

July 1, 2001

MEMORANDUM

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

FROM: Ron Bell
Director

SUBJECT: Procurement Information Memoranda (PIM) #98-008

Enclosed is PIM #98-008 representing several changes to the September 1998 edition of the *Agency Procurement and Surplus Property Manual (APSPM)*. Please insert or replace the pages enclosed; the appropriate page numbers are shown at the bottom of the page. The location of text changes are indicated by an arrow in the margin (→).

Appendix C contains a log in which to list the PIM number and date of revision. This letter and the corresponding PIM #98-008 should be filed in the back of the Appendix C log. Replacement pages should be inserted as indicated.

Section	Summary of Changes	Pen & Ink Change or Replace Pages as Indicated
2.1a Page 2-2	The Exemption Request form should be used by agencies and sent to the DGS/DPS contract officer when requesting an exception to purchasing an item available from a state contract. The use of this form should be referenced in 2.1a and 13.7.	Add the following sentences at the end of the first paragraph of 2.1a: "An exception from a mandatory state contract may be granted by the DGS/DPS contract officer responsible for the contract. The Procurement Exemption Request form located in Annex 13-D should be used to request an exception."
2.1d Page 2-3	Authority to purchase motor vehicles is transferred from VDOT to DGS.	Replace page 2-3.
2.1 h Page 2-4	DGS/Division of Fleet Management Interim Policy is established for the purchase or lease of motor vehicles.	Replace page 2-4.

3.1e Page 3-2	Typographical error.	Change the word “he” to “be” in the second sentence of the second paragraph under Sealed Bids.
3.12 Page 3-8	The nondiscrimination section has been rewritten to include nondiscrimination of faith-based organizations.	Insert replacement pages 3-8 and 3-8a.
3.14 b (1) Page 3-8a	A change was made to the Code of Virginia concerning preference to VA products and firms.	Replacement page 3-8 a, inserted above.
3.15 Page 3-9	Reverse auctioning was established as a method of procurement under the VPPA.	In 3.15, change the word “five” to “six” in the first line. Also, below “Emergency” insert “Reverse Auctioning” and note, “Interim policies and procedures for this method will be developed by DGS/DPS and issued in the future.”
3.21 Page 3-12	Typographical error referring to guidance on evaluation of bids contained in Annex 6-B, Step three, V. D.	Change the first letter on the page from E. to D.
3.24 a Page 3-14	Language was changed concerning Preference for Virginia Products and Firms.	In the first sentence of 3.24a before the semicolon, cross out the words “and,” “produced in Virginia or,” and the comma after the word firms. The sentence should read, “In the case of a tie bid, preference shall be given to goods produced in Virginia, goods or services or construction provided by Virginia persons, firms or corporations, if such choice is available (see 3.14b);....
Annex 3-C Page 3-18	Standard Performance Bond has been modified.	Replace pages 3-17 and 3-18.
Annex 3-D Page 3-21	Standard Labor and Material Bond has been modified.	Replace pages 3-19 through 3-22.
4.3a Page 4-2	Code of Virginia § 11.35.1 D. requires public bodies to prominently display a nondiscrimination statement concerning Faith-based organization in all IFB, RFP, contracts, and purchase orders.	Replace pages 4-1 and 4-2 and add page 4-2a.
4.4 Page 4-4	All supplies and equipment furnished must be new unless otherwise stated in the solicitation as stated in the Vendors Manual 7.2.	Add the following as the fourth and fifth sentences in 4.4: “Unless otherwise expressly stated in the solicitation, all supplies and equipment furnished must be new and in first class condition. Demonstration, previously rented, or reconditioned items are not considered new.”

4.24 1 Page 4-16	VPPA § 11-37 3 a has been modified to allow multiple project awards for architectural or professional engineering services.	Add the following sentence after the last sentence in 4.24 1 - Construction Related Services: "Multiple project awards for architectural or professional engineering services are allowed under certain conditions. See VPPA § 11-37 3 a and the DGS/DEB Construction and Professional Services Manual for guidance."
Annex 4-A Page 4-20	Code of Virginia § 11.35.1 requires a nondiscrimination statement on every PO.	Cross out existing page 4-20 and replace it with page 4-20 attached. The terms and conditions & Instructions to Vendors on the reverse side of the Agency Purchase Order have been modified.
5.2 Page 5-2	The contact telephone number for DOA has been changed.	Change the last telephone number shown in the last sentence of 5.2 to 804-371-7804.
5.5c Page 5-2	Guidance is provided to address how agencies should handle unsealed written solicitations under \$15,000.	Add, following the last sentence in 5.5c: "If developing an unsealed written solicitation under \$15,000, solicit three valid sources, then the guidance for unsealed solicitations over \$15,000 to \$50,000 should be followed (see 5.6 or 5.7)."
Annex 5-B Page 5-6	The contact telephone number for AMEX and DOA has been changed in Annex 5-B.	Change the contact number for AMEX on the flow chart at the bottom of Annex 5-B to 1-800-492-4979, Option 1 and change the DOA contact number to 804-371-7804.
11.2g Page 11-4	Language change: The words "in this section" were replaced by the words, "the Code of Virginia."	Insert replacement pages 11-3 and 11-4.
11.3a Page 11-4	A third paragraph was added to the Disputes section on denying a contractor's claim for damages.	Replacement page inserted above.
11.3c Page 11-4	The Disputes section adds subsection c. on Claims as provided by the VPPA § 11-69 B.	Replacement page inserted above.
13.7 a Page 13-2	The Exemption Request form is used by agencies when requesting an exception to purchasing an item available from a state contract. The use of this form should be referenced in 2.1a and 13.7.	Add the following sentence after the last sentence in 13.7 a: "The Exemption Request form located in Annex 13-D should be used to request an exception from purchasing from a mandatory state contract."
Chapter 14 Page 14-1	Policies and procedures have been written for conducting electronic procurement in Virginia (eVA).	Add Chapter 14 on Electronic Procurement, pages 14-1 through 14-4.

Appendix A Pages A-5 & A-6	Include the definition of “Reverse Auctioning” in Appendix A.	Insert replacement pages A-5 and A-6.
Appendix B Section I, Page B-2	The Anti-Discrimination clause has been modified to include language to include Faith-based organizations.	Cross out existing page B-2 and replace it with pages B-2 and B-2a attached. Delete top of page B-3 so B-3 now begins with clause D – Ethics in Public Procurement, which remains unchanged.
Appendix B, Section I, T. Page B-6	Delete requirement that the Commonwealth be added as an additional named insured under Worker’s Compensation Insurance.	Insert replacement pages B-6 and B-6a.
Appendix B, Section I, V. Page B-6a	Change the second paragraph of the Drug-Free Workplace clause. Wording refers to the chapter of Code where the <i>VPPA</i> resides; it is not part of the General term and condition.	Replacement pages B-6 and B-6a (inserted above). Eliminate the words, “in accordance with this chapter,” in the first sentence of the second paragraph under the Drug-Free Workplace clause.
Appendix B, Section I, W. Page B-6a	A new General term and condition is added to implement § 11-35.1 H pertaining to individuals who object to receiving goods or services from the awarded faith-based provider.	Replacement pages B-6 and B-6a (inserted above).

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

- (b) Pillows
- (c) Writing Instruments
- (d) Mailing Services - Stuffing Envelopes, Mass Mailings, Flyers, Catalogs, etc.
- (e) Contract Office Services -Clerical, Secretarial, Order Takers, Customer Service Representatives, etc.
- (f) * Mop Heads and Handles
- (g) * Spices, Teas, Custom Blending of Salts and Spices
- (h) * Gloves, Exam - Latex, Powder Free Latex, Powder Free Vinyl, Nitril - All Medical Grade [*Order Latex Gloves through Virginia Distribution Center (VDC)]

* Order through the VDC. See 2.1e.

For information or questions, contact VIB Marketing, VIB-Charlottesville at (804) 295-5168.

(2) **VDVH Business Enterprises.** When any vending stand or other business enterprise operated in a public building becomes vacant or a vacancy is created through the construction or acquisition of new public buildings or renovation or expansion of existing public buildings, the existence of such vacancies shall be made known to the Department for the Visually Handicapped at (804) 371-3103 or by e-mail to kenneddh@dvhmail.state.va.us. The DVH acting on behalf of the blind shall have first priority in assuming the operation of such vending stand or other business enterprise through the placement of a properly trained blind person in such vacancy (*Code of Virginia* § 63.1-155).

- (a) In addition to food service opportunities such as snack bars, cafeterias, and vending machine supplements, enterprises such as bookstores and other over the counter operations are also included.
- (b) Opportunities amounting to estimated annual sales of less than \$5,000 are exempt from this requirement.
- (c) In all cases for consideration the enterprise must be sent to the Business Enterprise program of the DVH in the form of a statement or scope of work at least sixty (60) days prior to publication of a solicitation.
- (d) The Business Enterprise division of the VDVH will evaluate the opportunity and either make a proposal to operate the enterprise or issue a waiver.

When convenience or emergency requires it, the Commissioner of the VDVH may, upon request of the purchasing officer, release the purchasing officer from the obligations of this section. Any purchasing officer who violates its provisions shall be guilty of a misdemeanor and upon conviction shall be punished accordingly (*Code of Virginia*, § 2.1-450).

d. **Virginia Department of Transportation (VDOT).** The Virginia Department of Transportation by Executive Order has been given the authority to purchase motor vehicle-related supplies. Further information may be obtained by calling the VDOT Administrative Services Division, (804) 786-2724.

- (1) For the purchase of vehicle fuel, VDOT has developed statewide contracts for use by state agencies.
- (2) For the purchase of related supplies and repair parts, agencies may use either of the following procedures:
 - (a) Purchase from VDOT's Central Warehouse, District Shop or Residency Shop by presenting an agency requisitions, a DGS/DPS or a VDOT requisition (DPS Form DGS-41-001 or VDOT Form AS-2) at the location from which the material is to be obtained, or
 - (b) If more practicable, agency may purchase related supplies and repair parts within their DGS/DPS delegated authority on the open market using the procedures in this manual.

- e. **Virginia Distribution Center (VDC).** The VDC purchases, stores, and distributes staple goods, canned/frozen foods, janitorial supplies, paper products, and other selected items for state agencies and institutions. An agency may not use its local purchasing authority to purchase an item from another source that is available from the VDC without a written waiver from the VDC Manager. A complete catalog of items stocked is issued in January and July. Changes and pricing updates are issued in April and October. For additional information, assistance or problem areas, contact the VDC at (804) 230-7701. See the annex to this chapter for ordering guidance and the form for use in requisitioning products. On line remote ordering is also available (Annex 2-D) to help facilitate requisitions, and provides real-time order status, shipping, and delivery information.
- f. **DGS/DPS Office of Graphic Communications (OGC).** OGC is a full service creative group that offers: concepts and marketing strategies; creative writing and design; desktop publishing; photography direction; illustration; project management; and, printing management. Typical projects produced consist of promotional, informational and public educational campaigns; college recruitment packages; press kits; logos and identity systems; annual reports; economic development and travel publications; magazines; calendars and posters; museum catalogs and brochures, etc.

All agencies planning to procure graphic design services, desktop publishing, or preparation of camera ready artwork in excess of \$750 must first contact OGC (804) 786-4726 to determine if their requirements can be provided by that office and, if not, receive authority to procure from another source. This requirement does not apply to agencies utilizing existing in-house capabilities; however, if the intent is to contract any of these services with the private sector, or another public body, OGC must first be contacted. If OGC gives authority to contract out the service, the solicitation should specify the following vendor performance requirements, as applicable: research, layouts, design, writing, editing, desktop publishing, typesetting, proofreading, photography, illustration, pasteups, format size, number of pages, and printing specification development.

- g. **Department of Information Technology (DIT).** Telecommunications services, as defined in Appendix A, must be procured through DIT.
- h. **DGS/Office of Fleet Management - Interim Policy.** For the purchase or lease of motor vehicles, agencies must submit VDOT Form CP-15 to the DGS Office of Fleet Management (804-367-6525) for approval to initiate the purchase process for all vehicles (*Code of Virginia* § 2.1-548.04).

The DGS/DPS Contract Compliance Section is available to provide assistance with mandatory sources as well as commercial vendors (804) 786-1602.

2.2 Nonmandatory Sources.

- a. **Optional Use Term Contracts.** Optional use term contracts may be established by DGS/DPS or other agencies and institutions within their delegated authority. This type of contract may be appropriate because of the unique nature of the commodity or service being procured and when the demand base encompasses all agencies and institutions. An example would be office supplies that generally are ordered in low dollar increments by users at the lowest organizational level and when local storage and distribution costs exceed any bulk purchase savings. Optional use contracts may also be appropriate when erratic or rapidly dropping prices are encountered such as in the personal computer and related peripheral equipment industries. Market conditions in these limited applications create an incentive for the contractors to retain business by publishing revised price lists against which fixed discount rates can be applied throughout the contract's term.
- b. **Surplus Property.** DGS/DPS has statutory responsibility for administering the surplus property program for state-owned personal property, as well as the federal surplus property program which makes surplus federal property available to eligible state participants. These programs are optional use sources of supply and should always be considered prior to initiating purchase action. Substantial sums of money can be saved for goods that are often in "like new" condition. To avoid unnecessary purchases of new materials or equipment, the agency or institution Fixed Asset Accounting and Control System (FAACS) coordinator should ensure that assets being procured are first screened against available assets from within their own agency and from other agencies and institutions by reviewing FAACS screening reports FAC30020 (agency) and FAC301 (statewide). Copies of these reports are available on request by contacting DOA at (804) 225-2646.
- c. **Sheltered Workshops.** See definition in Appendix A. State agencies may purchase selected goods and services from nonprofit sheltered workshops without competition if the goods or services:
 - (1) are of acceptable quality;

- (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 because of the race, religion, color, sex, age, disability, or national origin of the bidder, offeror, or contractor (Code of Virginia, X 11-44). Agencies and institutions shall prominently display a nondiscrimination statement in all invitations to bid, requests for proposals, contracts, and purchase orders indicating that the public body does not discriminate against faith-based organizations (Code of Virginia, § 11-35D).

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, goods, or services or construction provided by Virginia persons, firms or 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).

Annex 3-C

DGS 30-084
(Rev. 05/01)

CO-10
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**COMMONWEALTH OF VIRGINIA
STANDARD PERFORMANCE BOND**

KNOW ALL MEN BY THESE PRESENTS: That _____, the Contractor ("Principal") whose principal place of business is located at _____ and ("Surety") are held and firmly bound unto the Commonwealth of Virginia, _____, the Owner ("Obligee") in the amount of _____ Dollars (\$ _____), for the payment whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS,

Principal has by written agreement dated _____ entered into a contract with Obligee for _____ which contract (the "Contract") is by reference expressly made a part hereof;

NOW THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if the Principal shall promptly and faithfully perform said Contract in strict conformity with the plans, specifications and conditions of the Contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

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

No action shall be brought on this bond unless brought within one year after: (a) completion of the Contract and all Work thereunder, including expiration of all warranties and guarantees, or (b) discovery of the defect or breach of warranty or guarantee if the action be for such.

The Surety represents to the Principal and to the Obligee that it is legally authorized to do business in the Commonwealth of Virginia.

Signed and sealed this _____ day of _____.

Contractor/Principal (SEAL)

Witness By: _____
Title: _____

Surety (SEAL)

By: _____
Attorney-in-Fact
Typed Name: _____

My Power of Attorney is recorded in the Clerks Office of the Circuit Court of _____ Virginia in Deed Book _____, Page _____, and has not been revoked.

Attorney-in-Fact

AFFIDAVIT AND ACKNOWLEDGMENT OF ATTORNEY-IN-FACT

COMMONWEALTH OF VIRGINIA

(or, alternatively, Commonwealth or State of _____)

CITY / COUNTY OF _____, to-wit:

I, the undersigned notary public, do certify that _____ personally appeared before me in the jurisdiction aforesaid and made oath that he is the attorney-in-fact of _____, the Surety, that he is duly authorized to execute on its behalf the foregoing Bond pursuant to the Power of Attorney noted above, and on behalf of said Surety, acknowledged the aforesaid Bond(s) as its act and deed.

Given under my hand this _____ day of _____.

Notary Public (SEAL)

My Commission expires: _____

APPROVED:

Attorney General / Designee *Date*

Annex 3-D

DGS 30-088
(Rev. 05/01)

CO-10.1
Page 1 of 3

**COMMONWEALTH OF VIRGINIA
STANDARD LABOR AND MATERIAL PAYMENT BOND**

**THIS BOND IS ISSUED SIMULTANEOUSLY WITH PERFORMANCE
BOND IN FAVOR OF THE OBLIGEE CONDITIONED ON THE
FULL AND FAITHFUL PERFORMANCE OF THE CONTRACT**

KNOW ALL MEN BY THESE PRESENTS: That _____, the Contractor (“Principal”) whose principal place of business is located at _____ and _____ (“Surety”) are held and firmly bound unto the Commonwealth of Virginia, _____, the Owner (“Obligee”) in the amount of _____ Dollars (\$ _____), for the payment whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS,

Principal has by written agreement dated _____, entered into a contract with Obligee for which contract (the “Contract”) is by reference expressly made a part hereof;

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

The Principal and Surety, jointly and severally, hereby agree with Obligee as follows:

1. A claimant is defined as one having a direct contract with the Principal or with a subcontractor of the Principal for labor, material, or both for use in the performance of the Contract. A “subcontractor” of the Principal, for the purposes of this bond only, includes not only those subcontractors having a direct contractual relationship with the Principal, but also any other contractor who undertakes to participate in the Work which the Principal is to perform under the aforesaid Contract, whether there are one or more intervening subcontractors contractually positioned between it and the Principal (for example, a subcontractor). “Labor” and “material” shall include, but not be limited to, public utility services and reasonable rentals of equipment, but only for periods when the equipment rented is actually used at the work site.

2. Subject to the provisions of paragraph 3, any claimant who has performed labor or furnished material in accordance with the Contract documents in the prosecution of the Work provided in the Contract, who has not been paid in full therefor before the expiration of ninety (90) days after the day on which such claimant performed the last of such labor or furnished the last of such materials for which he claims payment, may bring an action on this bond to recover any amount due him for such labor or material, and may prosecute such action to final judgment and have execution on the judgment. The Obligee need not be a party to such action and shall not be liable for the payment of any costs, fees or expenses of any such suit.
3. Any claimant who has a direct contractual relationship with any subcontractor of the Principal from whom the Principal has not required a subcontractor payment bond, but who has no contractual relationship, express or implied, with the Principal, may bring an action on this bond only if he has given written notice to the Principal within one hundred eighty (180) days from the day on which the claimant performed the last of the labor or furnished the last of the materials for which he claims payment, stating with substantial accuracy the amount claimed and the name of the person for whom the Work was performed or to whom the material was furnished. Notice to the Principal shall be served by registered or certified mail, postage prepaid, in an envelope addressed to the Principal at any place where his office is regularly maintained for the transaction of business. Claims for sums withheld as retainage with respect to labor performed or materials furnished shall not be subject to the time limitations stated in this paragraph 3.
4. No suit or action shall be commenced hereunder by any claimant.
 - a. Unless brought within one year after the day on which the person bringing such action last performed labor or last furnished or supplied materials, it being understood, however, that if any limitation embodied in this bond is prohibited by any law controlling the construction hereof, the limitation embodied within this bond shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.
 - b. Other than in a Virginia court of competent jurisdiction, with venue as provided by statute, or in the United States District Court for the district in which the project, or any part thereof is situated.

5. The amount of this bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder.

Signed and sealed this _____ day of _____.

Contractor/Principal (SEAL)

Witness

By: _____
Title:

Surety (SEAL)

By: _____
Attorney-in-Fact

Typed Name: _____

My Power of Attorney is recorded in the Clerks Office of the Circuit Court of _____ Virginia in Deed Book _____, Page _____, and has not been revoked.

Attorney-in-Fact

AFFIDAVIT AND ACKNOWLEDGMENT OF ATTORNEY-IN-FACT

COMMONWEALTH OF VIRGINIA

(or, alternatively, Commonwealth or State of _____)

CITY / COUNTY OF _____, to-wit:

I, the undersigned notary public, do certify that _____ personally appeared before me in the jurisdiction aforesaid and made oath that he is the attorney-in-fact of _____, the Surety, that he is duly authorized to execute on its behalf the foregoing Bond pursuant to the Power of Attorney noted above, and on behalf of said Surety, acknowledged the aforesaid Bond(s) as its act and deed.

Given under my hand this _____ day of _____.

Notary Public (SEAL)

My Commission expires: _____

APPROVED:

Attorney General / Designee

Date

Annex 3-E**Bond Documentation Review Checklist**

When an agency's Attorney General representative is not available to review and determine the validity of a bond, the following guidance is offered in authenticating the validity of a surety bond, once received:

- _____(1) First time approvals may take bidder/contractor several weeks - there is an extensive prequalification process.
- _____(2) Return bid deposits to unsuccessful bidders as soon as possible.
- _____(3) If letters of credit are used, they should be "irrevocable" and be sure to verify the financial soundness of the issuer. The use of letters of credit is not recommended.
- _____(4) Contact the issuing surety company directly, in writing, to authenticate the bond immediately after it is presented and verify that the bond is correct and valid.
- _____(5) Check the name of surety on the bond - it should be identical to the name appearing in the State Corporation Commission (SCC) *Fidelity and Surety Report*. This report may be obtained by calling the SCC at (804) 371-9546.
- _____(6) Check the wording. Look for strikeover, white out, etc. Be sure the forms in the *APSPM* are used form DGS 30-084 (Rev. 05/01) CO-10, *Commonwealth of Virginia Standard Performance Bond*, and form DGS 30-088 (Rev. 05/01) CO-10.1, *Commonwealth of Virginia Standard Labor and Material Payment Bond*. These forms are specifically intended for bid, performance and payment (labor and material) bonds and contain the most appropriate language.
- _____(7) Unlike other property and casualty insurance companies, fidelity and surety companies are excluded from guarantee fund coverage, so it is important to check surety's status. Call the SCC's Bureau of Insurance (804) 371-9636 to insure that the surety is licensed and in good standing.
- _____(8) A single bond cannot exceed 10% of the net worth shown on the SCC list. You may need more than one company on a major project.
- _____(9) Sureties must have a minimum of \$4 million in net worth.
- _____(10) Make certain the surety is furnished all copies of addenda and of all change orders issued, after award.
- _____(11) Do not delay if you must call in a bond. The surety who issued the bond should be copied on correspondence to the contractor when cure attempts are initiated.
- _____(12) If you get a "Notice To Owner" (NTO) from a subcontractor, send the subcontractor a copy of the performance and payment bond and stay out of the issue. If you get a lot of "NTO's" - tell the surety as well.
- _____(13) Do not recommend issuing of "joint checks" (contractor and subcontractor) check payment. If required to do it, be sure the letter accompanying the payment states that such practice does not place owner in position of guaranteeing payment.

CHAPTER 4

GENERAL PROCUREMENT GUIDELINES & PLANNING

In this Chapter look for . . .

- 4. General
- 4.1 Lead-Time
- 4.2 Selection of Procurement Method
- 4.3 Preparing the Written Solicitation
- 4.4 Specifications
- 4.5 Qualified Products Lists (QPL) or Qualified Contractor's Lists (QCL)
- 4.6 Computer Hardware - Site Preparation
- 4.7 Prompt Payment Discounts
- 4.8 Advance Payments
- 4.9 Commodity Codes
- 4.10 Price Reasonableness Determination
- 4.11 Order Splitting Prohibition
- 4.12 Award Documents
- 4.13 Freight
- 4.14 Insurance
- 4.15 Bookstore, Commissary, Canteen, Gift Shop, and Similar Retail Outlet Purchases
- 4.16 Conference Planning
- 4.17 Used Equipment
- 4.18 Rental/Lease, Installment Purchases
- 4.19 Maintenance/Repair of Equipment
- 4.20 Printing
- 4.21 Services
- 4.22 Non-Professional Services
- 4.23 Professional Services
- 4.24 Construction
- 4.25 Make-or-Buy Analysis
- 4.26 Use of Contractor's Standard Contract Form
- 4.27 Samples
- 4.28 Vendor Advertising Prohibition
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4. **General.** This chapter contains general guidelines and suggestions when procuring goods, services, printing, non-capital outlay construction. In some cases, these guidelines expand upon requirements that have their basis in the *Virginia Public Procurement Act (VPPA)*. Their intent is to assist purchasers in conforming to generally acceptable procurement principles, yet provide maximum interpretive latitude in their application.

4.1 **Lead Time.**

- a. **Administrative Lead Time.** Administrative lead time is that period of time from initiation of the requirement by the user to issuance of an award. For routine procurements where informal written solicitations are used, the minimum time required to prepare, solicit, evaluate, and make an award may take from three (3) days up to thirty (30) days. When competitive sealed bidding or competitive negotiation is used, the time required by the purchasing office may be longer. It is important that agency purchasing personnel continue to emphasize to their requisitioners that this time period should be included in their planning.
- b. **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. These times vary widely by industry. Consideration should be given to market conditions which will affect delivery. Except for the most routine of expendable supplies, e.g., off-the-shelf items, a range of 30-90 days should be estimated in determining the OST. Custom made and complex items of equipment normally take longer to obtain.

4.2 **Selection of Procurement Method.** It is important to select the proper procurement method. The estimated or anticipated value of the contract must be determined first, unless the purchase is an emergency (for emergencies, see Chapter 9). The anticipated value of the contract includes the dollar value for the initial period of the contract, and includes all possible renewal periods. When determining the total value of a contract, include all cost elements such as travel related expenses (e.g., travel, lodging, and meals) and direct bill expenses (e.g., copying costs, postage, shipping and handling costs, long distance charges). If purchases under \$50,000 are required, then the small purchase procedures in Chapter 5 shall be used. If over \$50,000, a decision should be made whether to use competitive sealed bidding or competitive negotiation. For competitive sealed bidding see Chapter 6. For competitive negotiation see Chapter 7. For purchases where there is only one source practicably available, see Chapter 8.

4.3 **Preparing the Written Solicitation.**

- a. **General.** Solicitations should convey to the reader, in a clear, concise and logical sequence, the information necessary to answer the basic questions of who, what, why, where, when and how. The *Code of Virginia* § 11.35.1 D. requires public bodies to prominently display a nondiscrimination statement concerning Faith-based organizations in all Invitations for Bid (IFB), Requests for Proposals (RFP), contracts, and purchase orders. The following statement must be prominently displayed on the cover page of every IFB or RFP:

Note: This public body does not discriminate against faith-based organizations in accordance with the Code of Virginia, § 11-35.1 or against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.

- b. **Terms and Conditions.** Terms and conditions must be in writing, be clear and concise, and express the intent of the agency. Generally, if there is an ambiguity in a written contract that results in a dispute, its resolution will be against the party who wrote the contract. General terms and conditions shall be a part of every written solicitation issued by all agencies for goods and services (see Appendix B, section I). Exceptions to the use of the terms and conditions in Appendix B, section I must be approved by the agency's legal advisor. Special Conditions can be found in sections II, III and IV of Appendix B. Information and assistance in the preparation or use of additional special terms and conditions not contained in this manual can be obtained by contacting the appropriate DGS/DPS official for the goods, or services (see Directory of Procurement Assistance, Annex 13-C). Unless the agency has provided for prequalification of bidders, the solicitation shall include a statement of any requisite qualifications. Such qualifications must be verifiable and must be used in determining responsiveness of bids and in evaluating proposals (see IFB Solicitation and File Checklist, Annex 6-D and RFP Solicitation and File Checklist, Annex 7-E).



- c. **Contract Period.** Term contracts normally cover a 12-month period or cite a specific time for completion for the project or service. A solicitation for a multi-year contract, or one that includes an option on the part of the state to renew the contract for an additional period, may be advantageous and should be considered; however, in determining the value of the contract and procurement method, all possible renewal periods must be included. Multi-year programs are subject to availability of funds, and each solicitation covering a multi-year period must contain an availability of funds clause (see Appendix B, section II) and reference to the *Vendors Manual*. If price adjustments are to be permitted during the contract period, the conditions under which they are authorized must be specified in the original solicitation and resulting contract. Agencies should review all multi-year contracts at least annually to determine if the goods or services are still required, if prices are fair and reasonable based on the

TERMS AND CONDITIONS & INSTRUCTIONS TO VENDORS

1. This contractual agreement is subject to the terms and conditions of the Commonwealth of Virginia *Vendors Manual* and any revisions thereto, as published by the Department of General Services, Division of Purchases and Supply.
2. Goods or Services delivered must be strictly in accordance with bid referred to and shall not deviate in any way from terms, conditions or specifications of the bid. Equipment, materials and/or supplies delivered on this order shall be subject to inspection and test upon receipt. If rejected, same shall remain the property of the vendor.
3. Purchase Order number shall be shown by vendor on all related invoices, delivery memoranda, bills of lading, packages and/or correspondence.
4. A SEPARATE INVOICE FOR THIS PURCHASE ORDER OR FOR EACH SHIPMENT THEREON SHALL BE RENDERED IMMEDIATELY FOLLOWING SHIPMENT. ALL COPIES SHALL BE FORWARDED DIRECT TO AGENCY AT INVOICE ADDRESS SHOWN.
5. STATE SALES AND USE TAX CERTIFICATE OF EXEMPTION, FORM ST-12 WILL BE ISSUED UPON REQUEST, IF YOU DO NOT HAVE SAME ON FILE.
6. DELIVERIES AGAINST THIS ORDER MUST BE FREE OF EXCISE OR TRANSPORTATION TAXES, EXCISE TAX EXEMPTION REGISTRATION NO. 54-73-0076K MAY BE USED WHEN REQUIRED.
7. In the absence of other contractual terms, payment shall be due 30 days after receipt of proper invoice, or material/service, whichever is the later.
8. If discount for prompt payment is allowed, the discount period will begin on the date of receipt of proper invoice, or material, whichever is the later.
9. In case of default by the successful bidder, or failure to deliver the supplies or services ordered by the time specified, the Commonwealth after due notice (oral or in writing), may procure them from other sources and hold vendor responsible for any excess cost occasioned thereby.
10. No substitution, change or deviation shall be made without written authority from the Commonwealth by Purchase Order Change.
11. Vendors and contractors providing goods to the Commonwealth of Virginia under this order herewith assure the Commonwealth that they are conforming to the provision of the Civil Rights Act of 1964 as amended, as well as the Virginia Fair Employment Contracting Act of 1975 as amended, where applicable.
12. This Purchase Order/Contract shall be governed in all respects, whether as to validity, construction, capacity, performance or otherwise by the laws of the Commonwealth of Virginia.
13. All prices unless otherwise specified are net F.O.B. Destination with transportation charges prepaid.
14. If shipment is made by freight or express and charges added to invoice, the original bill of lading properly receipted shall accompany invoice. All charges must be prepaid.
15. Vendors and contractors performing work on Commonwealth owned or leased facilities or property shall, during the entire term of the contract, maintain at a minimum, the insurance coverages as listed in the *Vendors Manual* and any revisions thereto.

Note: This public body does not discriminate against faith-based organizations in accordance with the *Code of Virginia*, § 11-35.1 or against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.

- (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 the *Code of Virginia* 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.

A public body denying a contractor's claim for costs or damages due to the alleged delaying of the contractor in the performance of work under any public construction contract shall be liable to and shall pay such contractor a percentage of all costs incurred by the contractor to investigate, analyze, negotiate, litigate and arbitrate the claim. The percentage paid by the public body shall be equal to the percentage of the contractor's total delay claim for which the public body's denial is determined through litigation or arbitration to have been made in bad faith.



- 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).
- c. Each public body shall include in its contracts a procedure for consideration of contractual claims. Such procedure, which may be contained in the contract or may be specifically incorporated into the contract by reference and made available to the contractor, shall establish a time limit for a final decision in writing by the public body. If the public body has established administrative procedures meeting the standards of . 11-71, such procedures shall be contained in the contract or specifically incorporated in the contract by reference and made available to the contractor.



CHAPTER 14

ELECTRONIC PROCUREMENT

In this Chapter look for . . .

- 14. General
- 14.1 Definitions
- 14.2 Internet Access
- 14.3 Agency Responsibility
- 14.4 e-Mall Shopping
- 14.5 Small Purchase Competitive Requirements
- 14.6 Change Orders
- 14.7 Documentation of Purchase Transactions
- 14.8 Approvals

14. **General:** This chapter establishes policies and provides guidance on electronic procurement in Virginia, hereinafter referred to as eVA. eVA encompasses vendor central registration and source selection, requisitioning, solicitation development, soliciting and receiving formal and informal bids and proposals, bid/proposal tabulation and evaluation, electronic ordering, public posting, electronic receiving, electronic invoicing, electronic data record keeping and various reporting capabilities. Additionally, eVA facilitates item searches through an Electronic Mall (e-Mall), in which Commonwealth entities can shop mandatory sources and mandatory use and optional use term contracts, surplus property and non-contract sources, all displayed as electronic catalogs. Policies herein shall be applicable only to transactions processed through eVA and shall take precedence in the event of conflict with other sections of this manual. The Virginia Public Procurement Act, other applicable sections of the *Code of Virginia*, as well as other provisions of this manual and Vendors Manual will remain in full force and effect. Purchases processed outside eVA will continue to be governed by applicable law and by the non-eVA policies and procedures contained in this manual and Vendors Manual in effect at the time of the transaction.
- 14.1 **Definitions:** Refer to the eVA Implementation Guide's Glossary of Terms for definitions as they apply to eVA.
- 14.2 **Internet Access:** Authorized use of eVA requires access to the internet with equipment possessing the minimum rating of 32 MB RAM (64 – 128 MB recommended) with a 100 – 250 MB hard drive needed for Internet browser. Refer to the eVA Implementation Guide, Section II.E, for additional technical requirements. The eVA portal located at www.eva.state.va.us is the gateway to facilitate a single sign-on to access all services available to the user when processing a purchase requirement, obtaining data analysis and reporting or to reach the help desk. A help desk is also available by calling DGS/DPS at 804.786.3842 or FAX 804.786.5712.
- 14.3 **Agency Responsibility:** Agencies and institutions should develop written internal policies, procedures and controls on the use of eVA. This should include re-delegation of purchasing authority, requisition approval process, how to incorporate terms and conditions, interface with finance and accounting, record keeping, encumbrance of funds, receiving (central and/or decentralized) and interface with internal automated systems. Additionally, guidelines should be included for conducting compliance audits/reviews of purchase transactions made by or on behalf of agency employees. Although *BuySenseOrg* functionality will provide that each organization can use its own accounting structure, business rules and workflow, only minimal levels of approval should be included in the process so as to maximize the benefits of eVA. Descriptions on each of the eVA core functions are contained in the eVA Implementation Guide.

14.4 **e-Mall Shopping:** Any available mandatory source, mandatory use contract or optional use contract will appear first in the response(s) received to an item search in the e-mall. Non-contract items will follow. Unit prices shown in the electronic catalogs are inclusive of shipping charges; however, a minimum order requirement may apply, which can be determined by clicking on the item description to view further information. The below procedures shall apply to purchases made via the e-mall:

- a. **Mandatory Sources and Mandatory Use Contracts** (see 2.1): Purchases may be made up to any dollar amount unless otherwise limited by the specific mandatory source or contract. Exception to the use of a mandatory source or contract must be approved in advance, in writing, by an official of the mandatory source, or the contract officer in the case of a DGS/DPS contract, utilizing the Procurement Exemption Request form located at Annex 13-D. Approved requests must be attached to the purchase transaction file either electronically or by hard copy.
- b. **Optional Use Contracts** (see 2.2a.): Purchases may be made up to any dollar amount unless otherwise limited by the specific contract. Such contracts allow for purchases from other sources; however, if it is to be made from another source and the total cost exceeds the single quote limit, the requirement must be competed.
- c. **Non-mandatory Sources** (see 2.2b. & c.): Surplus property listed in the e-mall is available for purchase up to any dollar amount. Sheltered workshops are not listed. Purchases from sheltered workshops are exempt from competitive procurement within the guidelines stipulated in 2.2c, but can only be accessed outside eVA.
- d. **Open Market Sources:** In addition to any available mandatory source, mandatory contract or optional use contract, other vendors may appear as choices during the e-mall shopping for the specific requirement. When a mandatory source or contract is not available to satisfy the requirement or an exemption has been granted to bypass it, any open market vendor may be selected when the total value does not exceed the single quote limit. See paragraph 14.5 for small purchase competitive requirements.

14.5 **Small Purchase Competitive Requirements:** eVA provides the capability to shop e-Mall catalogs (non-contract) up to \$30,000 and to solicit informal competition electronically via Quick Quote for small dollar requirements up to \$50,000. Small purchase solicitations are not required to be publicly advertised for at least 10 days, but the deadline set for a response should take into consideration the agency's needs and the time needed by potential bidders to review the requirement and to offer a quote. The award shall be made to the lowest responsive and responsible bidder.

- a. **Single Quotation (up to \$5,000):** An e-mall catalog (non-contract) price is acceptable as a quote when the value of the purchase is \$5,000 or less. The lowest priced item received as a result of an e-mall catalog search need not be chosen, but such selection should be based on the product that best meets the need and the required delivery date and when the price is considered fair and reasonable. Documentation of the one quote selected is not required. Although an e-mall catalog price response is acceptable, competition may be solicited via Quick Quote whenever the requirement is for multiple quantities and/or when it can be expected that a lower price and/or savings in shipping costs may be realized.
- b. **e-Mall Search Responses (over \$5,000 to \$15,000):** e-Mall catalog (non-contract) prices are acceptable as quotes whenever a minimum of three valid responses are received as a result of the e-mall search. A valid response is defined as an item meeting brand name or equal, generic or proprietary specification requirements. Additional competition need not be solicited in such instances, but the award shall be made to the lowest price e-mall vendor meeting specifications. Whenever less than three e-mall catalog responses are received, additional competition must be solicited via Quick Quote (see paragraph 14.5e) to comply with the required three valid responses. Each valid e-Mall response should be counted as a quote and included in the bid tabulation along with the additional quick quotes received. In the event additional valid sources could not be identified or the number of additional valid responses did not total three when combined with the e-mall search, document the attempt made to identify other sources and/or conduct a price reasonableness determination if only one valid quote was received. Such documentation may be noted in the comment block of the eVA purchase request. Be aware that e-Mall catalog pricing is generally for one each, inclusive of shipping and handling charges and, therefore, a lower price plus additional savings for shipping can be expected for multiple quantities and/or line items if solicited via Quick Quote.

- c. **e-Mall Search Responses (over \$15,000 to \$30,000):** The same procedure as stipulated in paragraph 14.5b and 14.5f shall apply for e-Mall responses over \$15,000 to \$30,000, except substitute the number four wherever three is shown.
- d. **e-Mall Search Responses (over \$30,000):** e-Mall catalog (non-contract) responses over \$30,000 shall not be accepted as valid quotes. Small purchase requirements over \$30,000 to \$50,000 must be solicited via Quick Quote (see paragraph 14.5f).
- e. **Quick Quote (over \$5,000 to \$15,000):** Competition shall be solicited via Quick Quote for non-contract requirements between \$5,000 and \$15,000 by soliciting a minimum of three valid sources, if available. Quick Quote may also be used to solicit a quote(s) for requirements under \$5,000. The policy requiring at least three valid responses does not apply (see above paragraph 14.5b) when no valid quotes were received as a result of an e-mail search. Whenever less than three valid sources are identified and solicited and/or only one valid quote is received, document the file as stated in above paragraph 14.5b.
- f. **Quick Quote (over \$15,000 to \$50,000):** The same procedure as stipulated in above paragraph 14.5e shall apply when soliciting competition via Quick Quote for non-contract requirements between \$15,000 and \$50,000, except substitute the number four wherever three is shown.
- g. **Quick Quote (over \$50,000):** Quick Quote shall not be used to solicit competition for requirements exceeding \$50,000; however, emergency purchase requirements meeting the criteria of paragraph 9.1 may be solicited via Quick Quote up to any dollar amount.
- h. **Small Purchase Charge Card (SPCC):** Where a SPCC has previously been entered into the eVA system, it should be used to affect payment of all purchase transactions up to \$5,000 processed through vendors accepting the card. Every effort must be made to ensure that whenever a card is issued or cancelled, when a restriction imposed on a card is changed, etc., that the eVA system is updated as soon as practicable.

14.6 **Change Orders:** eVA does not provide the functionality at this time to issue change orders. The following guidance is provided for making and documenting purchase order changes prior to receiving the goods or services in eVA. **Note** that once an order has been documented as received in eVA it cannot be cancelled; therefore, any shortages, overages, damages, etc., discovered after receiving in eVA must be handled off-line with the vendor.

- a. **Goods or Service Not Received:** In this situation the purchase order must be cancelled in eVA and a new purchase request created, if the requirement still exists.
- b. **Goods Received and Rejected But Receipt Transaction Not Entered in eVA:**
 - Contact the vendor and make arrangements for the return of the goods. If the Commonwealth made the error, charges may be incurred in returning the merchandise.
 - After the appropriate arrangements have been made off-line, cancel the purchase order in eVA. In the eVA cancellation, use the remarks block of the receipt document to document any charges incurred by the Commonwealth as a result of the cancellation. Use this documentation to support the re-stocking and transportation fees, if any, associated with the cancellation.
 - If the requirement still exists, generate a new eVA purchase request.
- c. **Order Received Short--No Additional Deliverable Expected:** When an order is received short and investigation establishes that no additional goods or services will be received, complete receipt in eVA for quantity received and check the close order block. Document the circumstances in the remarks section of the eVA receipt.
- d. **Order Received Short--Additional Deliverable Expected:** Generate an eVA receipt for the actual quantity received and submit it for approval and do not mark the close order block on the eVA screen. When the receipt is approved eVA will create a new receipt shell for the outstanding balance.

e. **Order Received With an Overage:**

- If it is decided not to keep the overage, contact the vendor and request instructions for return of the overage. Generate and process an eVA receipt for the purchase order quantity originally ordered. No other eVA action required. Return the excess to the vendor.
- If it is decided to keep the overage, process an eVA receipt for the purchase order quantity originally ordered. Contact the vendor and inform of the overage and that it will be retained and that another eVA confirming purchase order will be issued. Inform the vendor not to ship on the new order and add comments in the remarks section of the purchase order, such as, “Confirming Order—Do Not Duplicate—This order was issued to cover overage received and retained on purchase order number _____, dated _____.”

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

14.8 **Approvals:** Prior approval of specific procurement transactions, as required within other chapters of this manual, remain in full force and effect. Requests for approvals may be submitted electronically, via FAX or by mail. The following are examples of prior approvals that may be required:

- a. **Sole Source Requirements Exceeding \$10,000:** Refer to 8.2.
- b. **Operational Emergencies Exceeding Delegated Purchasing Authority:** Refer to 9.1b.
- c. **IT Equipment, Software and/or Computer Related Services Exceeding \$100,000:** Refer to 1.4b(1) and (2).
- d. **Telecommunications Equipment and/or Services:** Refer to 1.4b(3) and (4).
- e. **Facilities, Equipment and Services Requiring Federal Communications Commission (FCC) Licensing:** Refer to 1.4b(4).
- f. **Virginia Correctional Enterprises (VCE) and CORPRINT:** Refer to 2.1b.
- g. **Virginia Department for the Visually Handicapped (VDVH):** Refer to 2.1c.
- h. **Virginia Distribution Center (VDC):** Refer to 2.1e.
- i. **DGS/DPS Office of Graphic Communications (OGC):** Refer to 2.1f.

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.

Reverse auctioning: Means a procurement method wherein bidders are invited to bid on specified goods or nonprofessional services through real-time electronic bidding, with the award being made to the lowest responsive and responsible bidder. During the bidding process, bidders' prices are revealed and bidders shall have the opportunity to modify their bid prices for the duration of the time period established for bid opening. The purchase of goods or nonprofessional services, but not construction or professional services, may be made by reverse auctioning.

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*. If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (*Code of Virginia*, § 11-35.1E).



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, or disabilities, except where religion, sex or national origin 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.

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

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

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

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

increased. The Department of General Services, Division of Risk Management (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, 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.

- W. **NONDISCRIMINATION OF CONTRACTORS:** A bidder, offeror, or contractor shall not be discriminated against in the solicitation or award of this contract because of race, religion, color, sex, national origin, age, or disability or against faith-based organizations. If the award of this contract is made to a faith-based organization and an individual, who applies for or receives goods, services, or disbursements provided pursuant to this contract objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the public body shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursements from an alternative provider.

→ *** When Used:** This clause shall be included in all solicitations using an Invitation for Bids or Request for Proposal (*Code of Virginia, § 11-35.1 H*).

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.