assess damages when both (1) the time of delivery or performance is such an important factor in the award of the contract that the Commonwealth may reasonably expect to suffer damage if the delivery or performance is delinquent, and (2) the extent or amount of such damage would be difficult or impossible to ascertain or prove. In deciding whether to include a liquidated damages clause in a contract, the purchase officer should consider the probable effect on such matters as pricing, competition, and the costs and difficulties of contract administration.

When a liquidated damages clause is to be used in a contract, the applicable clause and appropriate rate(s) of liquidated damages shall be included in the solicitation. The rate of liquidated damages used must be reasonable and considered on a case-by-case basis since liquidated damages fixed without any reference to probable actual damages may be held to be a penalty, and therefore unenforceable.

When a liquidated damages clause is used in a construction, modification, or repair contract, the rate(s) of liquidated damages to be assessed against the contractor should be for each day of delay and the rate(s) should, as a minimum, cover the estimated cost of inspection and superintendence for each day of delay in completion. Whenever the Commonwealth will suffer other specific losses due to the failure of the contractor to complete the work on time, the rate(s) should also include an amount for these items. Examples of specific losses are:

- (1) The cost of substitute facilities;
- (2) The rental of buildings and/or equipment.

**ASSESSMENT PROCEDURES :**

If a liquidated damages clause is included in a contract and the contractor is late or behind schedule and the delay is not an excusable one, the purchase officer should (1) issue a Notice of Contract Deficiency or "Cure Letter" to the contractor (see Chapter 10, Contract Administration); and (2) in addition, if there is a performance bond, send a copy of the cure letter to the bonding company. If the contractor does not comply with the cure letter, notify the bonding company that they are responsible to complete the contract and at the same time, terminate the contract for default (see Chapter 10, Contract Administration).

If there is no performance bond with the contract, (1) send a cure letter to the contractor. If the contractor does not correct the problem, issue a termination for default letter and re-bid the requirement. Assess liquidated damages against the contractor from the date the project was to be completed, as stated in the liquidated damages clause, to the date of the termination of default letter. In addition, any excess costs encountered in the re-purchase action may also be held against the defaulted contractor.

- 34. **MAINTENANCE MANUALS:** The contractor shall provide with each piece of equipment an operations and maintenance manual with wiring diagrams, parts list, and a copy of all warranties.

**\* When Used:** For solicitations to purchase or furnish and install major equipment or systems.

- 35. **MATERIAL SAFETY DATA SHEETS:** Material Safety Data Sheets and descriptive literature shall be provided with the bid/proposal for each chemical and/or compound offered. Failure on the part of the bidder/offeror to submit such data sheets may be cause for declaring the bid/proposal as nonresponsive.

**\* When Used:** Must be used for the purchase of all chemicals or compounds which may contain toxic or hazardous substances, i.e., cleaning, janitorial supplies, chemicals of all types (See clause #32).

- 36. **MINORITY/WOMEN OWNED BUSINESSES SUBCONTRACTING AND REPORTING:** Where it is practicable for any portion of the awarded contract to be subcontracted to other suppliers, the contractor is encouraged to offer such business to minority and/or women-owned businesses. Names of firms may be available from the buyer and/or from the Division of Purchases and Supply. When such business has been subcontracted to these firms and upon completion of the contract, the contractor agrees to furnish the purchasing office the following information: name of firm, phone number, total dollar amount subcontracted and type of product/service provided.

**\* When Used:** In solicitations over \$15,000 when subcontracting opportunities may exist.

- 37. **NAME OF MANUFACTURER AND SHIPPING POINT:** Each bidder/offeror shall supply in the space below the name and address of the manufacturer of each item offered and the shipping point.

ITEM NUMBER(S): \_\_\_\_\_

MANUFACTURER: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

SHIPPING POINT: \_\_\_\_\_

**\* When Used: For spot purchases or annual contracts for goods if the agency desires this information.**

38. **NEGOTIATION WITH THE LOWEST BIDDER:** Unless all bids are cancelled or rejected, the Commonwealth reserves the right granted by § 11-53 of the *Code of Virginia* to negotiate with the lowest responsive, responsible bidder to obtain a contract price within the funds available to the agency whenever such low bid exceeds the agency's available funds. For the purpose of determining when such negotiations may take place, the term "available funds" shall mean those funds which were budgeted by the agency for this contract prior to the issuance of the written Invitation for Bids. Negotiations with the low bidder may include both modifications of the bid price and the Scope of Work/Specifications to be performed. The agency shall initiate such negotiations by written notice to the lowest responsive, responsible bidder that its bid exceeds the available funds and that the agency wishes to negotiate a lower contract price. The times, places, and manner of negotiating shall be agreed to by the agency and the lowest responsive, responsible bidder.

**\* When Used: This clause may be used in those circumstances where, due to unknown cost factors, there may be a need to negotiate to remain within available fund limitation. For use only in an Invitation for Bids, for goods or services. This clause shall not be used as a matter of routine (see 6.7).**

39. **ORDERING OPTION:** The (name of agency), may during the first 60 days after this contract is awarded, with the concurrence of the contractor, place additional orders under the contract at the original unit price through the issuance of separate purchase orders. The aggregate of such additional orders shall not exceed 100% of the quantity originally stated in the contract.

**\* When Used: This can be used when purchasing goods on a spot basis and the contracting officer anticipates that there might be an additional requirement for the same goods within the next sixty (60) days. When it is used in a solicitation, a statement on the face of the invitation should direct the bidder's attention to this clause. It is not to be used for term type contracts.**

40. **PERFORMANCE AND PAYMENT BONDS:** The successful bidder shall deliver to the purchasing office executed Commonwealth of Virginia Standard Performance and Labor and Material Payment Bonds, each in the sum of the contract amount, with the Commonwealth of Virginia as obligee. The surety shall be a surety company or companies approved by the State Corporation Commission to transact business in the Commonwealth of Virginia. No payment shall be due and payable to the contractor, even if the contract has been performed in whole or in part, until the bonds have been delivered to and approved by the purchasing office. Standard bond forms will be provided by the purchasing office prior to or at the time of award.

**\* When Used: Must be used in all solicitations for construction which exceed \$100,000, but may be for construction, goods and services for less than \$100,000. See Appendix 3-C & D for forms.**

41. **PREBID/PREPROPOSAL CONFERENCE - MANDATORY/OPTIONAL:** (Note: Select one of the following two clauses if a mandatory or optional prebid or preproposal conference is desired and include it in the solicitation.)

- A. **MANDATORY PREBID/PREPROPOSAL CONFERENCE:** A mandatory prebid/preproposal conference will be at \_\_\_\_\_ (time and date) \_\_\_\_\_ at the \_\_\_\_\_ (place) \_\_\_\_\_. The purpose of this conference is to allow potential bidders/offerors an opportunity to present questions and obtain clarification relative to any facet of this solicitation.

Due to the importance of all bidders/offerors having a clear understanding of the specifications/scope of work and requirements of this solicitation, attendance at this conference will be a prerequisite for submitting a bid/proposal. Bids/Proposals will only be accepted from those bidders/offerors who are represented at this prebid/preproposal conference. Attendance at the conference will be evidenced by the representative's signature on the attendance roster. No one will be admitted after \_\_\_\_\_ (time) \_\_\_\_\_.

Bring a copy of the solicitation with you. Any changes resulting from this conference will be issued in a written addendum to the solicitation.

**\* When Used: For use in complex procurements when clarification of the contents of the solicitation to potential bidders/offerors will greatly enhance understanding of what is sought to be procured. CAUTION: Use of this clause may limit competition because only those that attend may submit a bid/proposal. Use wording appropriate to the type of solicitation, i.e., prebid, bid, bidder in an IFB and preproposal, proposal, offeror in an RFP.**



**\* When Used: Must be included in all printing solicitations.**

- B. **ACCEPTABLE MILL BRANDS:** Only those papers listed in the latest edition of The Competitive Grade Finder Directory fine paper directory book, will be considered as equal.

**\* When Used: Whenever a specific paper is specified along with the phrase “or equal.”**

- C. **OWNERSHIP OF PRINTING MATERIALS:** All artwork, camera-ready copy, negative, dies, photos, and similar materials used to produce a printing job shall become the property of the Commonwealth. Any furnished materials shall remain the property of the Commonwealth. All such items and materials shall be delivered to the ordering agency in usable condition after completion of the work, and prior to submission of the invoice for payment.

**\* When Used: Must be included in all printing solicitations.**

- D. **PRINTING PICK-UPS/DELIVERIES:** Contractor shall be responsible for all pick-ups and deliveries of all materials.

**\* When Used: Include in all printing solicitations when the contractor will be required to pick up artwork, negatives, etc. for the job and deliver the finished product to the agency.**

- E. **QUALITY COLOR PRINTING:** Contractor shall analyze each four-color subject and make separations individually. Contractor shall allow for color correction, dot etching, etc., in order to achieve top-quality production from each separation made.

**\* When Used: Include in all printing solicitations involving four-color process of more than one picture.**

46. **PRINTING DEFINITIONS:** (Note: Include one of the appropriate definitions in the solicitation whenever any of the following terms are used to describe the quality of the printing requirement.)

- A. **CLASS 1 - CRITICAL QUALITY PRINTING:** This class shall be used for four-color process printing where critical color matches are necessary or where engraved and/or embossed invitations are required. Typical examples: matching artist’s original paintings or sculptures, or product colors so that they represent true colors or materials used in creating the original are accurately represented, and reproduction of medical slides where true color may be critical. This is a step above “pleasing colors.” Finishing and bindery operations shall be of this same critical quality.

- B. **CLASS 1 - EXCELLENT QUALITY PRINTING:** This class shall be used when good clean, crisp reproduction is required. One color or multiple color jobs may be classified as AClass 1.≡ Four-color process subjects shall have pleasing color matches with good skin tones; some color correction may be necessary. PMS color matches may be required. Very fine lines and drawings may be required. Normally half-tones or screen tints will require 133, 150, or 200 line screens. There is to be large reverse areas, and/or large solid areas where good even ink coverage is necessary. Because of the overall design, very accurate registration is required. Camera-ready copy is generally furnished. Metallic inks may be used. Finishing and bindery operations shall be of the same excellent quality.

- C. **CLASS 2 - GOOD QUALITY PRINTING:** This class shall be used for the majority of black and white or one color jobs where no critical registration is required or when no colors overprint. Multiple color jobs may be classified as “Class 2.” Original copy is uniform and may have medium lines and drawings, medium-sized halftones and screens, medium-sized reverses and solid areas. Normally halftones and screen tints would be produced with 120 or 133 line screens. Metallic inks and process work are not generally included in the class. Normally metal plates and negatives are required. No cut lines or spots are acceptable. Finishing and bindery operations shall be of the same good quality.

- D. **CLASS 3 - MEDIUM QUALITY PRINTING:** This class denotes the least expensive kind of printing and shall be used for short-run, reproduction duplicator-type work where electrostatic or other direct plate methods are acceptable. Original copy is usually type written and may have coarse lines, drawings, and small reverses or solid areas. Evenness of ink coverage is not required. Coarse screen halftones or coarse screens may be used. No

colors overprint each other and no metallic inks are used. Finishing and bindery operations would normally be simple stapling or punching.

- 47. **PRODUCT INFORMATION:** The bidder/offeror shall clearly and specifically identify the product being offered and enclose complete and detailed descriptive literature, catalog cuts and specifications with the bid/proposal to enable the Commonwealth to determine if the product offered meets the requirements of the solicitation. Failure to do so may cause the bid/proposal to be considered nonresponsive.

**\* When Used: For solicitations to furnish and install or deliver goods when detailed specifications are required to properly evaluate items offered.**

- 48. **QUANTITIES:** Quantities set forth in this solicitation are estimates only, and the contractor shall supply at bid prices actual quantities as ordered, regardless of whether such total quantities are more or less than those shown.

**\* When Used: For term contract solicitations only.**

- 49. **RECYCLED PAPER:** The agency (or institution name) in determining the award of any contract for paper and paper products, shall procure using competitive bidding and shall award to the lowest responsive and responsible bidder bidding recycled paper and paper products of a quality suitable for the purpose intended, and in accordance with current EPA procurement guidelines for paper and paper products, so long as the bid price is not more than ten percent (10%) greater than the bid price of the lowest responsive and responsible bidder offering a product that does not contain recycled materials.

Bidder agrees to furnish upon request, a minimum of fifty (50) sheets of paper stock offered. Paper stock to be used for testing on agency (or institution name) equipment (may specify equipment that paper will be tested on) to ensure compatibility. If requested, samples must be delivered within five (5) days.

**\* When Used: Use in solicitations for paper and paper products.**

- 50. **REFERENCES:** Bidders shall provide a list of at least 3 references where similar goods and/or services have been provided. Each reference shall include the name of the organization, the complete mailing address, the name of the contact person and telephone number.

	<u>ORGANIZATION</u>	<u>ADDRESS</u>	<u>CONTACT PERSON</u>	<u>TELEPHONE</u>
1.	_____	_____	_____	_____
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____

**\* When Used: For furnish and install solicitations where contractor must have knowledge of proper installation or for the procurement of complex goods or services.**

- 51. **RENEWAL OF CONTRACT:** (NOTE: A term contract may not be renewed unless a renewal clause is included in the solicitation. Select one of the following clauses if an option to renew the contract beyond the original period of the contract is desired. Select either "one year" or complete the blank, indicating the number of "successive one year periods" the contract may be renewed.)

- A. **RENEWAL OF CONTRACT:** This contract may be renewed by the Commonwealth upon written agreement of both parties for (one year)/(\_\_\_\_ successive one year periods), under the terms of the current contract, and at a reasonable time (approximately 90 days) prior to the expiration.

**\* When Used: Include in solicitations for term contracts for goods and services, if desired, to permit renewal of the contract for a specific period of time, i.e., one year, two successive one-year periods, etc., at the same price(s), terms and conditions as in the original contract. Renegotiation of the price(s), terms and conditions is not permitted. If market prices are not expected to remain stable for goods, the Price Escalation/De-escalation clause (No. 43) should be considered for use with this provision.**

B. **RENEWAL OF CONTRACT:** This contract may be renewed by the Commonwealth for (one year)/(\_\_\_\_ successive one year periods) under the terms and conditions of the original contract except as stated in 1. and 2. below. Price increases may be negotiated only at the time of renewal. Written notice of the Commonwealth's intention to renew shall be given approximately 90 days prior to the expiration date of each contract period.

1. If the Commonwealth elects to exercise the option to renew the contract for an additional one-year period, the contract price(s) for the additional one year shall not exceed the contract price(s) of the original contract increased/decreased by more than the percentage increase/decrease of the \_\_\_\_\_ category of the CPI-W section of the Consumer Price Index of the United States Bureau of Labor Statistics for the latest twelve months for which statistics are available.
2. If during any subsequent renewal periods, the Commonwealth elects to exercise the option to renew the contract, the contract price(s) for the subsequent renewal period shall not exceed the contract price(s) of the previous renewal period increased/decreased by more than the percentage increase/decrease of the \_\_\_\_\_ category of the CPI-W section of the Consumer Price Index of the United States Bureau of Labor Statistics for the latest twelve months for which statistics are available.

**\* When Used.** For service contracts, use of this clause permits renewal of a contract with an increase/decrease in the labor rate portion only of the original contract. This clause should only be used when renewal of the contract may be desirable and price adjustments may be necessary. Select the most appropriate category that would apply to the contract and fill in the blank. If only a one-year renewal is desired, delete paragraph 2. of the clause. "For recent Consumer Price Index statistics, contact the Bureau of Labor Statistics at their website <http://stats.bls.gov/news.release/cpi.toc.htm> or by telephone at 202-606-7000. A link to the Bureau of Labor Statistics is on the DGS/DPS website at [www.dgs.state.va.us/dps/agcyinfo/index.htm](http://www.dgs.state.va.us/dps/agcyinfo/index.htm)"

52. **SECURITY LICENSE:** In accordance with § 9-183.3 of the *Code of Virginia* (1950), the bidder/offeror shall be licensed by the Department of Criminal Justice Services for solicitations which include the following work: installation, service, maintenance, or design of security equipment; security officer service; and/or private investigator service. Licenses must be obtained prior to submitting a bid/offer. The bidder/offeror shall place their license number in the space provided below:

Private Security Services Business License Number: \_\_\_\_\_

For assistance, bidders/offerors may contact the Department of Criminal Justice Services at (804) 786-0460.

**\* When used:** In all solicitations for the installation, service, maintenance, or design of security equipment, security officer service, central station alarm condition monitoring service, and/or private investigator service require the contractor to have a Private Security Services Business License issued by the Department of Criminal Justice Services under § 9-183.3 of the *Code of Virginia*.

53. **SUBCONTRACTS:** No portion of the work shall be subcontracted without prior written consent of the purchasing agency. In the event that the contractor desires to subcontract some part of the work specified herein, the contractor shall furnish the purchasing agency the names, qualifications and experience of their proposed subcontractors. The contractor shall, however, remain fully liable and responsible for the work to be done by its subcontractor(s) and shall assure compliance with all requirements of the contract.

**\* When Used:** In solicitations to furnish and install or specialty services when subcontracting will be permitted only upon prior approval of the purchasing agency. Use also when a contractor's or a subcontractor's license is required to perform the specialty service.

54. **USE OF RECYCLED MATERIALS:** Notwithstanding the prohibition against used, damaged or obsolete items, vendors are encouraged to use secondary or recycled materials in the manufacture of products to the maximum extent practicable without jeopardizing the performance or intended end use of the product unless such use is precluded due to health and welfare or safety requirements or product specifications contained herein. Please provide the following information in this regard:

1. Do any of the goods offered contain recycled materials? \_\_\_\_ Yes \_\_\_\_ No.
2. If so, please qualify the recycled material content. \_\_\_\_\_.

**\* When Used: Include in solicitations for goods that have a high probability for the use of recycled materials.**

55. **WARRANTY:** All materials and equipment shall be fully guaranteed against defects in material and workmanship for a period of \_\_\_\_\_ following date of delivery. Should any defect be noted by the owner, the Purchasing Office will notify the contractor of such defect or non-conformance. Notification will state either (1) that the contractor shall replace or correct, or (2) the owner does not require replacement or correction, but an equitable adjustment to the contract price will be negotiated. If the contractor is required to correct or replace, it shall be at no cost to the Commonwealth and shall be subject to all provisions of this clause to the same extent as materials initially delivered. If the contractor fails or refuses to replace or correct the deficiency, the office issuing the purchase order may have the materials corrected or replaced with similar items and charge the contractor the costs occasioned thereby or obtain an equitable adjustment in the contract price.

**\* When Used: Include in solicitations to furnish and install or deliver goods when the procuring agency wants to specify the length of time the warranty is to run; i.e., equipment 1 year, compressor 5 years, piano 10 years, etc.**

56. **WARRANTY (COMMERCIAL):** The contractor agrees that the goods or services furnished under any award resulting from this solicitation shall be covered by the most favorable commercial warranties the contractor gives any customer for such goods or services and that the rights and remedies provided therein are in addition to and do not limit those available to the Commonwealth by any other clause of this solicitation. A copy of this warranty should be furnished with the bid/proposal.

**\* When Used: Include in solicitations for goods, furnish and install or services when commercial warranty provisions for a particular item or service are acceptable.**

57. **WORK SITE DAMAGES:** Any damage to existing utilities, equipment or finished surfaces resulting from the performance of this contract shall be repaired to the Commonwealth's satisfaction at the contractor's expense.

**\* When Used: Include in solicitations to furnish and install equipment. May also be used in solicitations for services such as moving, maintenance, removal of equipment, non-capital outlay construction projects, etc.**

58. **WORK ESTIMATES (TIME AND MATERIAL CONTRACTS):** Under this time and material contract, the contractor shall furnish the agency with a non-binding written estimate of the total costs to complete the work required. The estimate must include the labor category(ies), the contractor's hourly rates specified in the contract, and the total material cost. Material costs shall be billed at contractor's actual invoice costs (contractor shall furnish copies of all invoices for materials) or discount off the list price, whichever is specified in the contract. If the agency determines that the estimated price is not fair and reasonable, the agency has the right to ask the contractor to reevaluate the estimate. If the revised estimate is determined to be not fair and reasonable, the agency reserves the right to obtain additional quotes from other vendors. A work order will be issued to the contractor, as the authority to proceed with the work, which will incorporate the contractor's estimate and the terms and conditions of the contract. The contractor and his/her personnel shall log in with the designated contract administrator each day before and after work to confirm labor hours.

**\* When Used: This clause may be used for all time and material contracts where the contractor furnishes estimates prior to starting work for particular projects. Agencies should take the necessary steps to ensure that it is protected from those cases where a contractor submits a low estimate and the invoice is much higher. Use of this clause will provide that protection as long as the contractor is held to the terms of this clause.**