

# *Commonwealth of Virginia*

## *Purchasing Manual for Institutions of Higher Education and their Vendors*

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The *Purchasing Manual for Institutions of Higher Education and their Vendors* specifies those policies which govern the purchasing processes at specifically designated publicly-funded colleges and universities under the Commonwealth of Virginia's pilot decentralization program. These policies are structured to support the mission of higher education and to comply with the *Virginia Public Procurement Act*.

The Commonwealth is a national leader in excellence in higher education with a diverse group of institutions which satisfy higher education's missions--teaching, research, public service and patient care. In meeting this mission, institutions are also ethically and legally charged to be good stewards of our public funds.

The *Virginia Public Procurement Act* states that "competition be sought to the maximum feasible degree," and that "procurement procedures involve openness and administrative efficiency." It also states that "individual public bodies enjoy broad flexibility in fashioning details of such competition." Our institutions' missions and the General Assembly's charge as stated in the act form the foundation for the Manual.

On this solid foundation, the Manual was constructed to meet several goals:

- Support the mission of higher education
- Maximize competition
- Comply with the *Code of Virginia*
- Present a clear, concise policy document which is specific to the purchasing departments of fully decentralized institutions of higher education
- Provide the flexibility to institutions to design their own small purchase procedures
- Provide information to vendors which seek to compete for the institutions' business
- Streamline policies to facilitate public and private sector cooperation
- Demonstrate higher education's commitment to ethics and fair business practices

Further, the Manual was written in an effort to create one comprehensive reference source for institutions and their vendors, thus reducing duplication of information and reproduction costs. Any information presented in other resources which govern institutions' specific expenditures, such as capital outlay are not included. Instead specific manuals or agencies are treated as resources.

The Manual, originally submitted in June 1995, was written under the authority of the *Appropriation Act of 1994, Section E 330*. It complies with the mandates of the Higher Education Decentralization Pilot Program, approved by the Secretary of Finance, in consultation with the Secretaries of Administration and Education and the Director of the State Council of Higher Education for Virginia.

It is in the spirit of stewardship, a greater mission, and support of the leadership of the Commonwealth, that this Manual is maintained and utilized by the following institutions of higher education:

College of William and Mary  
George Mason University  
James Madison University  
Old Dominion University

University of Virginia  
Virginia Commonwealth University  
Virginia Military Institute  
Virginia Polytechnic Institute and State  
University

The Manual was revised **July 2006**.  
*Further revisions are pending.*

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## **Key to Abbreviations**

Institutions of Higher Education = Institutions  
Purchasing Manual for Institutions of Higher Education and Their Vendors = The Manual  
Virginia Public Procurement Act = VPPA  
Invitation for Bids = IFB  
Request for Proposals = RFP  
Department of General Services = DGS  
Division of Purchases and Supply = DPS

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# **Section 1 - Authority and Responsibilities**

## **A. Introduction**

The designated institutions of higher education under the Commonwealth's pilot decentralization program embrace the fundamental obligation to the general public to ensure that purchases are accomplished in accordance with the intent of the laws enacted by the Virginia General Assembly, specifically the Virginia Public Procurement Act (VPPA). The VPPA states 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, 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 non-professional 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 stated in the procurement solicitation (*Code of Virginia*, Section 2.2-4300C).

This statement of intent by the General Assembly highlights the use of competition to the maximum feasible degree. Conducted properly, competitive procurement responds to user needs, results in public confidence in the integrity of public purchasing, and provides fair access for the private sector to public sector business.

If there is to be a contract between an institution of higher education and a nongovernmental vendor, the Virginia Public Procurement Act and the regulations of the *Purchasing Manual for Institutions of Higher Education and Their Vendors* apply regardless of the source of funds by which the contract is to be paid or in the absence of any monetary consideration flowing to either party.

## **B. Authority and Responsibility**

All purchases an institution makes shall be made in accordance with the *Code of Virginia*, Chapter 43, Title 2.2, and such rules and regulations as prescribed in this document. Any revision to the *Code of Virginia* will be included as a change to the Manual. Institution presidents have the ultimate responsibility to ensure that the acquisition of goods and services is in compliance with the *Code of Virginia*, executive orders, appropriations, other regulations, and the Manual.

## **C. Federal Grants**

Restrictions on the use of funds are frequently imposed by the granting federal agency. If the federal grant or contract funds contain conditions that are in conflict with the VPPA, the institution must request and obtain a written determination from the Governor that the acceptance of the grant or contract is in the public interest. Such determination shall state the specific provisions of the VPPA in conflict with the conditions of the grant or contract. (*Code of Virginia*, Section 2.2-4343B)

## **D. Authority to Sign Purchase Orders**

The institution designates in writing those persons authorized to sign purchase orders. Dollar thresholds are established, as applicable, for each signatory authority. A copy of the written authorization must be on file in the institution's purchasing department.

## **E. Procurement Records and Checklist**

The purchasing department awarding a contract or purchase order is responsible for maintaining all records relating to the procurement process. The file must be a complete record that tells the why, who, what, when, where and how of the procurement transaction.

## **F. Surplus Property**

The *Code of Virginia* Sections 2.2-1124, 2.2-1125 and 22.1-129 and 22.1-199.1 direct DGS/DPS to transfer surplus personal property from one state agency to another, to donate surplus property in certain specified circumstances, and to sell surplus property, paying the proceeds to the State Treasury, giving credit to the owning agency.

The Federal Property and Administrative Act of 1949, as amended, is the basic authority for all functions of the Federal Surplus Property Program. The most recent major amendment was Public Law 94-519, effective October 17, 1977. On the federal level, the General Services Administration is responsible for administering the program in coordination with state agencies. In Virginia, Code Section 1.1-445.1, effective 1984, designated DPS to administer the program in conformance with the Act and approved State Plan of Operation.

## **Section 2 - Methods of Procurement - Goods and Services**

### **A. Small Dollar Purchases**

Under the pilot decentralization program, specific institutions of higher education have the authority to establish and implement their own small dollar policies and procedures for purchases under \$50,000. The policies and procedures should encourage competition to the maximum feasible degree, provide fair access for vendors to small dollar purchases, and maintain flexibility to minimize administrative hardship for the private sector. Copies of these policies and procedures are available from each institution. Methods of procurement outlined in the Manual apply to purchases greater than \$50,000, unless noted. Purchases made under this subsection that are expected to exceed \$30,000 shall require the written informal solicitation of a minimum of four bidders or offerors. A model for small purchase procedures is included in the Manual as Appendix C.

### **B. Selection of Procurement Method**

In order to select the proper procurement method, the estimated or anticipated value of the contract must be determined. If the purchase is under \$50,000, then the small purchase policies and procedures of each institution apply. If the purchase is over \$50,000, the VPPA and the Manual will govern the transaction.

### **C. Preparing the Solicitation**

Solicitations for purchases must 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. Terms and conditions must be written clearly and concisely, and express the intent of the institution. Terms and Conditions must be approved by the Office of the Attorney General.

The *Code of Virginia*, Section 2.2-4343.1.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. To that end, the following statement must be used as applicable:

"This public body does not discriminate against faith-based organizations in accordance with the *Code of Virginia*, Section 2.2-4343.1, or against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment (*Code of Virginia*, Section 2.2-4310.A)."

### **D. Specifications**

Specifications are written to enhance competition, not to inhibit competition. These specification categories are listed in the preferred order of use:

#### **(1) Generic (Performance and Design)**

Buyers must analyze incoming requirements with a view towards soliciting the requirement on a generic specification basis. Under appropriate circumstances, performance specifications (setting forth the performance requirements), design specifications (setting forth the essential characteristics of the items solicited), or a qualified products list may be used.

#### **(2) Brand Name or Equal**

When it is determined to be impractical to develop a generic specification, a brand name may be used to convey the general style, type, character and quality of the article desired. Unless otherwise provided in the solicitation, the name of a certain brand, make or manufacturer does not restrict bidders to the specific brand or manufacturer named. Any article which the institution, in its sole discretion,

determines to be the equal of that specified, considering quality, workmanship, economy of operation and suitability for the purpose intended, may be accepted (*Code of Virginia*, Section 2.2-4315). When brand or manufacturers' names are specified, and one or more of these is known to be Virginia brands or manufacturers, those known to be Virginia brands or manufacturers are listed first before listing non-Virginia brands or manufacturers.

### **(3) Proprietary**

A proprietary specification restricts the acceptable products to those of one manufacturer. Upon solicitation, every effort must be made to obtain full competition among the distributors which carry the manufacturer's product. The determination for the use of a proprietary specification must be made in advance and be included in the procurement file. It is appropriate to use a proprietary specification when the desired product:

- (a) must be compatible with or is an integral component of existing equipment or products
- (b) must be pre-qualified to support specific needs of a program
- (c) is covered by a patent or copyright
- (d) must yield absolute continuity of results - one with which a user has had extensive training and experience, and the use of any other similar piece of equipment would require considerable reorientation and training.

## **E. Vendor Assistance in Specification Preparation**

No person who, for compensation, prepares an invitation to bid or request for proposal for or on behalf of a institution shall submit a bid or proposal for any portion of that procurement or disclose information concerning the procurement which is not available to the public. The institution shall permit this person to submit a bid or proposal only if the institution determines that the exclusion of the person would limit the number of potential qualified bidders or offerors, and not be in the best interest of the institution. (*Code of Virginia*, Section 2.2-4373).

## **F. Comments or Questions Regarding Specifications**

Every institution shall establish procedures whereby comments concerning specifications or other provisions in IFBs or RFPs can be received and considered prior to the time set for receipt of bids or proposals or award of the contract (*Code of Virginia*, Section 2.2-4316).

## **G. Bonds**

A bid bond, performance bond, or a payment bond may be required in a solicitation. When the institution requires a bid bond, it shall not exceed five percent of the amount bid. A bid bond, when specified, must accompany the bid. Performance bonds and payment bonds, if requested, must be in an amount at least equal to 100% of the accepted bid or proposal and should be filed 10 days prior to issuance of the purchase order or notice of award unless a written determination is made that it is in the best interests of the institution to grant an extension.

A certified check or cash escrow may be accepted in lieu of a bid, payment, or performance bond. If approved by the Attorney General, a bidder may furnish a personal bond, property bond, or bank or savings and loan association's letter of credit on certain designated funds in the face amount required for the bid, payment or performance bond. Approval shall be granted only upon a determination that the alternative form of security offered affords protection to the institution equivalent to a corporate surety bond.

If a performance bond requirement is not stated in the solicitation and the institution later determines that a bond should be provided prior to the award of a contract, the contractor to whom the award will be made shall

provide a performance bond, and the institution will pay the cost of the bond. For more information reference the *Code of Virginia*, Sections 2.2-4336 through 2.2-4338.

## **H. Term Contracts**

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 institution to renew the contract for an additional period, can be advantageous and should be considered. Multi-year programs are subject to the availability of funds, and each solicitation covering a multi-year period must contain an availability of funds clause. 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. Institutions should review all multi-year contracts at least annually to determine if the goods or services are still required, and if prices are fair and reasonable, based on the current market conditions, and if performance is satisfactory.

## **I. Public Notice and Response Time**

When establishing a date and time for receipt of bids or proposals, institutions should allow time for vendors to adequately respond. Institutions must give public notice of the IFB or RFP at least 10 days prior to the date set for the receipt of bids or proposals. For an IFB, public notice is provided by posting in a designated public area, or publication in a newspaper of general circulation or both. For an RFP, public notice is provided by posting in a public area normally used for posting of public notices and by publication in a newspaper or newspapers of general circulation in the area in which the corresponding contract is to be performed so as to provide reasonable notice to the maximum number of offerors that can be reasonably anticipated to submit proposals in response to the particular request. For both RFPs and IFBs public notice will also be published on the Department of General Services' central electronic procurement website (<http://www.eva.state.va.us>) and other websites as deemed appropriate by the individual institutions. In addition, bids or proposals may be solicited directly from potential contractors. Any additional solicitations shall include businesses selected from a list made available by the Department of Minority Business Enterprises.

Additionally, public notice of sole source and emergency procurements will be made by posting in a designated public area or published in a newspaper of general circulation on the day the institution awards or announces its decision to award the contract, whichever occurs first, or in the case of emergency procurements, as soon thereafter as is practicable.

## **J. Vendor Registration**

Institutions should establish procedures for vendor registration.

## **K. Acceptance Period**

Unless otherwise specified in the solicitation, bids and proposals are valid for 30 days from bid opening date.

## **L. Competitive Sealed Bidding and Invitations for Bids**

### **1. Competitive Sealed Bidding**

Competitive sealed bidding is used for procurements where specifications can be written in exact detail and price is the sole basis of selection. In competitive sealed bidding the invitation for bid is the tool used to list the purchase specifications or scope of work and all contractual terms and conditions.

### **2. Negotiation with Lowest Responsible Bidder**

A minimum of six vendors are normally solicited for competitive sealed bids. Sealed bids are publicly opened and read aloud. As soon as practical, bids are evaluated and an award is made to the lowest responsive and responsible bidder. Any bidder who, despite being the apparent low bidder, is determined not to be a responsible bidder for a particular contract shall be notified in writing. (Refer to Section 5, "Protests, Disputes, and Remedies.")

Unless canceled or rejected, a responsive bid from the lowest responsible bidder shall be accepted as submitted except that if the bid from the lowest responsible bidder exceeds available funds, the institution may negotiate with the apparent low bidder to obtain a contract price within available funds; however, such negotiation may be undertaken only under conditions and procedures described in writing and approved by the institution prior to issuance of the IFB. "Available funds" are those budgeted by the institution for the requirement and designated as such prior to issuing the solicitation (*Code of Virginia*, Section 2.2-4318).

### **3. Responsible Bidder**

A responsible bidder is determined as a vendor which:

- is a regular dealer, supplier or an authorized dealer of the goods or services offered
- has the ability to comply with the required delivery or performance schedule, taking into consideration other business commitments
- has a satisfactory record of performance
- has a satisfactory record of integrity
- has the necessary facilities, organization, experience, technical skills, and financial resources to fulfill the terms of the purchase order or contract

### **4. Responsive Bidder**

To be considered for an award, a bid must comply with the terms and conditions and specifications in the IFB. Failure to comply with the requirements set forth in the IFB may result in a bid being declared nonresponsive: for example, failure to sign a bid, or 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. may be grounds for this finding.

### **5. Multiple Awards**

Unless otherwise specified in the solicitation institutions may, in their sole discretion, award a multi-line item procurement in whole or in part or on an individual line item basis or award the procurement to multiple vendors.

### **6. Alternate Bids**

The institution's IFB must clearly state if the institutions will allow bidders to submit alternate bids or proposed approved equivalent products. If a bidder submits an alternate bid, it must clearly be identified as an alternate.

## **M. Competitive Negotiation and Request for Proposals**

### **1. Competitive Negotiation**

Competitive negotiation is a method for purchasing goods and services usually of a highly complex nature under which vendors are solicited by means of a request for proposals. The institution must determine the need for competitive negotiation in advance. The determination must be described in writing and included in the

procurement file. The request for proposals includes all mandatory terms and conditions and is the tool used during the competitive negotiation process to describe in general terms what will be purchased, and to specify the criteria which will be used to evaluate proposals. Price shall be considered but need not be the sole determining factor. A minimum of six vendors which appear to be qualified are normally solicited.

## **2. Ranking of Qualifications and Negotiations**

In the competitive negotiation process, the institution reviews proposals according to selection criteria included in the RFP. Negotiations shall occur with two or more vendors deemed to be fully qualified and best suited among those submitting proposals. If only one vendor meets the requirements outlined in the specifications and terms and conditions or if one vendor is deemed to be clearly more highly qualified than the other vendors, then the purchasing department should describe in a written document why negotiations were conducted with only one vendor. This applies to the purchase of goods and nonprofessional services only.

## **3. Final Agreement**

Any agreement reached as a result of negotiation must incorporate all agreements from negotiations into the written contract.

## **N. Prebid or Preproposal Conferences**

Prebid or preproposal conferences provide an opportunity for the institution to emphasize and clarify critical aspects of solicitations, eliminate ambiguities or misunderstandings, and permit vendor input. Attendance at conferences or site visits may be optional or mandatory. When mandatory attendance is stipulated, only bids or proposals from those vendors represented will be accepted. Institutions should carefully consider whether it is absolutely necessary that vendors attend in order to understand the solicitation and submit a response to it, as mandatory conferences and site visits can reduce competition. Conferences should be scheduled to allow time for proper notification and vendor schedules. After the conference, the institution will issue an addendum to the solicitation if a modification to the solicitation is required as a result of the conference.

## **O. Amending or Withdrawing Bids or Proposals by Vendors**

A vendor may amend or withdraw a bid or proposal if the institution receives such a request in writing before the due date and hour. The request must be signed by a person authorized to represent the person or vendor that submitted the bid or proposal.

## **P. Alterations to Bids or Proposals**

Prior to submission of a bid or proposal, alterations may be made, but they must be initialed by the person signing the bid or proposal. The proper procedure is to draw a single line through the information to be changed, insert the desired information, and initial the change. Erasures, typewriter strike-overs, or the use of opaque fluid on bid or proposal forms that affect unit price, quantity, quality, or delivery may result in the rejection of the line item or items involved in the bid or proposal.

## **Q. Late Bids or Proposals**

To be considered, bids or proposals must be received at the specific office location stipulated in the solicitation on or before the date and time designated on the solicitation. Vendors are responsible for the delivery of the bid or proposal and if using U.S. Mail or a delivery service should ensure that the bid or proposal is addressed properly. Bids received after the official date and hour are rejected. The official date and hour used



in receipt of responses is that time on the clock or automatic time stamp of the institution's purchasing department.

## **R. Cancellation or Rejection of Bids or Proposals**

An IFB, RFP or any other solicitation may be canceled or rejected. The reasons for cancellation or rejection shall be made part of the contract file. The institution shall not cancel or reject an IFB, RFP or any other solicitation solely to avoid awarding a contract to a particular responsive and responsible bidder or offeror. (*Code of Virginia, Section 2.2-4319*)

## **S. Mistakes in Bids or Withdrawals of Bids**

### **1. Mistakes Discovered Before Opening**

A bidder may correct mistakes discovered before the time and date set for receipt of bids by withdrawing and replacing or by correcting the bid.

### **2. Mistakes Discovered After Opening But Before Award**

#### **a. Informality**

An informality is a minor defect or variation of a bid or proposal from the exact requirements of the invitation for bids, or the request for proposals, which does not affect the price, quality, quantity or delivery schedule for the goods, services or construction being purchased. The institution may, in its sole discretion, waive such informalities or permit the vendor to correct them, whichever procedure is in the best interest of the institution. Examples include the failure of a vendor to:

- (a) Return the number of signed bids or proposals required by the solicitation.
- (b) Sign the face of the bid or proposal in the space provided.
- (c) Acknowledge receipt of an addendum to the solicitation.

#### **b. Judgment Errors**

An institution may allow a vendor to withdraw a bid prior to award upon written request. Approval to withdraw a bid shall not be unreasonably withheld. However, if approval is given, the institution shall make no award to the vendor which withdrew its bid for a period of sixty calendar days. The vendor may not submit a replacement bid. This does not apply to construction bids. Withdrawal of construction bids is handled in accordance with the *Construction and Professional Services Manual*.

#### **c. Non-Judgmental Errors**

If the mistake and the intended correct bid are clearly evident on the face of the bid document, the bid shall be corrected to the intended correct bid and may not be withdrawn. Examples of mistakes that may be clearly evident on the face of the bid document are typographical errors, errors in extending unit prices, transposition errors, and arithmetical errors.

### **3. Withdrawal of Bids (*Code of Virginia, Section 2.2-4330*)**

- (1) Institutions may establish procedures for the withdrawal of bids.
- (2) If a bid is withdrawn the lowest remaining bid is be deemed to be the low bid.

(3) No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or labor, or perform any subcontract or other work agreement for the person or vendor to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid was submitted.

(4) No bid may be withdrawn when the result would be the awarding of the contract on another bid of the same bidder or of another bidder in which the ownership of the withdrawing bidder is more than five percent.

## **T. Denial of Withdrawal of Bid**

If the institution denies the withdrawal of a bid it must notify the bidder in writing stating the reasons for its decision. The decision denying withdrawal of a bid is final unless the bidder appeals the decision within 10 days after receipt of the decision by invoking the appeals procedure or by instituting legal action as provided in the *Code of Virginia*, Section 2.2-4364.

## **U. Unsolicited Proposals**

Vendors are encouraged to submit unsolicited proposals offering new and innovative goods or services to institutions. However, all solicited and unsolicited proposals are submitted:

- at the risk of and expense of the offeror
- with no obligation on the part of the institution
- with no restriction on the institution's use of such ideas, proposals or the information contained therein

Unsolicited proposals shall be submitted in writing directly to the institution's central procurement office, which will establish a primary point of contact to coordinate the receipt and handling of unsolicited materials. Favorable evaluation by the institution does not in itself justify awarding a contract without providing for competition.

**(Note: This policy applies only to goods and non-professional services, and not to construction or professional services.)**

## **V. Sole Source**

Upon a determination in writing that there is only one source practicably available, for that which is to be procured, a contract may be negotiated and awarded to that source without competitive sealed bidding or competitive negotiation. The writing shall document the basis for this determination. The institution shall issue a written notice stating that only one source was determined to be practicably available and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted in a designated public area or published in a newspaper of general circulation on the date the institution awards or announces its decision to award the contract, whichever occurs first (*Code of Virginia*, Section 2.2-4303.E). Sole Source purchases greater than \$10,000 are reported quarterly to the Secretary of Education.

## **W. Emergency**

An emergency is an occurrence of serious or urgent nature that demands immediate action. In case of an emergency, a contract may be awarded without competitive sealed bidding or competitive negotiation; however, such procurement shall be made with such competition as is practical under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file. The institution shall issue a written notice stating that the contract is being awarded on an

emergency basis, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted in a designated public area or published in a newspaper of general circulation on the day the institution awards or announces its decision to award the contract, whichever occurs first, or as soon thereafter as is practicable (*Code of Virginia*, Section 2.2-4303.F).

## **X. Factors in Vendor Selection**

### **1. Freight**

Institutions may solicit bids on an FOB destination or origin basis. Freight charges are used as a factor in award and should be clearly shown on all documentation of the procurement. By signing an IFB, bidders certify that the bid prices offered for FOB destination include only the actual freight rate costs at the lowest and best rate and are based upon the actual weight of the goods to be shipped. Freight charges are, therefore, established for each individual purchase. If a requirement is bid FOB origin, the vendor normally prepays the charges and adds the amount to the invoice. A copy of the freight bill should be attached to all invoices that include freight charges.

### **2. Nondiscrimination**

In the solicitation, awarding or administration of purchase orders and contracts, no institution shall discriminate because of the race, religion, color, sex, disability, age, or national origin of the bidder, offeror, or vendor (*Code of Virginia*, Section 2.2-4310.A). Agencies and institutions shall prominently display a nondiscrimination statement in all invitations for bid, requests for proposals, contracts, and purchase orders indicating that the public body does not discriminate against faith-based organizations.

### **3. Small, Women-owned, or Minority-owned Businesses**

Institutions shall establish programs to facilitate the participation of small, women-owned, and minority (SWAM) businesses. These programs shall be established in writing and include cooperation with the Department of Minority Business Enterprise (DMBE), the United States Small Business Administrations, and other public or private agencies. Institutions shall submit annual progress reports on minority business procurements to the Department of Minority Business Enterprise (*Code of Virginia*, Section 2.2-4310.B). Institutions will submit an annual SWAM Procurement Plan to DMBE and the Secretary of Education. Institutions will comply with Appendix E, SWAM Procurement Programs. In the solicitation and awarding of purchase orders and contracts, institutions are encouraged to consider the use of small, women-owned, or minority-owned businesses.

### **4. Cash Discounts**

Prompt payment discounts may be considered in determining the lowest responsive bidder.

### **5. Determination of Price Reasonableness**

When competition is restricted, lacking, or the prices offered appear excessive, the institution is responsible for further analysis to determine if the prices are fair and reasonable. This applies for any sole source purchase, single response purchase, contract change and contract extension. The written documentation may be based on price analysis (comparison with prices previously paid, prices charged for functionally similar items, prices paid by other consumers, prices set forth in a public price list or commercial catalog, or state estimates) or through the analysis of pricetounit variations, value analysis (makeorbuy study), or cost analysis. The written analysis must be supported by factual evidence in sufficient detail to demonstrate why the proposed price is deemed to be reasonable. If the institution determines that the prices offered are not fair and reasonable, then the institution

will either rebid to seek broader competition or use a revised specification or both. If it is a negotiated purchase, then the price should be negotiated to one that is fair and reasonable.

## 6. Contract Pricing Arrangements

Contracts may be awarded on a fixed price or cost reimbursement basis or on any other basis that is not prohibited. However, no public contract shall be awarded on the basis of cost plus a percentage of cost except in case of an emergency affecting the public health, safety or welfare and in the case of certain insurance policies as provided in the *Code of Virginia*, Section 2.2-4331.

## 7. Taxes

### a. Excise

The Commonwealth of Virginia is generally exempt from paying federal excise taxes except for air transportation, the cost of which is generally defined as any amount paid within the United States for transportation of any person by air. Certain vaccines require that an excise tax be paid by the purchasing activity.

### b. State Sales

The Commonwealth of Virginia is generally exempt from paying Virginia's sales taxes on purchases of tangible personal property for its use or consumption. Requests for a Tax Exemption Certificate (Form ST-12).

### c. Sales and Use Tax -- State Government and Political Subdivisions

Virginia's Sales and Use tax does not apply to sales of tangible personal property to the Commonwealth of Virginia or to its political subdivisions, for their use or consumption, if the purchases are pursuant to required official purchase orders to be paid for out of public funds. The tax applies when such sales are made without the required purchase orders and are not paid for out of public funds. No exemption is provided for state or local government employee purchases of meals or lodging whether purchases are pursuant to required official purchase orders or not. The following examples are offered to show that taxes apply to lodging and conference facilities under a variety of circumstances:

- **Hotels, motels, tourist camps, etc. Generally.** The tax applies to the sale or charge or any room or rooms, lodgings or accommodations furnished to transients by any hotel, motel, inn, tourist cabin, camping grounds, club or other similar place. The tax applies to all sales of tangible personal property by such business.
- **Charges in connection with accommodations.** Any additional charges made in connection with the rental of a room or other lodging or accommodations are deemed to be a part of the charge for the room and subject to the tax. For example, additional charges for movies, local telephone calls and similar services are subject to the tax. Toll charges for long-distance telephone calls are not subject to the tax.
- **Meals (Generally).** Retail sales of meals by restaurants, hotels, motels, clubs, caterers, cafes and others are taxable. Related service charges (examples: cover charge, minimum sales fee, or room service charges) are a part of the sales price and are taxable. Any applicable tips are not subject to sales tax. See *Code of Virginia*, Section 630-10-64.
- **Meals (Exception).** **Food purchased by the University for free distribution at University facilities is exempt from state sales and use tax, including any applicable tips. This applies to food/catering services served at the University free of charge to faculty, staff, or guests. Meals not served at University facilities are subject to tax. See *Code of Virginia*, Section 58.1-609.4.**

## 8. Preference for Virginia Products and Vendors

In the case of a tie bid, preference is given to goods and services produced in Virginia or provided by Virginia vendors, if such choice is available. Copies of tie bids resulting from competitive sealed bidding are forwarded to the Anti Trust Section of the Office of the Attorney General.

Whenever any bidder is a resident of any other State and such State under its laws allows a resident vendor of that state a preference, a like preference may be allowed to the lowest responsible bidder which is a resident of Virginia (*Code of Virginia*, Section 2.2-4324). Institutions contemplating an award wherein the price difference between a Virginia supplier and a non-Virginia low bidder is not very large should consult the National Institute of Governmental Purchasing Survey 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.

## **9. Recycled Content**

In determining the award of any contract for paper and paper products to be purchased for the institution's use, the institution shall use competitive sealed bidding and shall award to the lowest responsible bidder offering recycled paper and paper products of a quality suitable for the purpose intended so long as the bid price is not more than 10 percent greater than the bid price of the low responsive and responsible bidder offering a product that does not qualify as a paper or paper product which meets EPA Recommended Content Standards as defined in 40 C.F.R. Part 250 (*Code of Virginia*, Section 2.2-4326).

Any person who manufactures, sells, or supplies goods or products may petition the institutions for the inclusion of the less toxic goods and products in its procurement process. The petitioner shall submit, prior to or during the procurement process, documentation which establishes that the goods or products meet the performance standards set forth in the applicable specifications. If the institution which receives the petition determines that the documentation establishes that the less toxic goods or products meet the performance standards set forth in the applicable specifications, it shall incorporate such goods or products into its procurement process (*Code of Virginia*, Section 2.2-4314.B).

In the case of a tie bid for goods after existing price preferences have been considered, preference is given to the bidder whose goods contain the greatest amount of recycled content (*Code of Virginia*, Section 2.2-4324.C).

## **10. Samples**

There are situations when samples will be needed to verify quality levels or to test offered materials to determine conformance with the specifications stipulated in the bid solicitation. A request for samples must be clearly indicated in the bid solicitation. Samples should be properly labeled, stored, and controlled until no longer needed. Those not destroyed during testing should be returned to the vendor. If, after 60 days, the samples have not been picked up and vendors fail to provide disposition instructions, samples may be offered to the institution's departments for use or treated as surplus property. The file must be properly documented as to disposition of samples.

## **Y. Insurance**

Whenever work is to be performed on State owned or leased facilities, the contractor is required to have insurance required by law and the institution's regulations to perform the type of work required. This includes Workers' Compensation, Employer's Liability, Commercial General Liability and Automobile Liability, and in certain types of programs Professional Liability/Errors and Omissions insurance coverage. In addition, for construction contracts, if any subcontractors are involved, subcontractors will also be required to have Workers' Compensation Insurance in accordance with Sections 2.2-4332 and 65.2-800 et seq. of the *Code of Virginia*. Stipulated insurance must be obtained prior to contract award and be maintained during the entire term of the

contract. An institution may require that the contractor provide the certificate of insurance prior to the provision of any goods and services or the commencement of any work.

## **Z. Drug-Free Workplace**

Any contracted firm, its agents and employees are prohibited from manufacturing, distributing, dispensing, possessing, or using any unlawful or unauthorized drugs or alcohol while on State property. All public bodies must include in every contract worth over \$10,000 the following provisions: during the performance of the contract, the contractor agrees to

- (a) provide a drug-free workplace for the contractor's employees
- (b) post in conspicuous places 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 specify the actions that will be taken against employees for violations of such prohibition
- (c) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace
- (d) 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.

## **AA. Purchases from State Contracts**

Term contracts have been established by the University, the College and Cooperative Procurement Group, the Department of General Services' Division of Purchases and Supply and the Department of Information Technology. Term contract vendors offer favorable prices for a wide variety of goods and services from reliable vendors and should be regarded as the preferred procurement source to obtain more favorable prices through volume purchasing and to reduce procurement lead time and administrative effort. Written notices of contract awards are issued notifying institutions of the existence of such contracts.

With the exception of DIT contracts for telecommunications services, use of term contract sources is not mandatory, but it is strongly encouraged. Alternative commercial sources should not be selected based on personal preference. Rather, a business-related reason should exist for any decision to not use a term a contract. Examples include situations where the contract vendor does not offer the exact time or service required, where more favorable price or delivery is available, or where better quality is available.

If any contract vendor does not meet performance expectations, it is important to advise the contracting officer of the situation so that appropriate action may be taken.

## **BB. Cooperative Procurement Among State Institutions**

Any institution may participate in, sponsor, conduct, or administer a cooperative procurement agreement with one or more public bodies or agencies of the United States for the purpose of combining requirements to increase the efficiency or reduce administrative expenses in the acquisition of goods and services, other than professional services. Such purchases are made in accordance with the *Code of Virginia*, Section 2.2-4304, the VPPA, and the Manual. The institution's IFB or RFP must state that the contract may be made available to other agencies for cooperative procurements.

Pursuant to the *Code of Virginia*, Section 2.2-4304, institutions subject to the Manual will specifically endeavor to share contractual access and historic/prospective contract usage data with other institutions of higher education (to include four-year, two-year and community colleges). VASCUPP institutions will routinely share such data with other VASCUPP institutions when conducting cooperative procurements. VASCUPP institutions

will routinely include a third-party access clause in their RFPs, IFBs and resulting contracts which will allow contractual access for other VASCUPP/higher education institutions and maximize the potential for advantageous terms, conditions, and pricing. The lead VASCUPP institution coordinating a cooperative procurement may also routinely choose to include access for: organizations (such as foundations) affiliated with their institution; and those counties, cities, or towns adjacent to their institution.

## **CC. Exceptions to Competitive Requirements**

Competitive procedures may be waived under these circumstances.

- (1) Selected categories of goods and services under \$50,000 as outlined in the institution's small purchase procedures
- (2) Purchases of used equipment under \$50,000
- (3) Purchases from governmental sources
- (4) Purchases under \$50,000 for testing or evaluation (limited to purchases of quantities considered necessary for complete and adequate testing)
- (5) Emergency purchases
- (6) Sole Source purchases

## **DD. Reverse Auctioning**

The purchase of goods or nonprofessional services, but not construction or professional services, may be made by reverse auctioning. However, bulk purchases of commodities used in road and highway construction and maintenance, and aggregates shall not be made by reverse auctioning. (*Code of Virginia*, Section 2.2-4303 J)

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# **Section 3 - Procurements with Special Considerations**

## **A. Information Technology**

Each month, institutions must send copies of all purchase orders (or purchase requisitions) for information technology in excess of \$100,000 to the Department of Technology Planning (DTP). Any procurement valued at \$1,000,000 and above must be reviewed and approved in advance by the Secretary of Technology.

Written approval of the Secretary of Technology shall be obtained before any state agency contracts for telecommunications services from a non-governmental source.

### **Information Technology Access Act**

In accordance with Section 2.2-3504 of the *Code of Virginia*, the following clause apply to all information technology contracts:

**NON-VISUAL ACCESS TO TECHNOLOGY:** All information technology (the "Technology") which is purchased or upgraded by institutions of higher education shall comply with the following nonvisual access standards from the date of purchase or upgrade until the expiration of the contract:

- (i) effective, interactive control and use of the Technology shall be readily achievable by nonvisual means;

- (ii) the Technology equipped for nonvisual access shall be compatible with information technology used by other individuals with whom any blind or visually impaired user of the Technology interacts;
- (iii) nonvisual access technology shall be integrated into any networks used to share communications among employees, program participants or the public; and
- (iv) the technology for nonvisual access shall have the capability of providing equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired.

Compliance with the foregoing nonvisual access standards shall not be required if the head of the using agency, institution determines that (i) the Technology is not available with nonvisual access because the essential elements of the Technology are visual and (ii) nonvisual equivalence is not available.

Installation of hardware, software, or peripheral devices used for nonvisual access is not required when the Technology is being used exclusively by individuals who are not blind or visually impaired, but applications programs and underlying operating systems (including the format of the data) used for the manipulation and presentation of information shall permit the installation and effective use of nonvisual access software and peripheral devices.

If requested, the Contractor must provide a detailed explanation of how compliance with the foregoing nonvisual access standards is achieved and a validation of concept demonstration.

## **B. Conferences**

As long as the procurement involves only the use of the facilities, the competitive requirements of the Virginia Public Procurement Act and this manual do not apply. However, if the procurement includes the provision of catered meals, audio visual equipment, etc., and the value of these other included services exceeds the \$30,000 level for which competition is required, the entire procurement, including the use of the space, is purchased as a package based on its anticipated value.

In the event that there is a compelling reason for selecting a particular hotel or motel as the site for a conference, meeting, or training session, such as location or the only one that can provide the needed facilities during the time frame in which the event is to be held, the institution handles the procurement on a sole source basis. In this case, the use of non-competitive negotiation to secure the best price is required.

## **C. Construction**

### **1. Capital Outlay Projects**

The procurement of construction for Capital Outlay Projects Acquisition, construction or improvements related to property, plant or equipment (including plans), as defined in DPB's Budget Development Instructions, is governed by the rules of the *Construction and Professional Services Manual*, issued by the Department of General Services, Division of Engineering and Buildings.

Construction is defined as 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*, Section 2.2-4301). Construction is purchased by competitive sealed bidding. Competitive negotiation may be used if a determination is made in advance, and explained in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to the institution (*Code of Virginia*, Section 2.2-4303.C). Competitive negotiation may only be used specifically in these circumstances:



- (1) On a fixed price design-build basis or construction management basis under *Code of Virginia*, Section 2.2-4306.
- (2) For the alteration, repair, renovation, or demolition of buildings when the contract is not expected to cost more than \$500,000.
- (3) For the construction of highways and any draining, dredging, excavation, grading, or similar work on real property.

Nonprofessional services needed for construction or facilities maintenance, such as cost estimating, critical path method scheduling, construction inspections, roofing evaluations, and nondestructive testing, will be purchased under nonprofessional services guidelines.

Institutions should purchase construction, including but not limited to renovation, remodeling, demolition and repair work on buildings and other structures, which are not Capital Outlay Projects but which involve plans and specifications prepared by an architect or engineer, by using the same procedures and contract provisions of the *Construction and Professional Services Manual*. "Prepared by an architect or engineer," means that the information shown on the plans and specifications is of a technical nature requiring the knowledge, training and expertise of a person who practices architecture or engineering. It does not include work defined by a written description or "scope of work" accompanied by clarifying sketches nor does it include repair or replacement of equipment. It is recognized that staff architects and engineers are often utilized to prepare these sketches and scopes of work even though an engineer or architect is not required and others could provide this function. As a rule of thumb, if a staff architect or engineer were not available to do the work, would the institution have to employ an architect or engineer to prepare the bid documents for the work? If the answer is yes, then the project fits this criteria. Institutions purchase noncapital outlay construction in the same manner as nonprofessional services.

Systems necessary to make a building functional, such as heating, ventilation, air conditioning, electrical, elevators, or like systems are purchased in accordance with the *Construction and Professional Services Manual*. Equipment or furnishings, whether builtin or free standing, not acquired as part of a general construction contract and not requiring plans and specifications prepared by an architect or engineer, are purchased under the terms in the Manual.

At a minimum, a construction contractor will be required to provide insurance as required based on the type of construction service being performed. Contact the Department of General Services, Division of Risk Management for advice on the specific situation (804-786-5968).

Solicitations for construction contracts with an estimated cost of \$1,500 or more must contain a Contractor Registration clause.

## **2. Contractor License Requirements**

Contractor Licensing and Registration. State statutes and regulatory agencies require that some contractors be properly registered and licensed, or hold a permit, prior to performing specific types of services. Among those services are the following:

<b>Service</b>	<b>Regulatory Agency</b>
Construction-Type	Department of Professional & Occupational Regulation
Pesticide Application	Department of Agriculture & Consumer Service

Asbestos Service

Department of Professional &  
Occupational Regulation

Security Service

Department of Criminal Justice Services

Treatment, Storage, Handling,  
Transportation, or Disposal of  
Hazardous Waste or Hazardous  
Radioactive Material

Department of Environmental Quality

It is the vendor's responsibility to comply with the rules and regulations issued by State regulatory agencies. The following statement should appear on the institution's solicitations for regulated services.

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

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

If a purchase of \$1,000 or more involves construction, removal, repair or improvement of any building or structure permanently annexed to real property or any other improvement to such real property, the contractor must possess one of the following licenses issued by the State Board for Contractors for the type of work involved (*Code of Virginia*, Sections 54.11103 and 54.11115).

Contractor License A (If the contract is \$70,000 or more or if the contractor does \$500,000 or more business in a 12-month period).

Contractor License B (\$7,500 \$70,000 or if the contractor does between \$150,000 and \$500,000 in business within a 12 month period; \$1,000 for electrical, plumbing, and HVAC work).

Contractor License C (\$1,000 \$7,500 or if the total value of work undertaken in a 12 month period does not exceed \$150,000). NOTE: Class C Contractors do not include electrical, plumbing, and heating, ventilation and air conditioning (HVAC) contractors.

The solicitation must state that the appropriate contractor license number must be furnished with the bid or proposal. If a contractor who is already licensed fails to submit the license number with the bid or proposal, the bid or proposal may still be considered if the contractor promptly submits the number upon the request of the purchasing office. An unlicensed vendor submitting a bid or offer when license is required is nonresponsive and is in violation of State law. Any buyer who knowingly receives or considers a response from an unlicensed vendor when a license is required is in violation of State law (*Code of Virginia*, Section 54.1-1115). Contractors must be licensed in the proper classification and specialty to perform the work required by the solicitation. If there is any question as to whether a licensed contractor is required for a specific procurement, call the State Board for Contractors for information or for policy interpretation (804-367-8511 or 804-367-2785).

## **D. Printing**

**1. CORPRINT**, a Corrections industry, is a required source for certain types of printed materials (*Code of Virginia*, Section 53.147). Should CORPRINT not be able to fulfill the requirement, institutions must document the file, explaining why another vendor was used. Institutions are exempt from using CORPRINT if they operate in-house printing services.

**2. Ownership of Artwork, Negatives, Etc.** All artwork, negatives, dyes, overlays or similar material used to print a job is the institution's property and must be returned to the institution upon completion of the job. This should be clearly stated in all solicitations. Institutions should not process any invoice for payment until these items are returned. The institution may waive this requirement when it is not practical.

**3. Copyright.** No vendor may copyright any work produced for the institution without prior written consent.

**4. Multi-Color Printing.** Except for promotional publications and diplomas or where the use of color is essential to support the purpose of the publication, all printing must be one color. Examples of supporting the purpose of the publication are: maps, aeronautical charts, or pictures illustrating the difference between healthy tissue and diseased tissue or the use of color blocks or words on a form to highlight or separate critical areas. Multi-color printing may be used for promotional publications. A promotional publication is defined as a publication:

- produced for institutions with specific statutory authority to advertise or promote
- designated for specified audiences outside of government
- intended to yield significant benefit to the Commonwealth and are produced for use in a competitive environment which may require multiple colors and other special features

All printing requests not meeting the three conditions above must be accompanied by a letter justifying the use of multicolor printing. This applies to jobs produced in-house as well as outside purchases. The institution's president or chancellor or his or her official designee must approve requests for multi-color printing.

**5. Official State Stationery, Letterheads, and Envelopes.** Standardization of "Official State Stationery" was established in November 1974 by Executive Order. Institutions of higher education are exempt, as they are permitted to continue the use of their present seal and design. Institutions' presidents or chancellors may use letterhead and envelopes with a 25% rag content.

Where necessary, institutions with policy and advisory boards or commissions may include the names of such board or commission members on the official letterhead or may use separate letterheads for the board or commission, and the institution. Engraved stationery may not be used. Any deviation from these specifications and requirements must be approved in advance by the institution's president or chancellor or his or her designee.

## **E. Consultant Services**

Consultants provide information, assistance, and guidance of a purely advisory nature, usually in the form of a report or other deliverables, setting forth alternative courses of action and recommendations based on the expertise possessed by the outside individual, vendor or organization. Such advice or assistance does not relieve the institution's management of responsibility for its final decision.

Before engaging an outside consultant the institution should first examine the possible use of State agencies:

Department of Human Resource Management -- personnel management, employee relations, training programs, job evaluations, compensation studies and workload evaluations.

Department of Accounts -- financial controls and internal audit programs.

Department of Planning and Budget -- analysis of alternatives, program review and evaluation, cost reduction programs and productivity improvement (*Code of Virginia*, Section 2.2-1501).

All state agencies and institutions of higher education shall make a determination of "return of investment" as part of the criteria for awarding contracts for consulting services.

## **F. Individual Services**

Contracting for the services of individuals should be treated the same as any other purchase. However, institutions contracting with individuals are cautioned that problems have arisen with the Federal Internal Revenue Service concerning withholding and Social Security taxes when the individual performs under the supervision and control of the institution. An employer - employee relationship has been determined to exist in such cases, and subjects the institution to tax liability and employment obligations established by State law or gubernatorial policy. Purchasing departments should consult with their financial officers, human resources officers, and legal counsel to establish policies and procedures for the use of independent contractors.

## **G. Professional Services**

Professional services must be obtained by competitive negotiation. The institution 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. The 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. Discussions include nonbinding estimates of total project costs. Proprietary information from competitive offerors shall not be disclosed to the public or to competitors. At the conclusion of discussions, on the basis of evaluation factors published in the RFP and all information developed in the selection process to this point, the institution 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 institution can be negotiated with 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 with a fair and reasonable price. Should the institution 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 (*Code of Virginia, Section 2.2-4301*).

State agency concurrence or approval for selected services may be required by reasons of law, regulations, directive, or appropriation. Such services and related agencies are as follows:

- Service Agency
- Accounting Dept. of Accounts
- (Coordination and Assistance)
- Architecture, Landscape Architecture, Department of General Services
- Professional Engineering and Land Surveying Division of Engineering and Buildings
- Law Attorney General's Office

### **1. Legal Services and Expert Witness**

Institutions may enter into contracts without competition for legal services, provided that the pertinent provisions of Chapter 5 (Section 2.2-500 et seq.) of Title 2.2 remain applicable or for expert witnesses and other services associated with litigation or regulatory proceedings.

### **2. Construction Related Services**

The procurement of Architectural, Landscape Architectural, Land Surveying, and Professional Engineering

Services for Capital Outlay projects and similar projects not classified as Capital Outlay projects must be in accordance with the *Construction and Professional Services Manual*.

## **H. Nonprofessional Services**

The term "nonprofessional services" means all services not within the scope of the practice of accounting, actuarial services, architecture, land surveying, landscape architecture, law, medicine, dentistry, optometry, pharmacy or professional engineering (*Code of Virginia*, Section 2.2-4301).

## **I. Special Approvals**

Approval for certain services is required by law, regulation, directive or appropriation. Services requiring other State agencies' approval or concurrence are as follows:

Insurance - Department of General Services/Division of Risk Management.

Capital Outlay Related Services - Department of General Services/Division of Engineering and Buildings.

Banking and Bank-Related Cash Management Services - Department of the Treasury, Division of Cash Management and Investments.

## **J. Department of Corrections**

Institutions must purchase articles and services produced or manufactured by State correctional facilities which are supported in whole or in part with State funds. Information on the goods and services available from Corrections is contained in the Virginia Correctional Enterprises catalog. Institutions submit purchase orders directly to Correctional Enterprises or VCE Partnership companies. Institutions with critical needs should contact the Correctional Enterprises, Customer Service, by phone (800) 823-2823 to discuss availability, delivery, etc. Written releases are granted if Corrections has nothing compatible with the requirement, or if it is unable to meet the delivery requirement. If desired by institutions, these releases may be given by facsimile transmission. Under the *Code of Virginia*, the Director of DGS/DPS may exempt purchasing from Correctional Enterprises when, in his/her opinion, an article produced or manufactured does not meet the reasonable requirements of the institution. In any case where the Director of DGS/DPS grants an exception, the Director submits a copy of the written justification for the exception to the Director of the Department of Corrections. Intentional violations of the requirement to purchase from Corrections, after notice from the Governor to desist, shall constitute malfeasance in office and shall subject those responsible for such violations to suspension or removal from office as provided for in the *Code of Virginia*, Sections 53.1-47, 53.1-48, and 53.1-51.

## **K. Virginia Industries for the Blind**

Institutions supported in whole or in part with State funds must purchase mattresses, gloves, and writing instruments produced or manufactured by the Virginia Industries for the Blind (VIB). Information on the goods available from the VIB is contained in the VIB brochure packet. Institutions with critical needs should contact the VIB Deputy Commissioner by phone (434) 295-6034 to discuss availability, delivery, etc. For such purchases, the institution must use VIB, unless a written release is granted to the institution from VIB. Intentional violations of the requirement to purchase from VIB, after notice from the Governor to desist, shall constitute malfeasance in office and shall subject those responsible for such violations to suspension or removal from office as provided for in the *Code of Virginia*, Sections 53.1-49, 53.1-51, and 53.1-52.

## **L. Nonprofit Sheltered Workshops of Virginia**

Institutions may purchase goods and services from nonprofit sheltered workshops without competition if the goods or services:

- (1) are within 10 percent of fair market value
- (2) are of acceptable quality
- (3) can be supplied within the time required
- (4) are not produced by inmates confined in State correctional institutions
- (5) are offered at a price which is fair and reasonable
- (6) are not produced by schools or workshops under the supervision of the Virginia Department of the Visually Handicapped

### **M. Rental, Lease, or Installment Purchase of Goods**

Rental, lease, or installment purchase of materials, equipment or supplies is handled in the same manner as the purchase of goods.

### **N. Motor Vehicles**

The Department of Transportation by Executive Order has the authority to purchase motor vehicles. Institutions desiring to purchase or lease vehicles must submit a VDOT Fleet Management Division CP-15 form for approval, to initiate the purchase process for passenger vehicles. The CP-15 form should be submitted to VDOT's Administrative Services Division for non-passenger vehicles.

### **O. Used Equipment**

Used equipment may be purchased using non-competitive negotiation upon a written determination that there is only one sole source practicably available for the used equipment. Used equipment is that which has been previously owned and used and if offered for sale under "where is, as is" conditions. It does not include demonstration or factory rebuilt items marketed through distributors.

Complete information describing the item must be provided to the purchasing departments, including the seller's price in writing. Prior to preparation of a purchase order, the purchasing department must obtain a written statement from a person who is technically knowledgeable of the type of equipment to be purchased, normally the end user, verifying the condition of the equipment, its future usefulness, and that its purchase would be in the best interest of the institution.

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## **Section 4 - Contract Administration and Vendor Performance**

With increased privatization and use of term contracts for administrative support within Higher Education, it is important for each institution to develop a methodology for active contract administration. Only through continual active involvement of contract administrators, working partnership with contracting officers, will the institutions contractual performance goals be achieved.

Contract administration begins with the signing or execution of a contract or purchase order. Its purpose is to assure that the contractor's total performance is in accordance with the terms and conditions of the contractual agreement. The integrity of the public purchasing system demands that goods or services be furnished as specified in the contract. Contract administration includes all actions taken by the institution relative to a specific contract after the award is made. A contract administrator is normally identified in each contract. Institutions should also assemble and maintain a master listing of all term contracts to include the base period and number of renewals.

## **A. Contract Modification Restriction**

Contracts may be renewed or extended if provided for in the original contract, and in emergency situations. No additional consideration may be paid to the contractor because of renewal or extension unless specifically authorized under the original contract. No fixed price contract may be increased by more than 25 percent or the amount of the contract or \$50,000, whichever is greater, without the advance written approval of the Governor or designee at the Institution responsible for the execution of contracts. In no event may the amount of any contract, without adequate consideration, be increased for any purpose, including, but not limited to, relief of an offeror from the consequences of an error in its bid or offer (*Code of Virginia*, Section 2.2-4309).

## **B. Assignment of Contract**

The contractor cannot assign a contract in whole or in part without the prior written consent of the institution.

## **C. Contract Renewal or Extension**

A contract may contain a renewal clause describing the conditions under which a term contract may be renewed for a stipulated period of time. The decision to renew lies with the institution.

An institution may extend the term of an existing contract for services to allow completion of any work undertaken but not completed during the original term of the contract.

## **D. Special Types of Contracts**

### **1. Requirements-Type Contracts**

Requirements-type contracts (open-ended) have no fixed total dollar amount; rather, they are typically unit price based. They establish a framework under which goods or services are provided, but it is the degree of ordering activity against the contract that will ultimately determine its total value. Effective administration of openend contracts requires that the institution have the ability to determine the degree of activity against these contracts. This includes having the ability to capture and analyze usage information, where appropriate. Contract administrators should ensure that ordering activity is in compliance with the terms of the agreement. Contract expenditure activity and contractor performance should always be examined prior to the exercise of any renewal provision or resolicitation.

### **2. Time and Materials Contracts**

Whenever an institution uses a cost reimbursement contract such as time and materials to acquire needed goods or services, the contract administrator should carefully analyze the invoice prior to providing approval for payment. Because there may be no incentive for contractors to contain costs, contract administrators have an obligation to verify the legitimacy and accuracy of any costs submitted for reimbursement. When a time and materials contract is used, the contract administrator should obtain, whenever feasible, a detailed cost estimate and evaluate the reasonableness of its cost elements before authorizing the work to be performed. If it is determined that the estimate is not reasonable or in accordance with the terms of the contract, negotiations or the solicitation of additional estimates should be considered.

During the actual work performance period, it is clearly in the institution's best interests to have an organized means to periodically monitor the work of the contractor and the conformance of the goods or materials being supplied. Contractors should come to expect such involvement by the institution as the norm rather than the exception.

### **3. Consultant Services**

When the services of a consultant are utilized, especially when analysis and research are involved, and the contractor's performance is to culminate in a written report or other document (i.e., the deliverable), it is imperative that the contract administrator periodically check the contractor's performance and assure that it is progressing to the degree anticipated. If performance does not satisfy expectations, the institution may issue a "cure" notice with specific guidance on what must be done to adequately meet performance expectations. If the consultant's report or any deliverable is not acceptable, the institution does not pay the final invoice until an acceptable report is received. A written notice is issued to the consultant stating what must be done to satisfy the requirements of the contract.

### **4. Revenue Sharing Contracts**

Institutions possess statutory authorization to generate revenue. Service contracts for the management of cash operations (e.g. food service, canteen or bookstore operations, etc.) allow institutions to share in the revenues these activities generate rather than require any expenditure of funds. Commissions are often based as a percentage of gross receipts, but many financial arrangements are possible. Institutions must be able to verify gross sales under agreements of this type. The contract administrator must assume responsibility for sound financial management of the contract performance. In addition, the disposition of any purchased capital equipment at termination and additions to real property during the term of the agreement must also be addressed in the contract.

### **E. Purchase Order, Authority, and Shipment**

A purchase order is a document the institution uses to execute a purchase transaction with a contractor. The purchase order number must be shown on all bills of lading, packing slips, back orders, invoices, etc. The contractor's receipt of a purchase order authorizes shipment. For requirements-type contracts, the receipt of a notice of award establishing a contract does not authorize shipment. Shipment is authorized by the receipt of a purchase order written against the contract. Contractors which accept and deliver an order without a purchase order or number or other properly executed contract form do so at their own risk.

### **F. Purchase Order Changes**

A purchase order change is used to correct errors, to add or delete small quantities of goods, or to make other minor adjustments in the original orders. It may also be used to cancel an order. A contractor which deviates from the requirements of a purchase order or contract prior to receipt of an authorized change order does so at its own risk. The authority to modify a contract resides with the institution's purchasing department exclusively unless the modification exceeds 25 percent or \$50,000 of the fixed price contract. (Reference Section 4A, "Contract Modification Restrictions.")

### **G. Cancellation of Purchase Orders and Contracts**

The institution's purchasing department may cancel purchase orders. The institution's purchasing department confirms all cancellations made by telephone, with a facsimile, or written purchase order change order which explains the basis of the cancellation.

Orders or contracts may be canceled without a contractor's consent as provided in under sections "Termination for Default" or "Termination for Convenience of the Commonwealth."

A contractor may request cancellation of any order and the institution will grant relief if the contractor is prevented from specific performance including timely delivery by an act of war, legal authority, act of God or



other unavoidable causes not attributed to the contractor's fault or negligence. The burden of proof rests with the contractor. The institution reserves the right to cancel all contracts with any contractor which fails to perform for any one contract.

## **H. Delivery and Receipt of Goods**

### **1. Delivery**

Delivery must be made by the date or period specified in the purchase order or contract or the contractor may be considered to be in default. If a contractor cannot make delivery as specified under an existing purchase order or contract, the contractor must immediately notify the purchasing department. The contractor may offer a new delivery date; however, if it is not acceptable to the institution and delivery cannot be made as originally specified, the contractor may be considered in default. Delivery by a contractor to a common carrier does not constitute delivery to the institution. Any claim for loss or damage incurred during delivery is between the contractor and the carrier. The institution accepts title only when goods are received and accepted regardless of the FOB point. Contractors should ensure they have been given a specific delivery location and must obtain a signed receipt for goods delivered.

### **2. Overshipments and Overruns**

The institution's purchasing department has the authority to approve the acceptance of goods in excess of those specified on the purchase order or contract provided the acceptance of excess good or services is in accordance with Section 4A, "Contract Modification Restrictions."

### **3. Substitutions**

Substitution is defined as delivery of an item that does not conform to the specifications of the purchase order or contract. Substitutions on purchase orders require the prior approval of the purchasing department. Any supplies delivered that do not meet specifications may be returned to the contractor at the contractor's expense. When a shipment or item is returned, the contractor must make immediate replacement with acceptable merchandise.

### **4. New, Used, Altered**

All supplies and equipment furnished must be new and in first class condition unless the purchase order or contract specifies used items. Demonstration, previously rented, or reconditioned items are not considered new. No equipment is acceptable if serial numbers or any other manufacturers' identifying labels or marks have been removed, obliterated, or changed.

### **5. Packaging**

Unless otherwise specified in the solicitation, contractors must use new standard commercial packing and shipping containers. Shipping containers must be legibly marked or labeled on the outside with the commodity description and number, size, quantity, contract number, and agency purchase order number or purchase order number. A packing slip or invoice must accompany all shipments and must reference the purchase order number.

### **6. Receipt of Shipments**

The institution checks shipments against the ordering document to assure quantities, units, etc., match. Required grading certificates, USDA stamps, or any other proofs of quality must precede or accompany the shipment.

## **7. Inspection**

All materials, equipment, supplies, and services are subject to inspection and test. Items or services that do not meet specifications may be rejected. Failure to reject upon receipt, however, does not relieve the contractor of liability for latent or hidden defects subsequently revealed when goods are put to use or tested. If latent defects are found, the contractor is responsible for replacing the defective goods within the delivery time originally stated in the solicitation and is liable for any resulting expenses the institution incurs.

## **8. Lost or Damaged Shipments**

The receiving institution will note all apparent damages in transit on the freight bill and will notify the contractor. Discovery of concealed damage or loss must be reported by the receiving institution to the carrier and the contractor within seven days of receipt. The contractor must make immediate replacement of the damaged or lost merchandise or be in default of the contract. It is the contractor's responsibility to file a claim against the carrier. If damage is to a small quantity, with the purchasing department's approval, the contractor may deduct the amount of damage or loss from its invoice in lieu of replacement.

## **I. Complaints on Vendor's Goods or Services**

The institution's purchasing department shall report differences between the contract and subsequent performance to the contractor on a Complaint to State Vendor form. Contractors are required to respond to the institution and to send a copy to DGS/DPS. Failure to respond within 10 days may result in removal from the institution's and/or State's vendors' List. Complaints or discrepancies on contractor performance should be reported as they occur. These reports are necessary in order for the institution and DPS to develop contractor history, evaluate contractor performance, and, if required, to take appropriate action.

## **J. Inspection, Acceptance, and Rejection of Goods or Services**

Institutions are responsible for inspecting and accepting goods or services purchased. Inspection is the close and critical examination of goods or services delivered to determine conformance with applicable contract requirements or specifications.

Rejection of goods or services is the responsibility of the institution whenever the goods or services do not meet contract requirements.

## **K. Termination for Default, Default Actions, Notice to Cure**

A contractor may be considered in default if it fails to perform in accordance with the terms of the purchase order or contract. These factors should be considered prior to taking any default action.

- (1) The specific reasons for the failure.
- (2) The period of time needed to obtain the goods or services from other sources compared to the time that delivery or performance could be accomplished by the delinquent contractor. If a contractor fails to perform, the institution should notify the contractor and try to reach a satisfactory solution. If the matter cannot be resolved, the institution may issue a Complaint to State Vendor Form. If the matter is still not resolved a "Notice to Cure" may follow. The notice may be given either orally or in writing advising the contractor that nondelivery or nonperformance is a breach of contract and, if the deficiency is not corrected within a specified number of days, the institution will terminate the contract for default and hold the contractor liable for any excess costs. When the notice to cure is given orally, it should be confirmed in writing when warranted, i.e., complex agreements or concern about willingness of the contractor to voluntarily comply. Upon the expiration of the time period, if a

satisfactory resolution has not been reached, the institution sends the contractor a Termination for Default Letter and takes repurchase action by awarding to the next lowest bidder or re-soliciting bids. If the repurchase results in increased costs to the institution, the institution invoices the original contractor for the excess costs. Until the excess costs repayment has been received, the contractor may be removed from the institution's contractor list. Concurrently, the institution notifies DPS. If repayment has not been made by the end of the specified period of time, collection action may be taken under the institution's approved debt collection policy. In addition, concurrent action to debar the defaulted contractor can be initiated. Contractors shall not be liable for any excess cost if the failure to perform arises out of any act of war, order of legal authority, strikes, act of God, or other unavoidable causes not attributed to their fault or negligence. Failure of a contractor's source to deliver is generally not considered to be an unavoidable cause.

## **L. Termination for Convenience**

A purchase order or contract may be terminated for the institution's convenience by notifying the contractor. This notice specifies the extent to which performance under the purchase order or contract is terminated, and the date of termination. If the date of termination is not practical, the contractor immediately notifies the institution. The contractor and institution seek to establish a mutually acceptable date. If an agreement cannot be reached, the institution, in its sole discretion, establishes a date.

If the purchase order or contract is for items being produced exclusively for the use of the institution, and the contractor must secure raw materials from other sources, the contractor must not order additional materials or services except as may be necessary for completion of any portion of the work which was not terminated. The institution may direct the delivery of the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of the work, or direct the contractor to sell them, subject to the institution's approval as to price. The contractor may, with the institution's approval, retain them, and apply a credit to the claim. The contractor must complete performance on any part of the purchase order or contract which was not terminated.

The contractor must submit any termination claim within 120 days after receipt of the notice of termination, unless the institution allows an extension of this period. The purchasing department will determine the information required in the claim. The claim will be reviewed and disposed of in accordance with the *Code of Virginia*, Section 2.2-514.

## **M. Debarment**

Debarment is action taken by the institution to exclude individuals or vendors from contracting with the institution for particular types of goods or nonprofessional services for specified periods of time. Debarment does not relieve the vendor of responsibility for existing obligations.

The purpose of debarment is to protect the institution from risks associated with awarding contracts to persons or vendors having exhibited an inability or unwillingness to fulfill contractual requirements, and to protect the institution's interests and the integrity of the procurement process by preventing individuals or vendors which have displayed improper conduct from participating in the institution's business for specific periods of time.

### **1. Causes for Debarment**

The debarring official can debar an individual or vendor without judicial determination for any of these reasons:

- (a) Breach (including anticipatory breach) of contract with an institution.

- (b) Sale or attempted sale to an institution of items or services which are required to be purchased under another contract, when the vendor knew or had reason to know that the items or services are required to be purchased under that contract.
- (c) Statement of an unwillingness or inability to honor a binding bid. A mere request to withdraw a bid, which does not otherwise state an unwillingness or inability to perform, is not a cause for debarment.
- (d) Falsifying or misrepresentation of manufacturer's specifications in order to appear responsive to a solicitation.
- (e) Conferring or offering to confer any gift, gratuity, favor, or advantage, present or future, upon any employee of an institution who exercises any "official responsibility" for a "procurement transaction" as those terms are defined in the *Code of Virginia*, Section 2.2-4368. It is not necessary that the employee accept the offer, or that the offer be made with intent to influence the employee in an official act. Offers of any discounts or privileges not available to all State employees is considered to be offering an advantage.
- (f) Failure to disclose a condition constituting a conflict of interest by any officer, director, owner, or partner of the vendor awarded the contract or purchase order.
- (g) Any cause indicating that the individual or vendor is not a responsible vendor.
- (h) A determination by the institution that a vendor has used abusive or obscene language or behaved in a threatening manner toward institutional personnel.
- (i) Sale, under non-emergency conditions, of building materials, supplies, or equipment for any building or structure constructed by or for the institution by an independent vendor employed to furnish architectural or engineering services, but not construction for such building or structure or from any partnership, association or corporation in which such architect or engineer has a personal interest (*Code of Virginia*, Section 2.2-639.2 and Section 2.2-4374).
- (j) Sale of goods or services to the institution when such sale is prohibited by any debarment then in effect.
- (k) Conviction of any criminal offense involving public contracting. Examples include, but are not limited to, bribery (*Code of Virginia*, Section 18.2-447) and knowingly making a false statement in regard to collusion on a solicitation (*Code of Virginia*, Section 18.2-498.4). Conviction for any of the above of any officer, director, owner, partner, agent, or related business entity of a vendor constitutes grounds for the removal of the vendor.
- (l) Court judgment finding a violation of either Federal or State antitrust laws.
- (m) Conviction of any offenses indicating a lack of moral or business integrity.
- (n) Any other activity which is so serious as to justify debarment.

If the debarring official finds that the cause for debarment reflects on the vendor's traits or tendencies only with regard to certain goods or services, the debarment may apply only to such goods or services. Otherwise the debarment applies to all goods and services within the purview of the debarring institution.

## **2. Ineligibility or Disqualification of Manufacturer**

Should any manufacturer commit any of the acts described under causes for debarment, bids offering material, equipment, or supplies manufactured by that vendor may be rejected even though the bid is submitted by a vendor in good standing.

## **3. Debarment Period**

Debarment is for a period of one year, except that debarment for reasons k., l., m., and n. may be for up to three years. Debarment commences upon notification of debarment, or if later, upon expiration of any existing debarments.

The debarring official may lift or suspend at any time the debarment if it is in the best interest of the institution. A debarred individual or vendor can apply for reinstatement at any time in writing to the debarring official

citing actions taken to remedy the reason for debarment or to prevent recurrence of the situation that caused the debarment action. Examples of actions the debarring official may take into consideration include, but are not limited to:

- a. Repayment by a debarred vendor of additional costs resulting from a default action for which the vendor had previously failed to reimburse.
- b. Disassociation with individuals or vendors that were responsible for the debarment.

#### **4. Debarment Notification and Appeal Procedure**

An individual or vendor being debarred must be notified in writing. The notice must state the reasons for the action taken. The debarring official must send a copy of the written debarment notice to the Director of DPS. This decision is final, unless the bidder, offeror, or vendor appeals the decision as provided for in Section 2.2-4365 of the *Code of Virginia* or institutes legal action as provided for in the *Code of Virginia*, Section 2.2-4364. See Section 5, "Remedies, Protests and Disputes" for additional information.

### **N. Billings and Invoices**

Contractors must render invoices submitted to the institution at the "Bill to" address specified on the purchase order. Failure to send the invoice to the specified "Bill to" address could delay payment at no fault to the institution. Invoices must reference the institution's corresponding purchase order number, vendor taxpayer ID number, and details of goods or services shipped consistent with the original order. Failure to supply this information could result in the institution returning the invoice to the vendor unpaid. Prompt payment with cash discounts will be taken if offered and payment is made within the prescribed time frame. Time will be computed from the date of delivery or performance or from the date a correct invoice is received, whichever is later.

#### **1. Invoice Processing**

Invoice processing is performed in accordance with the rules and regulations set forth by the Department of Accounts. To maintain good contractor relationships and a competitive environment, invoices are processed promptly. When a large purchase requires performance over an extended period of time, institutions may agree to make a payment on a predetermined schedule.

#### **2. Purchasing and Accounts Payable Cooperation**

Institutions are encouraged to develop a memorandum of understanding between Purchasing and Accounts Payable. These memoranda of understanding should establish a clear framework for an effective discrepancy resolution process, so contractor payments are not delayed.

Institutions are encouraged to promote a "zero overrun" tolerance policy when dealing with invoice price discrepancies. Invoice price discrepancies should be approved by the institution's purchasing department prior to payment of the additional amount. Institutions must recognize the tradeoff between the additional amount charged and the administrative costs required to contest that amount with action taken accordingly. Considerable attention needs to be directed in this regard to assure that neither the integrity of the bidding process is compromised, nor the standing of bidders altered.

#### **3. Partial Payments**

Institutions may initiate partial payments when portions of the goods have been received in good condition and have been properly invoiced by the contractor.

#### 4. Vendor Payment Assistance

Contractors should contact the Accounts Payable Department of the institution for assistance with invoices.

#### 5. Prompt Payment of Bills

(*Code of Virginia*, Sections 2.2-4347 through 2.2-4354)

Every institution that acquires goods or services or conducts any other type of contractual business with nongovernmental, privately owned enterprises shall promptly pay for goods and services by the required payment date. Payment is deemed to have been made when offset proceedings have been instituted, as authorized under the Virginia Debt Collection Act (*Code of Virginia*, Section 2.2-4801 et seq.). Date of postmark is deemed to be date payment is made.

(a) "**Payment date**" means either (a) the date on which payment is due under the terms of a contract for provision of goods or services, or (b) if such date has not been established by contract, thirty days after receipt of a proper invoice by the institution for the amount of payment due, or thirty days after receipt of the goods or services, whichever is later.

(b) "**Subcontractor**" means any entity that has a contract to supply labor or materials to the contractor to which the contract was awarded, or to any subcontractor in the performance of the work provided for in such contract.

Separate payment dates - Separate payment dates may be specified for contracts under which goods or services are provided in a series of partial deliveries or executions to the extent that such contracts provide for separate payment for such partial deliveries or executions.

In instances where there is a defect or impropriety in an invoice or in the goods or services received, the institution must notify the contractor within 15 days of the defect or impropriety if such defect or impropriety would prevent payment by the payment date.

Interest accrues, at the rate determined, on all amounts owed by an institution to a contractor which remain unpaid after seven days following the payment date, except where a contract provides for a different rate of interest, or for the payment of interest in a different manner. The rate of interest charged an institution is the base rate on corporate loans (prime rate) at large United States money center commercial banks as reported daily in the *Wall Street Journal*. Whenever a split prime rate is published, the lower of the two rates is to be used. However, in no event shall the rate of interest charged exceed the rate of interest established under the *Code of Virginia*, Section 58.1-1812.

No interest penalty shall be charged when payment is delayed because of disagreement between an institution and a contractor regarding the quantity, quality or time of delivery of goods or services or the accuracy of any invoice received for such goods or services.

No interest penalty must be paid to any debtor on any payment, or portion thereof, withheld pursuant to the Comptroller's Debt Setoff Program, as authorized by the Virginia Debt Collection Act (*Code of Virginia*, Section 2.2-4801 et seq.), commencing with the date the payment is withheld. If, as a result of an error, a payment or portion thereof is withheld, and it is determined that at the time of setoff no debt was owed to the Commonwealth, then interest accrues at the established rate on amounts withheld which remain unpaid after seven days following the payment date.

Contractors submitting invoices for interest due from an institution must include, as a minimum:

- (1) Original purchase order number or contract number

- (2) Envelope bearing postmark of the date payment was made. Where the envelope is not available, interest will be computed from the second business day after date of issue of the check.
- (3) Original invoice number and date
- (4) Date of publication of the issue of the *Wall Street Journal* upon which the interest rate is based

The payment date for items in disagreement is 30 days after the resolution of such disagreement.

Utility tariffs prescribed by the Commonwealth Corporation Commission are exempt from the prompt payment of bills.

## **6. Payment Requirements - All Contracts**

All contracts the institution awards require that contractors take these actions.

- (1) Within seven days after the receipt of payment for the work performed:
  - (a) pay the subcontractor within seven days for the proportionate share of the total payment received from the institution attributable to the work performed by the subcontractor under that contract; or
  - (b) notify the institution and subcontractor within seven days, in writing, of its intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.
- (2) If an individual contractor, provide social security number in order to receive payment.
- (3) If a proprietorship, partnership or corporation provide Federal employer identification number.
- (4) Pay interest to subcontractors on all amounts owed by the contractor that remain unpaid after seven days following receipt by the contractor of payment from the institution for work performed by the subcontractor under that contract, except for amounts withheld as allowed by prior notification.
- (5) Accrue interest at no more than the rate of one percent per month.
- (6) Include in each of its subcontracts a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor.

NOTE: A contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the institution. A contract modification may not be made for the purpose of providing reimbursement for such interest charge. A cost reimbursement claim may not include any amount for reimbursement for such interest charge.

## **7. Payment by Electronic Funds Transfer**

Institutions disburse payments to contractors via paper checks. In addition, payments can be made to selected contractors through the Commonwealth's Financial Disbursement System using Electronic Data Interchange (EDI) and its connectivity to the Automated Clearing House (ACH) network. For information relating to benefits of using EDI and the eligibility criteria, contact the Department of Accounts (804) 225-3164.

Contractors which qualify for EDI will be paid in accordance with the Prompt Payment Act of Virginia which requires payment within 30 days of invoice or receipt of goods or services date, whichever is later, or by the terms and conditions established under contractual agreements with the institution. Each party must bear the respective fees and other charges assessed by its designated bank(s) and third party service providers for EDI payments.

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## **Section 5 - Remedies, Protests, and Disputes**

### **A. Ineligibility**

The institution shall notify in writing any bidder, offeror or contractor refused permission to participate, or disqualified from, participation in public contracts.

1. Prior to the issuance of this written notification, the institution shall:

- (a) Notify the bidder in writing of the results of the evaluation.
- (b) Disclose the factual support for the determination.
- (c) Allow the bidder an opportunity to inspect any documents related to the determination, if the bidder made the request within five business days after receipt of the notice.

Within 10 business days after the receipt of the written notice, the bidder may submit rebuttal information challenging the evaluation. The institution then shall issue its written determination of disqualification or ineligibility based on all information in its possession, including any rebuttal information, within five business days of the date it received the rebuttal information.

If the evaluation reveals that the bidder, offeror or contractor should be allowed permission to participate in the public contract, the institution shall cancel the proposed disqualification action. If the evaluation reveals that the bidder should be refused permission to participate, or disqualified from participation, in the public contract, the public body shall notify the bidder, offeror or contractor. This notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within 10 days after receipt of the notice by invoking administrative procedures or institution legal action as provided for the in the VPPA.

2. If upon appeal, it is determined that the institution was arbitrary and capricious, or not in accordance with the Constitution of Virginia, statutes or regulation, the sole relief shall be restoration of eligibility.

### **B. Appeal of Denial of Withdrawal of Bid**

A decision denying withdrawal of bid shall be final and conclusive unless the bidder appeals the decision within 10 days after receipt of the decision by invoking administrative procedures meeting the standards of the *Code of Virginia*, Section 2.2-4365, if available, or in the alternative by instituting legal action as provided in the *Code of Virginia*, Section 2.2-4364.

If no bid bond was posted, a bidder refused withdrawal of a bid prior to appealing, shall deliver to the institution a certified check or cash bond in the amount of the difference between the bid sought to be withdrawn and the next low bid. Such security shall be released only upon a final determination that the bidder was entitled to withdraw the bid.

If, upon appeal, it is determined that the decision refusing withdrawal of the bid 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 sole relief shall be withdrawal of the bid.

### **C. Determination of Nonresponsibility**



Following public opening and announcement of bids received on an Invitation to Bid, the institution shall evaluate the bids in accordance with the definition of "competitive sealed bidding." At the same time, the institution shall determine whether the apparent low bidder is responsible. If the institution so determines, then it may proceed with an award in accordance with the definition of "competitive sealed bidding" as defined in the *Code of Virginia*, Section 2.2-4301. If the institution determines that the apparent low bidder is not responsible, it shall proceed as follows.

1. Prior to the issuance of a written determination of nonresponsibility, the institution shall:

- (a) Notify the apparent low bidder in writing of the results of the evaluation;
- (b) Disclose the factual support for the determination;
- (c) Allow the apparent low bidder an opportunity to inspect any documents which relate to the determination, if so requested by the bidder within five business days after receipt of the notice.

2. Within 10 business days after receipt of the notice, the bidder may submit rebuttal information challenging the evaluation. The institution shall issue its written determination of responsibility based on all information in the possession of the institution, including any rebuttal information, within five business days of the date the institution received such rebuttal information. At the same time, the institution shall notify the bidder in writing, with return receipt requested, of its determination.

3. Such notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within 10 days after the receipt of the notice by invoking administrative procedures or by instituting legal action as provided in the VPPA.

4. This shall not apply to procurements involving the prequalification of bidders and the rights of any potential bidders under such prequalification to appeal a decision that such bidders are not responsible.

If, upon appeal 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, 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 or directed award or both. 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 of the Invitation to Bid, and an award of the contract has been made, the relief shall be as set forth in the *Code of Virginia*, Section 2.2-4360.

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 *Code of Virginia* Section 2.2-4360.

Nothing contained in this section shall be construed to require an institution, 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 who desires to protest the award or decision to award a contract shall submit such protest in writing to the Director of Purchasing, no later than 10 days after public notice of the award or the announcement of the decision to award, whichever occurs first. Public notice of the award or announcement of the decision to award shall be given by the public body in the manner prescribed in the terms or conditions of the Invitation to Bid or Request for Proposal. Any 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 10 days after posting or publication of the notice of such contract as provided in the *Code of Virginia*, Section 2.2-4303. 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 which are subject to inspection under the *Code of Virginia*, Section 2.2-4342, then the time within which the protest must be submitted shall expire 10 days after those records are available for inspection by such bidder or offeror under the *Code of Virginia*, Section 2.2-4342, or at such later time as provided in this section. No protest shall lie for a claim that the selected bidder or offeror is not a responsible bidder or offeror. The written protest shall include the basis for the protest and the relief sought. The Director of Purchasing shall issue a decision in writing within 10 days stating the reasons for the action taken. This decision shall be final unless the bidder or offeror appeals within 10 days of receipt of the written decision by invoking administrative procedures meeting the standards of the *Code of Virginia*, Section 2.2-4365, if available, or in the alternative by instituting legal action as provided in the *Code of Virginia*, Section 2.2-4364.

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 institution shall cancel the proposed award or revise it to comply with the law. Where the award has been made but performance has not begun, it is determined that an award of contract was arbitrary and capricious, then the performance of the contract may be enjoined. Where the award has been made and performance has begun, the institution 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.

Where the Director of Purchasing 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, corruption or on an act in violation of the *Code of Virginia* (Section 2.2-4367 et seq.), the Director of Purchasing or appeals board may enjoin the award of the contract to a particular bidder (*Code of Virginia*, Section 2.2-4360).

### **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 chapter shall not be affected by the fact that a protest or appeal has been filed (*Code of Virginia*, Section 2.2-4361).

### **F. Stay of an 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, no further action to award the contract will be taken unless there is a written determination that proceeding without delay is necessary to protect the public interest or unless the bid or offer would expire (*Code of Virginia*, Section 2.2-4362).

### **G. Contractual Disputes**

Contractual claims, whether for money or other relief, shall be submitted in writing no later than 60 days after final payment; however, written notice of the contractor's intention to file such claim shall have been given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing in this section shall preclude a contract 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. Written claims must be submitted to the Director of Purchasing.

Each institution shall include in its contracts a procedure for consideration of contractual claims. Such procedure, which may be incorporated into the contract by reference, shall establish a time limit for the institution's final written decision.

A contractor may not invoke administrative procedures meeting the standards of the *Code of Virginia*, Section 2.2-4365, if available, or institute legal action as provided in the *Code of Virginia*, Section 2.2-4364, prior to receipt of the institution's decision on the claim, unless the institution fails to render such decision within the time specified in the contract.

The determination of the institution shall be final and conclusive unless the contractor appeals within six months of the date of the final decision on the claim by the institution invoking administrative procedures meeting the standards of the *Code of Virginia*, Section 2.2-4365, if available, or in the alternative by instituting legal action as provided in the *Code of Virginia*, Section 2.2-4364 (*Code of Virginia*, Section 2.2-4363).

## **H. Legal Actions**

A bidder or offeror, actual or prospective, who is refused permission or disqualified from participation in bidding or competitive negotiation, or who is determined not to be a responsible bidder or offeror for a particular contract, may bring an action in the appropriate circuit court challenging that decision, which shall be reversed only if the petitioner establishes that the decision was arbitrary or capricious.

A bidder denied withdrawal of a bid under Section 2.2-4358 may bring an action in the appropriate circuit court challenging that decision, which shall be reversed only if the bidder establishes 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.

A bidder, offeror or contractor, or a potential bidder or offeror on a contract negotiated on a sole source or emergency basis in the manner provided in the *Code of Virginia*, Section 2.2-4303, whose protest of an award or decision to award under the *Code of Virginia*, Section 2.2-4360 is denied, may bring an action in the appropriate circuit court challenging a proposed award or the award of a contract, which shall be reversed only if the petitioner establishes that the proposed award or the award is not an honest exercise of discretion, but rather is arbitrary or capricious or not in accordance with the Constitution of Virginia, statutes, regulations or the terms and conditions of the IFB or RFP.

If injunctive relief is granted, the court, upon the institution's request of the institution, shall require the posting of reasonable security to protect the institution.

A contractor may bring an action involving a contract dispute with a institution in the appropriate circuit court. Notwithstanding any other provision of law, the Comptroller shall not be named as a defendant except for disputes involving contract of the Office of the Comptroller or the Department of Accounts.

A bidder, offeror or contractor need not utilize administrative procedures meeting the standards of the *Code of Virginia*, Section 2.2-4365, 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 institution agrees otherwise.

Nothing in this section shall be construed to prevent a institution from bringing legal action against a contractor (*Code of Virginia*, Section 2.2-4364).

## **I. Administrative Appeals Procedure**

An institution may establish an administrative procedure for hearing protests of an intent to award or award, appeals from refusals to allow withdrawal of bids, appeals from disqualifications and determinations of nonresponsibility, and appeals from decisions on disputes arising during the performance of a contract, or any of these. Such administrative procedure shall provide for a hearing before a disinterested person or panel, the opportunity to present pertinent information and the issuance of a written decision containing findings of fact. The disinterested person or panel shall not be an employee of the governmental entity against whom the claim has been filed. The findings of fact shall be final and conclusive and shall not be set aside unless the same are fraudulent, arbitrary, capricious, or so grossly erroneous as to imply bad faith. No determination on an issue of law shall be final if appropriate legal action is instituted in a timely manner.

Any party to the administrative procedure, including the institution, shall be entitled to institute judicial review if such action is brought within 30 days of receipt of the written decision (*Code of Virginia, Section 2.2-4365*).

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## **Section 6 - Ethics, Conflict of Interests, and Freedom of Information**

### **A. Standards of Conduct**

Because of the extraordinary trust and responsibility exercised by public officials conducting procurement transactions, and because of the legitimate expectations by the public that this trust and responsibility be exercised properly, laws of the Commonwealth dictate a higher standard of conduct for procurement officials than for public employees generally. Procurement officials and contractors must be cognizant of these laws which include the Virginia Public Procurement Act, the State and Local Government Conflict of Interests Act, and the Virginia Governmental Frauds Act. All employees having official responsibility for procurement transactions must conduct business with contractors in a manner above reproach in every respect.

No State employee having official responsibility for procurement transactions:

- (1) shall solicit, demand, accept, or agree to accept from a bidder, offeror, contractor or subcontractor any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal or minimal value present or promised, unless consideration of substantially equal or greater value is exchanged (*Code of Virginia, Section 2.2-4371*); or
- (2) shall accept employment from any bidder, offeror or vendor with whom the employee dealt in an official capacity concerning procurement transactions for a period of one year from the cessation of employment by the State unless the employee or former employee provides written notification to the president of the institution prior to commencement of employment by that bidder, offeror or vendor (*Code of Virginia, Section 2.2-4370*).

Further, all personnel having official responsibility for procurement transactions shall be knowledgeable about the provisions of Article 6, Sections 2.2-4367 through 2.2-4377, the *Code of Virginia*, entitled "Ethics in Public Contracting." "No public employee having official responsibility for a procurement transaction shall knowingly falsify, conceal, or misrepresent a material fact; knowingly make any false, fictitious or fraudulent statements or representations; or make or use any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry" (*Code of Virginia, Section 2.2-4376*). "Willful violation of any provision of this article shall constitute a Class 1 misdemeanor. Upon conviction, any public employee, in addition to any other fine or penalty provided by law, shall forfeit his employment (*Code of Virginia, Section 2.2-4377*). Institutions "may require public employees having official responsibility for procurement transactions in which they participated to annually submit for such transactions a written certification that they complied with the provisions of this article" (*Code of Virginia, Section 2.2-4375*).

Most institutions in the Commonwealth are also members of the National Association of Educational Buyers. The institution, by their membership, agree to adhere to the NAEB Code of Ethics adopted July 1, 1985. (See Appendix D.)

## **B. Vendor Seminars**

Employees having official responsibility for procurement transactions may attend vendorsponsored seminars or trade shows where they will benefit from receiving product information and learning of new techniques and product or service trends. Employees may accept food, drinks and giveaway items offered to all participants at these functions.

## **C. Documentation of Files and Public Access to Procurement Records**

A complete file must be maintained in one place for each purchase transaction, containing all the information necessary to understand the why, who, what, when, where and how of the transaction.

## **D. Bid and Proposal Inspection**

Institutions must give bidders 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 institution decides to reject all bids or offers and rebid (*Code of Virginia*, Section 2.2-4342).

Institutions must provide the opportunity for the inspection of proposal records within a reasonable time after the evaluation and negotiations of proposals are completed but prior to award, except in the event that the institutions decide not to accept any of the proposals and resolicit.

## **E. Virginia Freedom of Information Act**

Records are open to the public in accordance with the Virginia Freedom of Information Act, except as provided in the *Code of Virginia*, Section 2.2-4342.

- (1) Cost estimates relating to a proposed procurement transaction prepared by or for an institution are not open to public inspection (*Code of Virginia*, Section 2.2-4342.B).
- (2) Bids and proposal records are open to the public after award.
- (3) Any inspection of procurement records is subject to reasonable restrictions to ensure the security and integrity of the records.
- (4) Trade secrets or proprietary information submitted for a procurement transaction is not subject to public disclosure under the Virginia Freedom of Information Act; however, the bidder or offeror must invoke the protection of Section 2.2-4342, *Code of Virginia* 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 institution'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 institution.
- (5) To protect the institution and its employees from possible claims for damages due to the improper release of information, institutions must not release any information that a bidder, offeror or vendor 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, the party seeking the information should be advised that it will have to obtain a court order and be requested to name as a defendant in the suit the bidder, offeror or vendor which designated the information as well as the institution.

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## Appendix A -- Resources

*Commonwealth of Virginia Construction and Professional Services Manual*, Revised December 31, 1993. Division of Engineering and Buildings, Department of General Services, 805 East Broad Street, Richmond, Virginia 23219.

Note: The *Construction and Professional Services Manual* governs all capital outlay purchases for decentralized institutions of higher education, and is in addition to the *Purchasing Manual for Institutions of Higher Education and their Vendors*.

*Commonwealth of Virginia Vendor's Manual: A Vendor's Guide on How to do Business With the Commonwealth of Virginia* Revised December 1998. Division of Purchases and Supply, Department of General Services, 805 East Broad Street, P.O. Box 1199, Richmond, Virginia 23219-1199.

Note: *Agency Procurement and Surplus Property Manual and Appendices* (September 1998). Commonwealth of Virginia. Department of General Services, Division of Purchases and Supply, 805 East Broad Street, Richmond, Virginia 23219. APSPM is required by Section 2.2-1111 *Code of Virginia* and includes policies and procedures which govern procurement and surplus property activities for agencies and institutions of the Commonwealth. The *Commonwealth of Virginia Purchasing Manual for Institutions of Higher Education and their Vendors* for designated institutions of higher education is permitted under an administrative decentralization pilot program.

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## Appendix B -- Definitions

### Appeal

Action taken by a bidder, offeror (actual or prospective) or by a vendor to seek a hearing before a disinterested person or panel or in an appropriate circuit court challenging a decision in accordance with Sections 2.2-4364 or 2.2-4365 of the *Virginia Public Procurement Act*.

### Best Value

The overall combination of quality, price, and various elements of required services that are in total optimal relative to a public body's needs. Public bodies are encouraged to consider best value concepts when making procurement decisions involving goods and nonprofessional services, but not construction or professional services. (*Code of Virginia*, Sections 2.2-4300 and 2.2-4301).

### Bid

A competitively priced offer made by an intended seller, usually in reply to an Invitation for Bids. 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.

### Blanket Purchase Agreement (BPA)

An arrangement under which a purchaser contracts with a vendor to provide the purchaser's 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 these persons authorized to accept goods.

### **Competitive Bidding**

The offer of vendor bids by individuals or vendors competing for a contract, privilege, or right to supply specified services or goods.

### **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.

### **Competitive Negotiation**

A method for purchasing goods and services, usually of a highly complex and technical nature whereby qualified individuals or vendors are solicited by means of a Request For Proposals. Negotiations are conducted with selected offerors and the best proposal, as judged against criteria contained in the Request For Proposals, is accepted and an award issued.

### **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 legal 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*, Section 2.2-4301).

### **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, vendor, or organization under contract to that agency.

### **Contract**

When used as a noun in the 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. 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 vendor's total performance is in accordance with the contractual commitments and that the obligations of the vendor under the terms and conditions of the contract are fulfilled.

**Contract, Cost-Plus-A-Fixed-Fee**

A costreimbursement type contract that provides for the payment of a fixed fee to the vendor. 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 vendor'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, Section 2.2-4331).

**Contract, Fixed Price**

A contract which provides for a vendor price under which a vendor bears the full risk for profit or loss.

**Contract, Fixed Price With Escalation/De-escalation**

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**

(Open-end contracts) 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 vendor 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**

An **employee of the institution** whose primary assignment is purchasing goods or services.

**Contractor**

An individual or vendor which has entered into an agreement to provide goods or services to the Commonwealth.

**CORPRINT**

Department of Corrections, Industrial Enterprises, Printing Facilities.

**Cure Notice**

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



**Debarment**

An action taken to exclude individuals or vendors from contracting with institutions for particular goods or nonprofessional services for specified periods of time (*Code of Virginia*, Section 2.2-4325).

**Default**

Failure of a vendor to comply with the terms and conditions of a contract.

**Designbuild Contract**

Means a contract between an institution and another party in which the party contracting with the institution agrees to both design and build the structure, roadway or other item specified in the contract.

**Design Specification**

A purchase specification setting forth the essential physical 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 (DGS/DPS)**

Department of General Services, Division of Purchases and Supply. DGS/DPS is the State's centralized purchasing agency for materials, equipment, supplies, nonprofessional services and printing. DGS/DPS prescribes the rules and regulations for the purchase of materials, supplies, equipment, nonprofessional services, and printing (*Code of Virginia*, Sections 2.1-440 and 2.1-442).

**Drug-Free Workplace**

A drug-free workplace is a site for the performance of work done in connection with a specific contract awarded to a contractor in accordance with the Virginia Public Procurement Act, 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.

**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*, Sections 2.2-4367 through 2.2-4377).

**Evaluation of Bids**

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

**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*, Section 2.2-4301).

**Hardware/Software Contract List**

A list of hardware and software items which have been competitively bid. The list reflects the approved vendor and item cost and provides an expeditious method of obtaining miscellaneous, small, frequently purchased items. The list eliminates repetitive bidding for these items to satisfy multiple requests, and provides significant discounts on single item purchases. The presence of an item on the contract list does not in any way indicate the Commonwealth's endorsement of the item, nor is it an indication of suitability for a given function.

**Informality**

A minor defect or variation of a bid or proposal from the exact requirements of the invitation for bids, or the request for proposals, which does not affect the price, quality, quantity, or delivery schedule for the goods, services or construction being procured (*Code of Virginia*, Section 2.2-4301).

**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.

**Late Bid or Proposal**

A bid or proposal which is received at the place designated in the invitation for bids or request for proposals 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 nonspecification materials in manufacture, or missing internal parts such as a gasket, gear, or electrical circuit, etc.

**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 vendor.

**Multiple Award**

The award of contracts to more than one bidder. When a solicitation in its terms and conditions so provides, awards may be made to more than one vendor (*Code of Virginia*, Section 2.2-4301). Appropriate in situations where the award of a single contract would be impractical and awards are limited to the least number of suppliers necessary to satisfy program requirements.

**Negotiation**

A bargaining process between two or more parties, each with its own viewpoints and objectives, seeking to reach a mutually satisfactory agreement on, or settlement of, a matter of common concern.

**Non-Competitive Negotiation**

The process of arriving at an agreement through discussion and compromise when only one source is practically available.

**Nonprofessional Services**

Any services not specifically identified as professional services in the definition of professional services (*Code of Virginia*, Section 2.2-4301).

**Notice of Award**

A Notice of Award is written notification to a vendor stating that the vendor has received an award.

**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.

**Payment Bond, For Labor and Material**

A bond required of a vendor to assure fulfillment of the vendor'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 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*, Section 2.2-4301).

**Prebid or Preproposal 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.

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

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

**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**

Work performed by an independent vendor within the scope of the practice of accounting, actuarial services, architecture, land surveying, landscape architecture, law, dentistry, medicine, optometry, pharmacy, or professional engineering. "Professional Services" shall also include services of an economist procured by the State Corporation Commission. (*Code of Virginia*, Section 2.2-4301).

### **Proposal**

An offer made by one party to another as a basis for negotiations for entering into a contract.

### **Proprietary Specification**

One that restricts the acceptable products or services to those of one manufacturer or vendor. A common example would be a specification by brand name which **excludes** 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 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. Notices of awards for IFBs and RFPs will be published on the Department of General Services' central electronic procurement website (<http://www.eva.state.va.us>) and other websites as deemed appropriate by the individual institutions. For RFPs, public notice is also required to be made via publication in a newspaper or newspapers of general circulation. Public notice via newspapers is optional for IFBs, sole source procurements, and emergency procurements.

### **Purchase Order**

A document the institutions use 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.

### **Regular Dealer**

A person or vendor 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 Proposals (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 (*Code of Virginia*, Section 2.2-4301).

**Responsible Bidder or Offeror**

A person or vendor 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*, Section 2.2-4301).

**Responsive Bidder**

A person or vendor who has submitted a bid which conforms in all material respects to the Invitation for Bids (*Code of Virginia*, Section 2.2-4301).

**Reverse Auctioning**

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.

**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 means any work performed by an independent vendor 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*, Section 2.2-4301).

**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*, Section 2.2-4301).

**Software**

Software includes 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 Commonwealth 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.

**Spot Purchase**

A one-time purchase made in the open market. If it is under \$50,000 it will be made in accordance with the applicable small purchase procedures. If it is \$50,000 or more it will be made by soliciting sealed bids or proposals or by an exception authorized by law.

**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 possesses 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.

**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.

**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 vendor's claims in accordance with appropriate policy and procedures.

**Termination For Default**

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

**Unsealed Bid**

An unsealed written offer conveyed by letter, telegraph or other means. The bids are normally opened and recorded when received.

**Unsolicited Proposal**

Proposal received that is not in response to any institutionally initiated solicitation or program.

**Used Equipment**

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

**Vendor**

One who sells goods or services.

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**Appendix C**

Model for Small Purchase Procedures for Specified Institutions of Higher Education Under Decentralization Pilot Program.

*Note: These procedures may vary from institution to institution*

These small purchase procedures are general guidelines which the specified institutions of higher education may use to develop their own procedures. Vendors should check with each institution for their individual procedures. Small purchase procedures apply to purchase of goods and services up to \$50,000.

## **General**

The use of the DPS contracts are preferred.

The following sources are optional:

- Office of Graphic Communications (OGC).
- Virginia Distribution Center (formerly Central Warehouse).
- DIT hardware/software and related services.
- DIT telecommunications equipment/goods.

## **Procurement Methods**

### **Single Quotation:**

- Purchases where the estimated cost of the goods or services does not exceed \$5,000 may be made upon receipt of one written or telephone quotation.
- Whenever there is reason to believe a single quotation is not a fair and reasonable price, additional competition should be sought.

### **Four Solicitations for Quotes:**

- When the estimated cost of goods or services is between the applicable single quote limit and \$50,000, written quotes from four (4) valid sources (required over \$30,000) or telephone quotations from four (4) valid sources (up to \$30,000) shall be solicited (including a minimum of two (2) minority-owned or women-owned businesses provided there is sufficient registration). If fewer than the required number of total sources and/or minority-owned or women-owned businesses are solicited, the reasons must be documented and approved by the Director, University Purchasing prior to contract award.
- If telephone bids are solicited (up to \$30,000), a record shall be kept of the company name, vendor contact person providing the quote, date quote was provided, vendor telephone number, shipping terms, delivery date, description of the required goods or services, and the quoted prices. Such documentation relative to the telephone bids must be maintained in the procurement file. Written quotes shall be included in the procurement file. The award shall be made to the lowest responsive and responsible bidder. Companies should be solicited on a rotational basis to ensure opportunities to a wide vendor base.

### **Four Solicitations for Proposals:**

- When the estimated cost of goods or services is between the applicable single quote limit and \$50,000 solicit proposals from four (4) valid sources (including at least two minority-owned or women-owned businesses - provided there is sufficient registration).
- The solicitation should be concise and include a description of what is being sought. It should stipulate the information requested from the Offeror for evaluation purposes. Also, any specific terms and conditions related to the procurement should be incorporated.

- In lieu of an evaluation committee, the buyer or end user may solely evaluate and rank proposals.
- Proposals may be evaluated and ranked based on its overall merits. Evaluation criteria and associated weights are not required. The evaluator(s) must rank each proposal based upon their independent review of the offer.
- Negotiations may be conducted with the top ranked firm(s), but it is not a requirement. Consideration should be given to the value added through negotiations.
- A written summary evaluation document must be submitted by the evaluator(s) which provides rationale for the selection of firm(s) and a recommendation to award.
- Public posting is not required.

### **Sole Source Procurement**

A sole source procurement is authorized when there is only one source practicably available for the goods or services required. Competition is not available in a sole source situation; thus distinguishing it from a proprietary purchase where the product required is manufactured by only one company, but is sold through distributors and competition between them can be obtained. Sole source justification based solely on a single vendor's capability to deliver in the least amount of time is not appropriate since availability alone is not a valid basis for determining a sole source procurement.

- **Written Determination.** A written determination documenting that there is only one source practicably available for that which is to be procured, must be included in the procurement file. The writing shall document the basis for the determination. Public posting is not required.
- **Negotiating a Contract.** After the sole source has been documented, a contract may be negotiated and awarded without competition. In making a sole source procurement, it is the buyer's responsibility to negotiate a contract that is in the best interest of the University. The buyer should carefully research the product or services and determine in writing what is a fair and reasonable price. Negotiations can be conducted on adding terms and conditions favorable to the University and deleting or changing terms that are one-sided in favor of the contractor. It is important to know the market and the contractor's situation in regard to the market. In noncompetitive negotiations - one must be exceptionally well prepared and negotiate to the extent that is practicable.
- **Documentation.** The sole source documentation must contain the following information:
  - Explain why this is the only product or service that can meet the needs of the purchasing agency.
  - Explain why this vendor is the only practicably available source from which to obtain this product or service.
  - Explain why the price is considered reasonable.
  - Describe the efforts that were made to conduct a non-competitive negotiation to get the best possible price for the taxpayers.
- **Approval and Reporting.** Sole source procurements exceeding \$10,000 must be approved by the Director, University Purchasing. All sole source procurements exceeding \$10,000 must be submitted to the Secretary of Education on a quarterly basis for review.

### **Emergency Procurement Procedures**

An emergency is an occurrence of a serious and urgent nature that demands immediate action. Emergency procedures may be utilized only to purchase that which is necessary to cover the emergency. Subsequent requirements shall be obtained using normal purchasing procedures. The potential loss of funds at the end of a fiscal year is not considered to be an emergency.

- The nature of the emergency determines what pre-award action may be taken:
  - For an emergency purchase required to protect personal safety or property, efforts should be directed to finding a source and authorizing the contractor to proceed. This does not relieve the



university from negotiating a fair and reasonable price and subsequently documenting the procurement action taken.

- For other types of emergencies, competition should be sought to the extent practicable. Verification of the vendor's: 1) qualifications 2) insurance coverage, if applicable, 3) warranty, and 4) any other data pertinent to the procurement may be obtained.
- As soon as practicable, after directing the contractor to proceed, a confirming purchase order should be prepared. Care should be taken to include in detail any agreement, including price, made orally with the contractor.
- Prepare a written determination for signature by the Purchasing Director or designated representative indicating the nature of the emergency, the reason for selection of the particular contractor and include such determination with the file.
- Issue confirming purchase order.

### **Demand Payments (Exceptions to Normal Competitive Requirements)**

Competition normally is either not practicable or available for purchase of the following goods or services up to \$50,000.

- Books, printed materials, reprints and subscription (e.g., print or electronic), videocassettes and slide presentations when only available from the publisher/producer. File documentation to include verification of exclusivity. Requires approval by a Buyer Manager.
- Academic/research consulting services. Requires approval by Director, University Purchasing.
- Alcohol purchased from Alcohol Beverage Control stores.
- Honoraria, entertainment (speakers, lecturers, musicians, performing artists).
- Royalties and film rentals when only available from the producer or protected distributors. File documentation to include verification of exclusivity. Requires approval by a Buyer Manager.
- Membership dues. Memberships to social organizations require approval by Director, University Purchasing.
- Writers.
- Artists.
- Photographers (other than graduation and yearbook photographers).
- Advertisements in newspapers, magazines, journals, radio or television.
- Utility charges.
- 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. Requires approval by Director, University Purchasing.
- Accreditation fees.
- Academic testing services.
- Transplants, related transplant services, and implants.
- Pass-through-procurements. (Examples include contracting for alumni functions for which the institution is reimbursed by the alumni and materials purchased for students by a faculty member using State funds and for which the students fully reimburse the institution). Requires approval by Director, University Purchasing.
- Televised or radio programs (e.g., athletic events, televised conferences, etc.) whereby specific stations are selected because of market demographics. Requires approval by a Buyer Manager.
- Fees associated with participation in intercollegiate athletic tournaments and events including team lodging, registration and game guarantees for all athletic events.
- Referees, officials and umpires for intercollegiate athletic events.
- Pharmacies participating in pharmacy student in-service programs wherein all qualifying facilities are eligible.

- Recipients of awards from the Alzheimer's & Related Diseases Research Award Fund administered by the Virginia Center on Aging wherein the requirements are clearly advertised and proposals are evaluated in accordance with published guidelines. Requires approval by a Buyer Manager.

### **Price - Reasonableness Determinations**

When competition is restricted or lacking or the prices offered appear excessive, the procuring agent is responsible for further analysis to determine in writing if the prices are fair and reasonable. This applies to sole source, single response, contract changes/modifications, contract extensions, and contract renewals.

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## **Appendix D -- NAEB Code of Ethics**

- Give first consideration to the objectives and policies of my institution.
- Strive to obtain the maximum value for each dollar of expenditure.
- Decline personal gifts or gratuities.
- Grant all competitive suppliers equal consideration insofar as State or federal statute and institutional policy permit.
- Conduct business with potential and current suppliers in an atmosphere of good faith, devoid of intentional misrepresentation.
- Demand honesty in sales representation whether offered through the medium of a verbal or written statement, an advertisement, or a sample of the product.
- Receive consent of originator of proprietary ideas and designs before using them for competitive purchasing purposes.
- Make every reasonable effort to negotiate an equitable and mutually agreeable settlement of any controversy with a supplier; and/or be willing to submit any major controversies to arbitration or other third party review, insofar as the established policies of my institution permit.
- Accord a prompt and courteous reception insofar as conditions permit to all who call on legitimate business missions.
- Cooperate with trade, industrial and professional associations, and with governmental and private agencies for the purposes of promoting and developing sound business methods.
- Foster fair, ethical and legal trade practices.
- Counsel and cooperate with NAEB members and promote a spirit of unity and a keen interest in professional growth among them.

National Association of Educational Buyers -- Adopted July 1, 1985

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## **Appendix E -- SWAM Procurement Programs**

The documents contained in this Appendix are to be used by Institutions in their efforts to establish, develop, and conduct programs to facilitate the participation of small, women-owned, and minority (SWAM) businesses:

- [July 2004 Memo from Governor's Chief of Staff regarding SWAM Procurement](#)
- [Cover letter from the Director of Minority Business Enterprise regarding the SWAM Program](#)
- [Guidelines \(including description\) for the development of the SWAM Procurement Plan](#)
- [Draft letter that may be used by your agency to inform your vendors of the certification requirement of the SWAM Program](#)
- [Outline of the information needed in the development of the agency or SWAM Procurement Plan](#)

- [Appendix A](#) (Program Options to Facilitate SWAM Participation)

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## **Appendix F**

# **Restructured Higher Education Financial and Administrative Operations Act**

These institutions have entered into Management Agreements with the Commonwealth of Virginia in compliance with the Restructured Higher Education Financial and Administrative Operations Act of 2005:

- College of William and Mary
- University of Virginia
- Virginia Polytechnic Institute and State University

As a part of the Management Agreement, a "Rules" document has been created which addresses procurement procedures at the three institutions. As a general rule, these institutions are not governed by the administrative regulation from state agencies, the Virginia Public Procurement Act (VPPA) or other Legislation, unless specifically named in Legislation as a participant. A full text copy of the Rules document is available - [Rules Document](#).

The institutions listed above will continue to comply with the provisions of the Manual unless noted to the contrary below:

### **Management Agreement Overview -- (effective July 1, 2006)**

#### **Procurement And Surplus Property**

- Continues delegation of a core set of locally administered policies and procedures to govern procurement.
- Clarifies that these institutions are exempt from VITA procurement regulations.
- Validates that state contracts are optional for use in all areas except telecommunications services which remain mandatory.
- Major differences between the Rules document, the VPPA, and provisions of the Manual:
  - Increases bid, performance and payment bond requirements from \$100,000 to \$1,000,000.
  - Provides additional optional flexibility to deal with capital projects valued under \$1 million (renovations).
  - Exempts from review and approval by the Chief Information Officer of the Commonwealth the procurement of information technology and telecommunications goods and services, and use of federal General Services Agency ("GSA") contracts.
  - Removes requirement for advance written determination for use of competitive negotiation when competitive sealed bidding is not practicable or not fiscally advantageous.
  - Allows for multiple awards of term contracts in procurement of professional services.
    - Allows for architectural or professional services (A/E) contracts to be for multiple projects. The dollar sum of the projects in one contract term shall be established in the RFP. Any unused amounts from any contract term may be carried forward.
  - Establishes the small purchase level at \$50,000 for goods, professional and non-professional services. Individual institutional small purchase procedures will apply to transactions expected to be below \$50,000.

- Streamlines the competitive negotiations (RFP) process for goods and non-professional services.
  - Exempts from competition several transaction categories (e.g. speakers and performing artists, memberships and association dues, conference facilities and services, etc.).
  - Lifts approval requirements to participate in cooperative contracts.
  - Makes purchase from Virginia Industries for the Blind ("VIB") optional.
  - Enacts a Memorandum of Agreement that defines scope and expectations of electronic procurement systems operated by the state and the institution and connected by interface or integration (applies to University of Virginia and Virginia Tech only).
  - Provides institution-level authority for disposition of surplus personal property.
  - Allows retention of all proceeds at the institution from sale of recycling and surplus property.
  - Provides for the institution to adopt a small, woman-owned and minority-owned (SWAM) business plan that is consistent with the Commonwealth's SWAM program.
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