

District 19 Community Services Board



VENDORS MANUAL

A Vendor's Guide on
How to do Business District 19 CSB

**20 West Bank Street
Petersburg, Virginia 23803**

VENDORS MANUAL

INTRODUCTION

The *Vendors Manual* purpose is to set forth rules and regulations applicable to the purchase of nontechnology goods and nonprofessional services by District 19 Community Services Board. The information in this manual was taken from the state Vendors Manual 1998 edition which is published under the authority of 2.2-111 of the Code of Virginia. The 1998 edition incorporates changes legislated by the General Assembly and also includes a number of editorial changes to improve readability and understanding of the manual. Its purpose is to set forth rules and regulations applicable to the purchase of nontechnology goods and nonprofessional services by the Commonwealth. A complete *Vendors Manual* containing all changes and a listing of changes made since publication of the edition may be obtained from the Department of General Services (DGS), Division of Purchases and Supply (DPS) on the eVA Internet Home Page (www.eva.virginia.gov) under "Vendors Manual" on the "Vendor" tab. You can find a copy of District 19 CSB Vendors Manual on District 19 CSB website at www.d19csb.com.

Any vendor providing nontechnology goods or nonprofessional services to the Commonwealth and/or District 19 CSB should be familiar with the contents of the State Vendors Manual and District 19 CSB Vendor's manual. The contents in these manuals generally applies to all State and District 19 CSB procurements.

Additional rules and regulations from the state Vendors Manual supersedes this manual and information from the state Vendors Manual may be added to this manual and any District 19 CSB contract or purchases at any time.

The rules and regulations in this manual cannot be less than what is stated in the state Vendors Manual. Commonwealth includes District 19 Community Services Board.

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CHAPTER 1

AUTHORITY AND RESPONSIBILITY

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

“To the end that public bodies in the Commonwealth obtain high quality goods and services at reasonable cost, that all procurement procedures be conducted in a fair and impartial manner with avoidance of any impropriety or appearance of impropriety, that all qualified vendors have access to public business, and that no offeror be arbitrarily or capriciously excluded, it is the intent of the General Assembly that competition be sought to the maximum feasible degree, that procurement procedures involve openness and administrative efficiency, that individual public bodies enjoy broad flexibility in fashioning details of such competition, that the rules governing contract awards be made clear in advance of the competition, that specifications reflect the procurement needs of the purchasing body rather than being drawn to favor a particular vendor, and that the purchaser and vendor freely exchange information concerning what is sought to be procured and what is offered. Public bodies may consider best value concepts when procuring goods and nonprofessional services, but not construction or professional services. The criteria factors, and basis for consideration of best value and the process for the consideration of best value shall be as stated in the procurement solicitation.” (*Code of Virginia*, § 2.2-4300C).

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

The *VPPA* applies generally to every “public body” in the Commonwealth which § 2.2-4301 of the *Code of Virginia* defines to include “any legislative, executive, or judicial body, agency, office, department, authority, post, commission, committee, institution, board or political subdivision created by law to exercise some sovereign power or to perform some governmental duty”

1.2 **Purchases for Local Governments.** Upon request, DGS/DPS and VDOT may procure nontechnology material, equipment, supplies or services for local governments.

1.3 **Purchases from Term Contracts - (Mandatory Source)**

- a. Local governments may purchase from statewide contracts unless the contract is specifically limited to state agencies. If an item is available on a DGS/DPS mandatory contract or from the Virginia Distribution Center, an agency or institution may not establish a contract for the same or similar goods or services or use its local purchasing authority to purchase from another source unless the purchase does not meet the contract minimum order requirement. In an emergency, the use of contract sources may be waived by the applicable purchasing office responsible for administering the term contract. The sale or attempted sale by a vendor to a state agency of goods or services which are required to be ordered from a term contract or from a mandatory source (see paragraph 1.4), may subject a vendor to removal from the Vendors List if that vendor knowingly sells to a state agency goods or services which must be purchased under a term contract or from a mandatory source.
- b. VITA establishes contracts for the purchase of information technology goods and services to include computers, software, telecommunications equipment and services for the use of state agencies and institutions.
- c. Term Contracts for goods or services are for the sole benefit of the Commonwealth of Virginia, its agencies and institutions and, in some cases, its political subdivisions. The contracts do not apply to government employees or other individuals, and ordering of goods from these contracts by individuals for personal use is prohibited.

1.4 **Purchases from State Agencies or Employment Services Organization Vendors**

- a. The *Code of Virginia* requires that certain goods or services be procured, where available, from designated state agencies or employment services organization vendors. These include:
 - (1) Department of Corrections (*Code of Virginia*, §§ 2.2-1116, 53.1-47, 53.1-48, 53.1-49)
 - (2) Department for the Blind and Vision Impaired (*Code of Virginia*, §§ 2.2-1117 and 2.2-4344 A1(a))
- b. Goods or services may be procured without competition from employment services organizations (*Code of Virginia*, §§ 2.2-1118 and 2.2-4344 A1(b)).

1.5 **Preferences**

- a. **Virginia Vendors.** Preference is given to materials, equipment and supplies produced in Virginia, goods, or services or construction provided by Virginia persons, firms or corporations in the event of a tie bid. Whenever the lowest responsive and responsible bidder is a resident of any other state and such state under its laws allows a resident contractor of that state a percentage preference, a like preference shall be allowed to the lowest responsible bidder who is a resident of Virginia and is the next lowest bidder. If the lowest responsive and responsible bidder is a resident of any other state and such state under its laws allows a resident contractor of that state a price-matching preference, a like preference shall be allowed to bidders who are residents of Virginia (*Code of Virginia*, § 2.2-

4324B). If the lowest responsive and responsible Virginia bidder is unable to match the price, the preference shall be given to other Virginia bidders in ascending price order. If the lowest bidder is a resident contractor of another state with an absolute preference, the bid shall not be considered.

1.6 **Open Records.** Procurement proceedings, records, contracts, and orders are public records, open to the inspection of any citizen or any interested person, firm or corporation, in accordance with the *Virginia Freedom of Information Act (Code of Virginia, § 2.2-3700 et seq.)*. Cost estimates relating to a proposed procurement transaction prepared by or for a state agency shall not be open to public inspection (*Code of Virginia, § 2.2-4342B*). Bid and proposal records are not available to the public for inspection until after the award except that any bidder, upon request, shall be afforded the opportunity to inspect bid records within a reasonable time after the opening and evaluation of all bids but prior to award, except in the event that the public body decides not to accept any of the bids and to rebid.

Any competitive negotiation offeror, upon request, shall be afforded the opportunity to inspect proposal records within a reasonable time after the evaluation and negotiation of proposals are completed but prior to award, except in the event that the public body decides not to accept any of the proposals and to resolicit.

Despite the preceding restrictions as to when bidders, offerors, and the general public may inspect bid and proposal records, once bids have been publicly opened and their prices announced, the names of the bidders and their bid prices may be disclosed to anyone. Likewise, the identity of offerors submitting proposals in the competitive negotiation process may be disclosed.

Unsealed bid and unsealed proposal records shall be open to the inspection of any citizen, or any interested person, firm or corporation in accordance with the Virginia Freedom of Information Act only after award of the contract.

Any inspection of records shall be subject to reasonable restrictions to ensure the security and integrity of the records (*Code of Virginia, § 2.2-4342E*).

A procuring agency may make reasonable charges for the copying, search time and computer time expended in the supplying of procurement records in response to a public request. The charge shall not exceed the actual cost to the procuring agency of supplying such records. Upon request the procuring agency will furnish in advance an estimate of the charges for supplying procurement records (*Code of Virginia, § 2.2-3704F*).

Trade secrets or proprietary information submitted by a bidder, offeror, or contractor in connection with a procurement transaction shall not be subject to public disclosure under the *Virginia Freedom of Information Act*; however, the bidder or offeror must invoke the protections of the *Code of Virginia, § 2.2-4342F*, 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 reason why protection is necessary. The proprietary or trade secret material submitted must be identified by some distinct method such as highlighting or underlining and must indicate only the specific words, figures, or paragraphs that constitute trade secret or proprietary information. The classification of an entire bid or proposal document, line item prices and/or total bid or proposal prices as proprietary or trade secrets is not acceptable. If, after being given reasonable time, the bidder or offeror refuses to withdraw an entire classification designation, the bid or proposal will be rejected.

1.7 **Cooperative Procurement.**

- a. The *Code of Virginia*, § 2.2-4304 authorizes public bodies to participate in, sponsor, conduct, or administer cooperative procurements to satisfy requirements for goods and non-professional services. Any authority, department, division, institution, officer, agency, and other unit of state government, hereinafter called the agency, must comply with the following requirements. In addition, cooperative contracts or arrangements under which any fees, incentives or financial terms, direct or indirect, may be rebated, paid, or credited to Commonwealth using agencies require the approval of DGS/DPS before any order or commitment can be made by the using agency.
- b. **Use of Commonwealth Cooperative Contracts:** Agencies desiring to purchase from cooperative contracts for non-telecommunications and non-technology goods and nonprofessional services as set forth in §2.2-4304 may do so without regard to their delegated purchasing authority when all the following conditions are met: (1) no DGS/DPS contract exists for the same or similar goods and services; (2) the contracts were awarded by Commonwealth agencies or institutions; (3) the agency participated in the request for proposal or invitation to bid or the contract original solicitation specified that the procurement was being conducted on behalf of other public bodies; (4) the contracts are posted on the eVA State Contracts listing to assure public visibility of the full terms and pricing of such contracts and any amendments; and (5) the contractors agree to the Commonwealth's General Terms and Conditions and District 19 Community Services Board General Terms and Conditions, and any other considerations for doing business with the Commonwealth.
- c. **Use of Non-Commonwealth Cooperative Contracts, including National Cooperatives awarded by other than Commonwealth agencies and institutions:** These cooperatives are not authorized unless approved in writing by DGS/DPS. Authorized cooperative contracts awarded by other than Commonwealth agencies are posted on the eVA State Contracts listing to assure public visibility of the full terms and pricing of such contracts after DGS/DPS determines that the contracts comply with §2.2-4304; that prices are fair and reasonable; that Virginia businesses have been afforded access to participate; that the contractors are registered in eVA; and that contractors agree to the Commonwealth's General Terms and Conditions, any other terms and conditions, and any other considerations for doing business with the Commonwealth.
- d. **General Services Administration (GSA) or other U.S. Government Contracts:** As authorized by the United States Congress and consistent with applicable federal regulations, and provided the terms of the contract permit such purchases, § 2.2-4304 of the *Code of Virginia* permits any authority, department, agency, or institution of the Commonwealth to purchase goods and nonprofessional services, other than telecommunications and information technology, from a U.S. General Services Administration contract or a contract awarded by any other agency of the U.S. government, upon approval of the Executive Director. For non-IT general purchases only one GSA Schedule has been approved for use by Congress, Schedule 84. Certain law enforcement, drug interdiction, and emergency operations programs have been granted authority by Congress to use any GSA Schedule subject to GSA guidelines as to when they may be used.

CHAPTER 2

PROCUREMENT METHODS

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2.1 Policy.

- a. Contracts with nongovernmental sources for the purchase, lease or rental of goods, printing, insurance, nonprofessional services, and construction, shall be awarded after competitive sealed bidding, or competitive negotiation as provided in this manual, unless otherwise authorized by law. Competition shall be sought to the maximum feasible extent. Competitive sealed bidding for a firm fixed price contract is the preferred method of contracting. In the solicitation or awarding of contracts, no public body shall discriminate against a bidder or offeror because of the race, religion, color, sex, national origin, age, disability or any other basis prohibited by state law relating to discrimination in employment (*Code of Virginia*, § 2.2-4310A).

2.2 Exceptions from Competitive Bidding. District 19 CSB has determined that procurement by competitive bidding under the following circumstances is not practicable:

- a. Purchases up to \$5,000.
- b. The following selected categories of goods and services up to and including \$30,000:
 - (1) Books, pre-printed materials, reprints and subscriptions (e.g., print or electronic), pre-recorded audio and video cassettes, compact discs, slide presentations, etc., when only available from the publisher/producer.
 - (2) Academic/research consulting services.
 - (3) Honoraria, entertainment (speakers, lecturers, musicians, performing artists).
 - (5) Training that is specialized, proprietary, not typically available to the general public for which competition is generally unavailable, off-site, and requires a registration fee.
 - (6) Royalties and film rentals when only available from the producer or protected distributors.

- (7) Professional Organizational Membership dues.
 - (8) Writers.
 - (9) Artists (does not include graphic artists); original works of art; and original, or authentic antique period art frames (does not include newly created replacement or reproduction frames).
 - (10) Photographers other than for graduations and yearbooks, e.g., for official photographs/portraits.
 - (11) Contributions and donations made by a university.
 - (12) Advertisements such as in newspapers, magazines, journals, radio, television, etc.
 - (13) Utility charges. (natural gas, electricity; does not include cable services nor waste management)
 - (14) Conference facilities (to include conference support and related lodging and meals) only when the use of a specific facility is directed by an outside donor, sponsor, or organization.
 - (15) Accreditation fees and academic testing services.
 - (16) Exhibition Rental Fees for exhibitions of historical artifacts or original works of art. (The rental fee may include charges other than the rental of the exhibition, such as transportation costs.)
 - (17) Rare and historic manuscript, printed and photographic materials (e.g. books, ephemera, maps, manuscripts, photographs, and prints) that are one of a kind or exist in very limited supply.
 - (18) Purchases for testing or evaluation (limited to purchases of quantities considered necessary for complete and adequate testing).
- c. Purchases from the federal government, other states and their agencies or institutions, and public bodies.

2.3 **Small Purchase Procedures**

- a. **Single Quotation** (up to \$5,000). Where District 19 CSB estimated cost of goods or nonprofessional services is \$5,000 or less, unless exempted, purchases shall be made upon receipt of a minimum of one (1) written or telephone (oral) quotation. If more than one quote is solicited, the award will be made to the lowest responsive and responsible bidder, provided the agency determines the price to be fair and reasonable.
- b. **Unsealed Bidding** (over \$5,000 to \$100,000).

Solicit bids or quotes for goods and nonprofessional services over \$5,000 up to \$100,000 by using Unsealed written bidding. Public posting is required for this type bidding.
- c. **Unsealed Proposals** (Over \$5,000 to \$100,000). District 19 CSB may obtain required goods or nonprofessional services using a solicitation for unsealed proposals up to \$100,000. Public posting

is required if this solicitation. A written determination for the use of competitive negotiation is not required for unsealed proposals. In lieu of an evaluation committee, the buyer or end user may solely evaluate and rank offers. Upon completion of the evaluation, negotiations shall be conducted with the offerors selected.

2.4 **Sealed (Formal) Bids**. Written sealed bids are required for goods or nonprofessional services when the estimated cost is over \$100,000. The solicitation will be publicly posted on the District 19 CSB website (www.d19csb.com) at least ten (10) days prior to the date set for receipt of bids. This also applies to two-step sealed bidding. Written sealed bids received are held, unopened, until the date and time set in the solicitation, at which time they are publicly opened and the following information is read aloud:

- bidders' names;
- unit prices, lot prices, or total prices, as applicable;
- discount terms offered, if discount terms are to be considered in making the award; and
- brand names and model numbers if requested by the attendees.

Bids will be evaluated and awarded based upon the requirements set forth in the solicitation.

2.5 **Competitive Negotiation** (Applies to sealed solicitations for other than Professional Services). Within the delegated purchasing authority of an agency, competitive negotiation may be used upon a determination made in advance by the purchasing agency and set forth in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to District 19 CSB for procurement of goods, services, or insurance (*Code of Virginia*, § 2.2-4303C). The writing shall document the basis for this determination. In competitive negotiation, a written Request For Proposal (RFP) is issued that describes in general terms what is to be procured, the criteria to be used in evaluating the proposal, the applicable contractual terms and conditions, including any unique capabilities or qualifications required of the contractor.

A notice of the RFP will be publicly posted on the District 19 CSB website (www.d19csb.com) at least ten (10) days prior to the due date and time and the notice will be published in a newspaper of general circulation in the area in which the contract is to be performed.

Selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals, on the basis of the criteria involved in the Request for Proposal, including price if so stated in the Request for Proposal. Negotiations shall then be conducted with each of the offerors so selected. Price shall be considered, but need not be the sole determining factor. After negotiations have been conducted with each offeror so selected, the public body shall select the offeror which, in its opinion, has made the best proposal, and shall award the contract to that offeror. Should the public body determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror.

2.6 **Emergency Procurement**. In case of emergency, a contract may be awarded without competitive sealed bidding or competitive negotiation; however, such procurement shall be made with such competition as is practicable under the circumstances. The writing shall document the basis for this determination. All emergency procurement award notices shall be publicly posted on District 19 CSB public posting notice board and at a minimum state that the procurement has been declared an

emergency and must also state that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This shall be done on the day the decision to award is announced or the award is made, whichever occurred first, or as soon thereafter as is practicable.

2.7 **Sole Source Procurement.**

- a. 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. All sole source procurement award notices shall be posted on District 19 CSB public posting notice board and at a minimum state that only one source was determined to be practicably available and must also state that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This shall be done on the day the decision to award is announced or the award is made, whichever occurred first.

CHAPTER 3

GENERAL REQUIREMENTS OF VENDORS

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 - 3.3 Personal Interest and Gifts
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- 3.1 **Visits by Vendors.** Visits by vendors or their representatives to purchasing offices are welcomed and encouraged. In order that the staff and vendors may schedule their time productively, an appointment is suggested. Appointments may be scheduled Monday through Friday on official business days from 9:00 a.m. to 3:00 p.m. (phone 804-862-8054 ext. 3102).
- 3.2 **Vendor Assistance to State Agencies.** Vendor sales efforts of a consultative or advisory nature are encouraged. They assist agencies in keeping current with the latest state of the art technology and materials and are a valuable source of information. The furnishing of product or service information by a vendor is considered to be normal sales effort and does not entitle the vendor to preferential treatment in the awarding of contracts. A vendor may offer, without compensation, assistance to agency personnel in developing specifications for a requirement and compete on that requirement. A purchasing office may provide the specifications to competing vendors for comment before issuing the solicitation.
- 3.3 **Personal Interest, Donations, and Gifts.** No vendor shall offer any gift, gratuity, favor, or advantage to any District 19 CSB employee who exercises official procurement responsibility, develops procurement requirements, or otherwise influences procurement decisions. District 19 CSB employees may attend vendor-sponsored seminars or trade shows where the buying staffs will benefit from receiving product information and learning of new techniques and trends. Food, drinks, and give-away items offered to all participants at such functions may be accepted by District 19 CSB employees attending.

Vendors and employees of District 19 CSB are prohibited from exchanging anything exceeding nominal value at Expo events, which includes distributions by vendors at exhibit booths where the vendors are educating buyers about their products.

- 3.4 **Responsible Bidder or Offeror.** In determining a responsible bidder or offeror, a number of factors including, but not limited to, the following are considered. The vendor should:
- a. be a regular dealer, supplier and/or an authorized dealer of the goods or services offered;
 - b. have the ability to comply with the required delivery or performance schedule, taking into consideration other business commitments;
 - c. have a satisfactory record of performance;
 - d. have a satisfactory record of integrity; and,
 - e. have the necessary facilities, organization, experience, technical skills, and financial resources to fulfill the terms of the purchase order or contract.
- 3.5 **Responsive Bidder.** A responsive bidder means a person who has submitted a bid which conforms in all material respects to the Invitation for Bids. Examples of nonresponsiveness include, but are not limited to, failure to sign a bid, failure to return the required bid documents, substitution of terms, deletion of terms and conditions stated in the Invitation for Bids, and failure to offer a product or service that meets the requirements of the Invitation for Bids. A bidder who fails to provide prices for all categories of labor in the pricing schedule of a time and materials service contract is considered non-responsive. This is true whether the price was left blank or the bidder entered a figure of \$0. Bidders who provide multiple prices for performing a service where a single price was solicited are also non-responsive.
- 3.6 **Copyright.** No vendor may copyright any work contracted for by District 19 CSB and produced for District 19 CSB without the prior written consent of the agency.
- 3.7 **Ownership of Artwork, Negatives, and Other Submitted Information**
- a. All artwork, negatives, dies, overlays, or similar materials used to print a job shall be the property of District 19 CSB and must be returned to the requisitioning agency upon completion.
 - b. Ownership of all data, materials, and documentation originated and prepared for District 19 CSB pursuant to a solicitation shall belong exclusively to the agency and be subject to public inspection in accordance with the *Virginia Freedom of Information Act*. Information on protecting trade secrets or proprietary information is found in 1.6.
- 3.8 **Prohibited Contracts.**
- a. No state agency except for institutions of higher education as defined by §2.2-4321.1 H. shall contract for goods or services with a nongovernmental source if the source, or any affiliate of the source, is subject to the provisions of (i)§ 58.1-612 and fails or refuses to collect and remit the tax on its sales delivered by any means to locations within the Commonwealth or (ii) Article 2 (§ 58.1-320 et seq.) or Article 10 (§58.1-400 et seq.) of Chapter 3 of Title 58.1 and fails or refuses to remit income tax due thereunder. The provisions of clause (ii) shall not apply to any person that has (a) entered into a payment agreement with the Department of Taxation to pay the tax and is not delinquent under the terms of the agreement or (b) appealed the assessment of the tax in accordance with law and such appeal is pending.

- b. District 19 CSB may contract for goods or services with a source prohibited under subsection A in the event of an emergency or where the nongovernmental source is the sole source of such goods or services.
 - c. The determination of whether a source is a prohibited source shall be made by the Department of Taxation after providing the prohibited source with notice and an opportunity to respond to the proposed determination.
- 3.9 **Subsequent/Additional Bid/Proposal for the Same Procurement.** Submission of a subsequent bid/proposal, unless specifically identified as an amendment to a previously submitted bid/proposal, shall constitute an additional bid/proposal submitted by the same bidder or offeror on the same IFB/RFP. For information on amending or withdrawing bids/proposals, see Section 5.11.
- 3.10 **Virus-free and Accessible Submittals.** It is the responsibility of the vendor to ensure that any electronic submission transmitted to District 19 CSB is virus-free and in a format (e.g. Microsoft Word or Excel, Adobe Acrobat, etc.) that is accessible by that agency. Documents not accessible by the purchasing agency may be cause to determine the bid nonresponsive.
- 3.11 **Authorization to Transact Business in the Commonwealth.**
- a. In accordance with the *Code of Virginia* § 2.2-4311.2, every written contract shall include a provision that a contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 or as otherwise required by law.
 - b. The *Code of Virginia* § 2.2-4311.2 subsection B requires that “Pursuant to competitive sealed bidding or competitive negotiation, all public bodies shall include in the solicitation a provision that requires a bidder or offeror organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 to include in its bid or proposal the identification number issued to it by the State Corporation Commission. Any bidder or offeror that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 or as otherwise required by law shall include in its bid or proposal a statement describing why the bidder or offeror is not required to be so authorized.”
 - c. Should a bidder/offeror omit including the SCC number or a statement describing why the bidder/offeror is not required to be so authorized on its bid/proposal, the agency, at its sole option, may allow the bidder/offeror additional time to provide the SCC Identification Number or a statement describing why the bidder/offeror is not required to be so authorized and continue the evaluation. An agency shall not award a contract to a bidder/offeror that fails to comply with § 2.2-4311.2 unless a waiver is granted by the Director of the Department of General Services or his designee.
 - d. For purposes of compliance with this section, agencies may rely on the accuracy of the bidder’s/offeror’s statement provided on the SCC Form describing why the bidder/offeror is not required to be so authorized per exclusions listed in Title 13.1 or Title 50 and are not required to validate. Any falsification or misrepresentation contained in the statement submitted by the bidder/offeror pursuant to Title 13.1 or Title 50 may be cause for debarment.

- e. Any bidder or offeror described in *Code of Virginia* § 2.2-4311.2 subsection B that fails to provide the required information shall not receive an award unless a waiver is granted by the Director of the Department of General Services or his designee in accordance with *Code of Virginia* § 2.2-4311.2.

CHAPTER 4

SOLICITATIONS

In this Chapter look for . . .

- 4.1 Selection of Bidders/Offerors
 - 4.2 Response Time
 - 4.3 Prebid or Preproposal Conference
 - 4.4 Receipt of Sealed Bids or Proposals
 - 4.5 Receipt of Unsealed Proposals
 - 4.6 Canceling or Amending a Solicitation
 - 4.7 Combining Responses to Separate Solicitations is Prohibited
 - 4.8 Postage
 - 4.9 Facsimile Bids or Proposals
 - 4.10 Late Bids or Proposals
 - 4.11 Insurance
 - 4.12 Specifications, Questions, and Comments
 - 4.13 Brand Names
 - 4.14 Contractor Registration (License)
-

- 4.1 **Selection of Bidders/Offerors.** All qualified vendors have access to District 19 CSB's business. Selection of vendors will be at the discretion of District 19 CSB. All Invitations to Bid, Requests for Proposal, sole source award notices, and emergency award notices shall be posted on District 19 CSB's website: www.d19csb.com. Addenda are also required to be posted. Professional service procurements must be posted over \$50,000. Any vendor not solicited may request a copy of the solicitation.
- 4.2 **Response Time.** Normally, the time set for return of sealed bids is fourteen (14) to seventeen (17) calendar days after publication of the IFB. The minimum time for receipt of a sealed bid or proposal will not be less than ten (10) calendar days from the date issued. In addition, mandatory conferences or site visits will not be scheduled less than ten calendar days from the date the solicitation is issued and public notice requirements are completed. Vendors should check each solicitation to ascertain its due date.
- 4.3 **Prebid or Preproposal Conference.** On complex, critical or high value procurements, a solicitation may contain a requirement to attend a prebid or preproposal conference. Attendance at conferences or site visits may be either optional or mandatory. When mandatory attendance is stipulated in the solicitation, an attendance roster is signed by the attendees and only bids or proposals from those firms represented at the conference or visiting the site will be accepted. Vendors are cautioned that agencies are authorized to establish a cutoff time for late arrivals, after which no one will be permitted access to the conference. Conferences scheduled during a period of suspended District 19 CSB business operations will be rescheduled by the purchasing agency to a date and time which will permit proper notification to all potentially interested participants.

4.4 **Receipt of Sealed Bids or Proposals.**

- a. **General.** The solicitation will state that written sealed bids or proposals are to be received by the issuing purchase office prior to the date and hour specified in the solicitation. Bid or proposal receipt deadlines and public openings scheduled during a period of suspended state business operations will be deemed rescheduled for processing at the appropriate times on the next regular business day. A special envelope or label may be furnished with the solicitation. It is imperative that the bid or offer be returned in this envelope. If return in the special envelope is not possible, the signed bid or proposal should be returned in a separate envelope or package, sealed and identified as follows:

From:

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

Name of Contract/Purchase Officer/Buyer:

The envelope should be addressed as directed in the solicitation.

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

Bidders should be careful when electing to use private courier services to deliver their bids or proposals to the contracting agencies. Many agencies have different addresses for hand delivery versus the point of delivery established for postal delivery. It is solely the responsibility of the bidders/offerors to ensure that bids or proposals reach the designated address by the specified date and time shown on the solicitation.

- 4.5 **Receipt of Unsealed Proposals.** The RFP for written unsealed proposals will state that they must be received by a date and time specified. Proposal receipt deadlines scheduled during a period of suspended state business operations will be deemed rescheduled for the appropriate times on the next regular business day. Unlike sealed bids, special envelopes generally are not furnished. These proposals may also be hand delivered to the office issuing the solicitation. Unsealed proposal solicitations and responses may be electronic. Unsealed responses shall be received until the time and date specified in the solicitation.

4.6 **Canceling or Amending a Solicitation.** An Invitation to Bid, a Request for Proposal, any other solicitation, or any and all bids or proposals, may be canceled or rejected. The reasons for cancellation or rejection will be made part of the contract file. A public body will not cancel or reject an Invitation to Bid, a Request for Proposal, any other solicitation, bid or proposal pursuant to this section solely to avoid awarding a contract to a particular responsive and responsible bidder or offeror (*Code of Virginia*, § 2.2-4319).

Amendments may be made by the issuance of an addendum prior to the time set for receipt of responses. Acknowledgment of receipt of an addendum must be returned prior to the time set for receipt of bids or proposals, or accompany the bid or proposal. Failure to acknowledge receipt of an addendum may be cause for rejection of the bid or proposal.

4.7 **Combining Responses to Separate Solicitations is Prohibited.** A vendor shall not combine responses to separate IFBs or RFPs into one bid or proposal.

4.8 **Postage.** All bids or proposals should be weighed and the postage verified before mailing. The U.S. Postal Service does not deliver unstamped mail. Postage due mail may be delivered, but the District 19 CSB will not assume the responsibility for paying the amount due and may return or refuse the mail.

4.9 **Facsimile or Electronic Bids or Proposals.** Bids or proposals sent via facsimile or electronically, must meet the requirements for unsealed or sealed responses described below. The timing device used to document the receipt of bids or proposals will be designated by the purchasing agency. The time printed on the top of the facsimile copy will not govern the time of receipt.

a. **Unsealed Proposals.** Facsimile or electronic proposals must be completely received in the office that issued the solicitation prior to the time and date designated for submission. The original copy of the facsimile or electronic transmission may be requested. If requested it must be received within five (5) working days.

b. **Sealed Bids/Sealed Proposals.** Facsimile bids or proposals will be accepted from a third party or an agent of the bidder or offeror for sealed programs provided that the bids or proposals are submitted in sealed envelopes to the purchasing agency. The bidder/offeror is responsible for arranging the third party involvement in sealed bid/proposal programs and for faxing the complete bid/proposal to the third party, not just a summary or the cover sheet. The original bid or proposal and addenda may be requested and, if requested, must be received within five (5) business days. See 5.3 for signature requirements.

4.10 **Late Bids or Proposals.** To be considered, all bids or proposals must be received at the specific office location stipulated by the procuring activity on or before the date and hour designated on the solicitation. Vendors should pay particular attention to ensure that the bid or proposal is properly addressed. The state is not responsible if the bid or proposal does not reach the specific destination by the appointed time. Bids or proposals received after the date and hour designated are automatically disqualified and will not be considered. The official time used in the receipt of responses is that time on the clock or automatic time stamp machine in the procuring activity.

4.11 **Insurance.** Whenever work is to be performed on District 19 CSB owned or leased property or facilities, the contractor shall be required to have Workers' Compensation, Employer's Liability, Commercial General Liability and Automobile Liability, and in certain types of programs Professional Liability/Errors and Omissions insurance coverage. District 19 CSB must be named as an additional

insured when requiring a Contractor to obtain Commercial General Liability coverage. In some cases, Workers' Compensation Insurance and Employer's Liability Insurance may not be required. Workers' Compensation insurance is required when the contractor has three (3) or more employees. If work is performed by a sole proprietor, the person does not need Workers' Compensation insurance, as they do not have employees. Employer's Liability is required if an employer has employees who are paid a wage or salary. Employer's Liability is not required for persons in business together, e.g., husband and wife, siblings or parents and children, as these persons would be considered owners not employees. For construction contracts, if any subcontractors are involved, subcontractors shall also be required to have workers' compensation insurance in accordance with *Code of Virginia*, § 2.2-4332 and 65.2-800 et seq. Stipulated insurance must be obtained prior to commencing work and be maintained during the entire term of the contract. The procuring office may require a certificate of insurance to be furnished prior to commencement of work and at anytime during contract performance.

- 4.12 **Specifications, Questions, and Comments.** It is the intent of the purchasing office to use specifications that encourage competition. Vendors are requested to inform the responsible purchasing office whenever they have comments or questions concerning specifications or solicitation requirements (*Code of Virginia*, § 2.2-4316). Suggestions concerning new products or improvements to specifications are encouraged and will be considered. This information should be provided to the issuing purchase office as early as possible but at least five (5) working days prior to bid or proposal due date to provide time to amend or cancel the solicitation before the scheduled receipt date.
- 4.13 **Brand Names.** 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 or offerors to the specific brand, make, or manufacturer named. Any article which the public body, in its sole discretion, determines to be the equivalent of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended shall be accepted (*Code of Virginia*, § 2.2-4315). The bidder or offeror is responsible to clearly and specifically indicate the product being offered and to provide sufficient descriptive literature, catalog cuts and technical detail to enable District 19 CSB to determine if the product offered meets the requirements of the solicitation. This is required, even if offering the exact brand, make, or manufacturer specified. Normally, in competitive sealed bidding, only the information furnished with the bid will be considered in the evaluation. Failure to furnish adequate data for evaluation purposes may result in declaring a bid nonresponsive. Unless the bidder or offeror clearly indicates in its bid/proposal that the product offered is an "equivalent" product, such bid/proposal will be considered to offer the brand name product referenced in the solicitation.
- 4.14 **Contractor Registration (License).** 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. It is the contractor's responsibility to comply with the rules and regulations issued by state regulatory agencies. An unlicensed vendor submitting a bid or proposal where such license is required is in violation of state law and the bid or proposal will be rejected. A vendor bidding on construction, demolition, repair, or improvements to facilities must be a registered contractor with the Department of Professional and Occupational Regulation in accordance with *Code of Virginia*, Title 54.1, Chapter 11, as follows:

If a procurement of \$1,000 or more involves construction, removal, repair, or improvement of any building or structure permanently annexed to real property or any other improvement to such real

property, the contractor must possess one of the following licenses issued by the State Board for Contractors for the type of work involved prior to submitting a bid or proposal (*Code of Virginia*, §§ 54.1-1103 and 54.1-1115):

- **Contractor License A** - If the contract is \$120,000 or more or if the contractor does \$750,000 or more business within a 12-month period; or
- **Contractor License B** - \$10,000 - \$120,000 or if the contractor does between \$150,000 and \$750,000 in business within a 12-month period; or
- **Contractor License C** - \$1,000 - \$10,000 or if the contractor does less than \$150,000 in business within a 12-month period. **NOTE:** The Board shall require a master tradesmen license as a condition of licensure for electrical, plumbing and heating, ventilation and air conditioning contractors.

In addition, all nonresident contractors and subcontractors submitting bids on the above work who are not registered with the Department of Professional and Occupational Regulation shall register with the Department of Labor and Industry under the provisions of *Code of Virginia*, § 40.1-30.

Private Security Services. All solicitations for the installation, service, maintenance, or design of security equipment, security officer service, central station alarm condition monitoring service, and/or private investigator service require that the successful bidder, offeror or approved subcontractor have a Private Security Services Business License issued by the Department of Criminal Justice Services (see *Code of Virginia*, § 9.1-139). This applies regardless of the dollar value of the resulting contract. Assistance may be obtained from the Department of Criminal Justice Services at 804-786-0460.

CHAPTER 5

SOLICITATION RESPONSES

In this Chapter look for . . .

- 5.1 Solicitation Forms
 - 5.2 Vendor Name and Address
 - 5.3 Signature on Bid or Proposal
 - 5.4 Terms and Conditions
 - 5.5 Pricing and Discounts
 - 5.6 Samples
 - 5.7 Alternate Bids
 - 5.8 Taxes
 - 5.9 Time of Performance
 - 5.10 Questions Concerning Solicitations
 - 5.11 Amending or Withdrawing Bids or Proposals by Vendors
 - 5.12 Alterations to Bids or Proposals
 - 5.13 Mistakes in Bids
 - 5.14 Withdrawal of Bids
 - 5.15 Denial of Withdrawal of Bid
-

- 5.1 **Solicitation Forms.** All vendors receiving an Invitation for Bid (IFB) or Request for Proposal (RFP) are expected to return the bid or proposal response to the purchasing office that issued the solicitation. If the vendor does not wish to submit a bid or proposal, a “No Bid” or a similar statement should be returned to the issuing office.
- 5.2 **Vendor Name and Address.** Purchase orders or contracts will be issued only to the firm’s name appearing on the bid or proposal form. If orders or payments are to be mailed to an address or addresses other than that shown on the face of the form, the bidder or offeror must so indicate and list the post office box, or street name and number, city, state, and zip code for the addressee.
- 5.3 **Signature on Bid or Proposal.** Facsimile bids or proposals on sealed programs will be accepted from a third party or an agent of the bidder or offeror provided that the bids or offerors are submitted in sealed envelopes (see 4.4). For sealed bid or sealed proposal programs, the bid or proposal, and all addenda returned by the bidder or offeror by facsimile must be signed. The original bid or proposal must be signed in ink. The person signing the bid or proposal must be a person authorized by the bidder or offeror to sign bids or proposals. Typewritten signatures are not acceptable. The person signing must include his or her title, and if requested, must verify his or her authority to bind his or her company in contract. Failure to sign the face of the bid/proposal in the space provided will result in rejection of the bid/proposal except if the unsigned bid/proposal is accompanied by other signed documents indicating the bidder's/offeror's intent to be bound [see 5.13c(1)(b)].
- 5.4 **Terms and Conditions.** Terms and Condition and Instructions to Vendors are shown in Appendix B, Section I. Solicitations contain general terms and conditions which incorporate the procedures and

provisions of this manual as well as all applicable statutory provisions such as the *Virginia Fair Employment Contracting Act (Code of Virginia, §§ 2.2-4200 through 2.2-4201)*. The General Terms and Conditions that are typically used in agency contracts are found in Appendix B, Section II. These provisions apply to all written solicitations issued by District 19 CSB unless changed, deleted, or revised by the legal advisor to the agency. Special conditions may change or rescind the procedures and provisions of this manual, and the solicitation should be read with care prior to submission of a bid or proposal. A bidder or offeror is not permitted to challenge the validity of the terms or conditions of the Invitation for Bids or Request for Proposal (*Code of Virginia, § 2.2-4360*). Modification of, or additions to, the General Terms and Conditions of an IFB or RFP may be cause for rejection of the bid or proposal. No modification of or addition to any provisions of a contract shall be effective unless reduced to writing and signed by the parties to the contract.

- 5.5 **Pricing and Discounts.** Solicitations normally request net price FOB destination. The net price is the list price less trade or volume discounts offered. Unit prices, extensions, and/or gross total must be shown as requested in the pricing schedule. Prompt payment discounts offered must be clearly shown in the space provided and will be taken if payment is made within the specified time frame, e.g., 2% 20 days. Such discounts will not be a factor in award unless specified in the solicitation. Correct pricing is extremely important, and price should be double checked before submitting a bid or proposal. In the case of errors in the extension of prices, the unit price shall govern.
- 5.6 **Samples.** Samples of materials or equipment for testing, evaluation, or demonstration purposes, when requested in a solicitation must be furnished at no cost. Each individual sample must be labeled with the bidder's or offeror's name, manufacturer's brand name and number, requisition number or contract program, and item referenced. Samples submitted by the successful bidder or offeror may be held for comparison with goods received. All samples submitted may be subjected to tests and evaluation by either a qualified laboratory or test panel, and the results will be a factor in making the award. Samples not destroyed in testing will be returned, if requested, to the bidder or offeror at his or her expense. Requests for return of samples will be honored upon the completion of testing and evaluation. Samples will be disposed of if not claimed within 60 days after pick-up notification has been given.
- 5.7 **Alternate Bids.** An alternate bid is a bid submitted in knowing variance from the specifications and must be clearly distinguished as an alternate by the bidder. Frequently, alternate bids incorporate the latest in technology and can result in substantial savings, not only in monetary terms but also in system-wide operational efficiencies. Vendors should contact buying offices with suggested revisions to specifications as soon as possible in the procurement process. An award cannot be made on an alternate bid; however, all bids may be rejected and the requirement resolicited with a revised specification using the features of the alternate.
- 5.8 **Taxes.**
- a. **Excise.** District 19 CSB generally is exempt from paying federal excise taxes, except it must pay excise taxes 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.** District 19 CSB is generally exempt from paying Virginia's sales taxes on purchases of tangible personal property for its use or consumption. Sales tax, however, is paid by District 19 CSB on materials and supplies that are installed and become a part of real property, e.g., glued-

down carpet. Contractors are not exempt from paying taxes on these categories, as they are considered to be a cost of doing business and should be considered in pricing when preparing a bid on a District 19 CSB contract. (Virginia Retail Sales and Use Tax Regulations, §§ 630-10-27 and 630-10-45. Also see §§ 58.1-603 and 58.1-604). If further interpretive assistance is required, contact the Department of Taxation, Office of Customer Services, 804-367-8037.

- 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.
- d. **Sales and use Tax - Contractors.** Persons who contract with the Commonwealth or its political subdivisions to perform a service, and in conjunction therewith, furnish some tangible personal property, are deemed to be the consumers of all such property and are not entitled to exemption on the grounds that a governmental entity is a party to the contract. This is true even though title to the property provided may pass to the government and/or the contractor may be fully and directly reimbursed by the government. This same principle applies to persons who enter into contracts with a governmental entity to perform real property construction or repair.

5.9 **Time of Performance.** A specific date or number of calendar days required for delivery or performance after receipt of order may be stated in the terms and conditions of a solicitation. Otherwise, the date or number of days must be entered by the bidder in the space provided on the solicitation form (see 7.7).

5.10 **Questions Concerning Solicitations.** Questions concerning a solicitation should be directed to the person and phone number listed on the document. Always refer to the identification number and the opening date on the IFB or RFP. Bid tabulations are a matter of public record and are open for inspection to bidders and offerors after evaluations are complete but prior to award (see 1.6).

5.11 **Amending or Withdrawing Bids or Proposals by Vendors.** A bid/proposal may be amended and/or withdrawn by a bidder or offeror if the office issuing the solicitation 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 firm that submitted the bid/proposal.

5.12 **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 and insert the desired information and initial the change. Erasures, strikeouts, 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.

5.13 **Mistakes in Bids.**
Correction. Except as herein provided, no plea or claim of mistake shall be available to a bidder for recovery of any deposit or security required to be paid or posted or as a defense in any legal proceeding for the failure, neglect or refusal of the bidder to (1) execute a contract that has been awarded by District 19 CSB, (2) accept a purchase order issued by District 19 CSB to a bidder in response to a bid submitted by such bidder, or (3) perform in accordance with the terms, specifications and conditions of a contract.

b. **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 (see 5.11 and 5.12).

c. **Mistakes Discovered After Opening But Before Award**

(1) **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 Proposal, which does not affect the price, quality, quantity, or delivery schedule for the goods, services, or construction being procured (*Code of Virginia*, § 2.2-4301). The procuring agency may, in its sole discretion, waive such informalities or permit the bidder/offeror to correct them, whichever procedure is in the best interest of the District 19 CSB. Examples include the failure of a bidder/offeror to:

(a) Return the number of signed bids/proposals required by the solicitation.

(b) Sign the face of the bid/proposal in the space provided, but only if the unsigned bid/proposal is accompanied by other signed documents indicating the bidder's/ offeror's intent to be bound.

(c) Acknowledge receipt of an addendum to the solicitation, but only if it is clear from the bid/proposal that the bidder/offeror received the addendum and intended to be bound by its terms, or the addendum involved had a negligible effect on price, quantity, quality, or delivery.

(2) **Judgment Errors.** Bids may not be withdrawn if the mistakes are attributable to errors in judgment, nor may such mistakes be waived or corrected.

(3) **Nonjudgmental Mistakes**

(a) Mistakes Where the Intended Correct Bid is Evident. If the mistake and the intended correct bid are clearly evident in 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 in the bid document are typographical errors, errors in extending unit prices, transposition errors, and arithmetical errors.

(b) Mistakes Where the Intended Correct Bid is Not Evident. A bidder may be permitted to withdraw a low bid if a mistake is clearly evident from the bid documents submitted by the bidder and/or a comparison with other bids.

d. **Mistakes Discovered After Award.** Bids containing mistakes shall not be corrected or withdrawn after award of a contract or issuance of a purchase order. No plea or claim of mistake in a bid or resulting contract shall be available as a defense in any legal proceeding brought upon a contract or purchase order awarded to a bidder as a result of the breach or nonperformance of such contract or purchase order (see 7.14).

5.14 **Withdrawal of Bids.** If the lowest apparent responsive bid is 25% or more lower than the next low bid, the buyer may contact the bidder to confirm the bid price. If the bidder is able to verify, to the satisfaction of the purchasing office, that it was a nonjudgmental mistake, the bid may be withdrawn.

- a. If a bid is withdrawn, the lowest remaining bid shall be deemed to be the apparent low bid.
- b. No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm 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.
- c. If the public body denies the request for withdrawal of a bid under the provisions of this section, it shall notify the bidder in writing stating the reasons for its decision and award the contract to such bidder at the bid price, provided such bidder is a responsive and responsible bidder.
- d. 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.

5.15 **Denial of Withdrawal of Bid.** If District 19 CSB denies the withdrawal of a bid under the provisions of paragraph 5.14, it shall notify the bidder in writing stating the reasons for its decision and award the contract to such bidder at the bid price, provided such bidder is a responsible and responsive bidder (*Code of Virginia*, § 2.2-4330 F). The decision denying withdrawal of a bid shall be final and conclusive unless the bidder appeals the decision within ten days after receipt of the decision by invoking the appeals procedure in Chapter 8 or by instituting legal action as provided in the *Code of Virginia*, § 2.2-4364.

CHAPTER 6

EVALUATION AND AWARD

In this Chapter look for . . .

- 6.0 General
 - 6.1 Evaluation of Bids and Proposals
 - 6.2 Acceptance Period
 - 6.3 Notice of Intent to Award and Notice of Award
 - 6.4 Multiple Awards and Split Awards
 - 6.5 Tie Bids
 - 6.6 Negotiation with the Lowest Responsible Bidder
-

6.0 **General.** Factors other than price are considered in selecting the successful bidder/offeror. A determination must be made by the purchasing office as to whether the bidder/offeror is responsive to the requirements of the solicitation and whether or not they are a responsible bidder or offeror capable of furnishing the goods or services solicited (see sections 3.4 and 3.5). Any bidder who, despite being the apparent low bidder, is determined not to be a responsible bidder shall be notified in writing. District 19 CSB reserves the right to request samples of materials or equipment or further information prior to award even if not specifically required in the terms and conditions. Failure to provide requested material or information in a timely manner may be considered valid justification for rejection of the bid.

6.1 **Evaluation of Bids or Proposals**

- a. **Evaluation of Bids.** Bids are evaluated and an award should be made to the lowest responsive and responsible bidder. District 19 CSB reserves the right to reject any and all bids in whole or in part and to waive any informality in the bid. In the case of errors in the extension of prices, the unit price will govern (see 5.5).
- b. **Evaluation of Proposals - Goods and Nonprofessional Services.** Proposals are evaluated by the buyer, contracting officer, or an evaluation team, on the basis of the criteria set forth in the RFP. Proposals deemed to be fully qualified and best suited are selected on the basis of the factors stated in the RFP. As an option, evaluators may request presentations or discussions with offerors, as necessary, to clarify material in the offerors' proposals, to help determine those fully qualified and best suited. Offerors who fail to submit required documentation or meet mandatory requirements, in such time, for evaluation purposes may be eliminated from further consideration. Negotiations are then conducted with two or more of the selected offerors. Price is considered, but need not be the sole determining factor. After negotiations have been completed, the purchasing office shall select the offeror (or offerors, if multiple awards are provided for in the RFP), which in its opinion has made the best proposal, and make the award accordingly. If so provided in the RFP, after negotiations have been held, offerors are given the opportunity to submit best and final offers. District 19 CSB is not required to furnish a statement of the reasons why a particular proposal was not deemed the most advantageous (*Code of Virginia*, § 2.2-4359D). Should the purchasing office determine in writing and in its sole discretion that only one offeror is

fully qualified, or that one offeror is clearly more highly qualified than others under consideration, a contract may be negotiated and awarded to that offeror.

- c. District 19 CSB in its sole discretion may choose not to make an award to a bidder or offeror who is in litigation with District 19 CSB or the Commonwealth at the time of bid/proposal evaluation.

6.2 **Acceptance Period.** Bids are valid for a minimum of thirty (30) days unless a longer period of time is specified in the solicitation or in the bid response. If an award decision has not been made at the end of the stipulated days, the bid may be withdrawn at the written request of the bidder. If the bid is not withdrawn at that time, it remains in effect until an award is made or the bids are rejected.

6.3 **Notice of Intent to Award and Notice of Award.** When the evaluation is complete, the office that issued the solicitation will announce its decision by posting either a Notice of Intent to Award or Notice of Award on District 19 CSB web site. Notices may also be posted in their public notice posting area or other designated location as stated in the solicitation document. A copy of the notice will be mailed to any bidder submitting a self-addressed, stamped envelope for this purpose with the bid/proposal. A low bidder determined not to be a responsible bidder will be notified in writing. A Notice of Award will be posted for 10 days if a Notice of Intent to Award is not issued.

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

6.5 **Tie Bids**

- a. **Virginia Products or Firms.** A tie bid exists when two or more bidders offer products or services that meet all specifications, terms and conditions at identical prices. In the case of a tie bid, preference shall be given to goods produced in Virginia, goods or services or construction provided by Virginia persons, firms or corporations, if such a choice is available; otherwise, the tie shall be decided by lot, (*Code of Virginia*, § 2.2-4324). At the option of the office issuing the IFB, all bids may be rejected and the program rebid. Tie bids are reported to the Antitrust Unit of the Virginia Attorney General's Office (see also 1.5). Whenever any bidder is a resident of any other state and such state under its laws allows a resident contractor of that state a preference, a like preference may be allowed to the lowest responsible bidder who is a resident of Virginia.

- b. **Recycled Content.** In the case of a tie bid in instances where goods are being offered and existing price preferences have already been taken into account, preference then shall be given to the bidder whose goods contain the greatest amount of recycled content.

6.6 **Negotiation with the Lowest Responsible Bidder.** Unless canceled or rejected, a responsive bid from the lowest responsible bidder shall be accepted as submitted except that if the bid exceeds available funds, District 19 CSB 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 public body prior to issuance of the Invitation to Bid and summarized therein (*Code of Virginia*, § 2.2-4318).

CHAPTER 7

PERFORMANCE

In this Chapter look for . . .

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- 7.1 **Purchase Order, Authority and Shipment.** A purchase order is a document used District 19 CSB to execute a purchase transaction with a vendor. The order number should be shown on all bills of lading, packing slips, back orders, invoices, etc. The 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). Contractors who accept and deliver an order without a written purchase order or other properly executed District 19 CSB contract form do so at their own risk.
- 7.2 **New/Used/Altered.** All supplies and equipment furnished must be new and in first class condition unless the solicitation and contract award specified 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.
- 7.3 **Packaging.** Unless otherwise specified in the solicitation, new standard commercial packing and shipping containers shall be used. Shipping containers should 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 should accompany all shipments and should reference the purchase order number. Failure to do so may result in delayed payment processing.

- 7.4 **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 office issuing the award. Any item delivered not meeting specifications may be returned to the contractor at the contractor's expense. When an item is returned, the contractor must make immediate replacement with acceptable merchandise or be considered in default.
- 7.5 **Loss or Damage in Transit.** Delivery by a contractor to a common carrier does not constitute delivery to District 19 CSB. Any claim for loss or damage incurred during delivery shall be between the contractor and the carrier. District 19 CSB accepts title only when goods are received regardless of the F.O.B. point. The receiving agency will note all apparent damages in transit on the freight bill and notify the contractor. Discovery of concealed damage or loss will be reported by the receiving agency to the carrier and the contractor within seven days of receipt and prior to removal from the point of delivery if possible. The contractor shall make immediate replacement of the damaged or lost merchandise or be in default of the contract. It shall be the contractor's responsibility to file a claim against the carrier. If damage is to a small quantity, with the approval of the agency, the contractor may deduct the amount of damage or loss from his or her invoice to the agency in lieu of replacement.
- 7.6 **Freight.** By signing an IFB the bidder certifies that the bid price(s) offered for F.O.B. destination include only the actual freight charges at the lowest and best rate and is 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 F.O.B. origin, the contractor shall prepay the charges and add the amount to the invoice. A copy of the freight bill should be attached to all invoices that include freight charges. In a solicitation specifying F.O.B. origin the state will consider freight cost in the evaluation of bids.
- 7.7 **Delivery.** Delivery must be made by the date or period specified in the purchase order or contract or the contractor will be in default. The receiving sections of most of District 19 CSB's locations are open during normal working hours, Monday through Friday, except on official holidays. If a contractor cannot make delivery as specified under an existing purchase order or contract, the contractor must immediately notify the ordering agency. The contractor may offer a new delivery date; however, if it is not acceptable to the agency and delivery cannot be made as originally specified, the contractor will be in default (see 7.14).
- 7.8 **Receipt of Shipments.**
- a. **General.** Shipments will be checked against the agency's copy of the ordering document to assure quantities, units, etc., match. Overshipments may be rejected and returned at the contractor's expense. Required grading certificates, USDA stamps, or any other proofs of quality must precede or accompany the shipment. Contractors should ensure that they have been given a specific delivery location and obtain a signed receipt for goods delivered.
 - b. **Printing Overruns, Underruns.** District 19 CSB is not required to accept overruns provided "no overruns" is specified in the solicitation. However, an agency may, at its discretion, accept up to a ten percent overrun. The additional overrun price quoted shall not exceed the base lot price quoted for the equivalent incremental quantity. Whichever price is less will prevail. District 19 CSB may

at its discretion accept an underrun, provided that credit is allowed the agency at the full base price per unit for the quantity of the underrun.

- 7.9 **Overshipments.** District 19 CSB should not accept goods in excess of those specified on the purchase order or contract unless it is recognized as a custom of that industry (e.g. printing, cable, fabric), is so stated in the bid, and is accepted by the buyer. Increases or decreases exceeding \$500 shall be provided for by a change order and shall be provided whenever requested by a supplier. Change orders for increases or decreases up to \$500 shall be prepared if requested by the supplier. In the event that an overshipment is not recognized until after receipt and not provided for in the award, the agency must notify the contractor that the overshipment will not be accepted and, unless the overshipment is picked up by the contractor, it will be returned at the contractor's expense.
- 7.10 **Inspection.** All materials, equipment, supplies, and services are subject to inspection and testing. 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 incurred by District 19 CSB.
- 7.11 **Assignment of Contract.** A contract shall not be assignable by the vendor in whole or in part without the written consent of District 19 CSB purchasing office issuing the contract.
- 7.12 **Contract Renewal or Extension.** A term contract may contain a renewal clause describing the conditions under which it may be renewed. Term contracts for goods or nonprofessional services may not be renewed without a renewal clause, except that in exceptional or extenuating circumstances a contract may be extended by mutual consent for a limited period of time, not to exceed six (6) months. This action shall be in writing prior to the expiration of the current contract. District 19 CSB may extend the term of an existing contract for services to allow completion of any work undertaken but not completed during the specified term of the contract.
- 7.13 **Complaints on Vendor's Goods or Services.** Any issues concerning solicitations or non-contractual issues should be addressed with the issuing agency. Any differences between the provisions of the contract and subsequent performance will be reported by the ordering agency to the contractor on a Procurement Complaint Form. Vendors are required to respond to the agency. Failure to respond within ten days (10) may result in removal from the mailing list. Vendors may also use this form to communicate any non-compliance issues with the contract or ordering agency.
- 7.14 **Termination for Default.** In case of default by a contractor for failure to deliver or perform in accordance with the contract specifications or terms and conditions, District 19 CSB may procure the articles or services from other sources and hold the defaulting contractor responsible for any resulting additional purchase and administrative costs. District 19 CSB will normally repurchase from the next low bidder or purchase competitively by resolicitation. If the repurchase results in increased costs to District 19 CSB, a letter will be sent to the defaulted contractor requiring payment for additional costs. When repayment is requested, the contractor will be removed from the mailing list until the repayment has occurred. 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. The burden of proof rests with the contractor.

- 7.15 **Cancellation of Purchase Orders and Contracts.** Cancellation of purchase orders will be made in writing by the purchasing office that issued the order. Orders or contracts may be canceled without a contractor's consent as provided in 7.14, Termination for Default, or 7.18, Termination for Convenience of the Commonwealth. A contractor may request cancellation, and the state will grant relief if the contractor is prevented from specific performance, including timely delivery, by an act of war, order of legal authority, act of God, or other unavoidable causes not attributed to the contractor's fault or negligence. Failure of a contractor's source to deliver is generally not considered to be an unavoidable cause. The burden of proof for need of such relief rests with the contractor. The state reserves the right to cancel all contracts with any contractor who fails to perform for any one contract.
- 7.16 **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 (see 7.14 & 7.15). A contractor who deviates from the requirements of a purchase order or contract prior to receipt of an authorized change order does so at its own risk (see 7.17).
- 7.17 **Contract Modification Restriction.** No contract may be renewed or extended unless provided for in the original contract. Contract modifications to purchases made under small purchase procedures shall not exceed 25% of the original contract price without advance written approval of the Executive Director or his or her designee. Contract renewals, extensions or modifications must be in writing under the signature of the buyer/contract officer responsible for the purchase.
- 7.18 **Termination for Convenience of the Commonwealth and District 19 CSB.** A purchase order or contract may be terminated for the convenience of the Commonwealth and/or District 19 CSB by delivering to the contractor a notice of termination specifying the extent to which performance under the purchase order or contract is terminated, and the date of termination. After receipt of a notice of termination, the contractor must stop all work or deliveries under the purchase order or contract on the date and to the extent specified.

If the purchase order or contract is for commercial items sold in substantial quantities to the general public and no specific identifiable inventories were maintained exclusively for the Commonwealth and/or District 19 CSB's use, no claims will be accepted by the Commonwealth and/or District 19 CSB. Payment will be made for items shipped or services provided prior to receipt of the termination notice, unless otherwise specified in the contract.

If the purchase order or contract is for items being produced exclusively for the use of the Commonwealth and District 19 CSB, and raw materials or services must be secured by the contractor from other sources, the contractor shall order no additional materials or services except as may be necessary for completion of any portion of the work which was not terminated. District 19 CSB may direct the delivery of the fabricated or non-fabricated 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 the same, subject to District 19 CSB's approval as to price. The contractor may, with the approval of District 19 CSB, retain the same, and apply a credit to the claim. The contractor must complete performance on any part of the purchase order or contract not terminated.

The contractor must submit any termination claim within 120 days after receipt of the notice of termination, or such longer period as District 19 CSB for good cause may allow. This claim will be in a form and with certifications prescribed by the purchasing office that issued the purchase order. The claim will be reviewed and forwarded with appropriate recommendations to the requisitioning agency and/or the appropriate assistant attorney general for disposition in accordance with the *Code of Virginia*,

§ 2.2-514. Termination for convenience claims will be considered for only actual expenses incurred up to the time of termination.

7.19 **Claims.** Written notice of the contractor's intention to file a claim whether for money or other relief, must be given at the time of the occurrence or beginning of the work upon which the claim is based. Contractual claims whether for money or other relief shall be submitted in writing no later than sixty days after final payment. Nothing herein shall preclude a 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.

A contractor may not institute legal action prior to receipt of the purchasing office's decision on the claim unless that office fails to render such decision within thirty (30) days. The decision of the purchasing office shall be final and conclusive unless the contractor, within six months of the date of the final decision on the claim, institutes legal action as provided in the *Code of Virginia*, § 2.2-4364.

7.20 **Debarment.** Debarment as used in this section means action taken by the Director of the Division of Purchases and Supply (DPS) to exclude individuals or firms from contracting with state agencies for particular types of goods or nonprofessional services for specified periods of time. Debarment does not relieve the contractor of responsibility for existing obligations.

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

Causes for Debarment. An individual or firm may be debarred for any of the following reasons:

- a. Breach (including anticipatory breach) of contract with a state agency. As one example of Breach, failure of the vendor to comply with a Most Favored Customer Clause included in its contract. For default action see 7.14.
- b. Sale or attempted sale to a state agency of the same or similar goods or services which are available under an existing mandatory DGS/DPS state contract, when the contractor knew or had reason to know that the goods or services are required to be purchased under the contract, unless such sale or attempted sale occurs in response to an IFB, RFP, or unsealed solicitation that specifies such goods or services.
- c. Stating 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 misrepresenting 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 a state agency who exercises any "official responsibility" for a "procurement transaction" as those terms are defined in the *Code of Virginia*, § 2.2-4368. It is not necessary that

the offer be accepted by the employee, or that the offer is made with intent to influence the employee in an official act. Extending to any state employee exercising official responsibility for a procurement transaction any discount or privilege not available to all state employees is considered to be offering an advantage.

- f. Failing to disclose a condition constituting a conflict of interest by any officer, director, owner, or partner of the vendor in a contract or purchase order awarded by DPS or any other agency of the state (*Code of Virginia*, § 2.2-3106).
- g. Any cause indicating that the individual or firm is not a responsible vendor.
- h. A determination by the Director of DPS that a vendor has used abusive or obscene language or a threatening manner toward state purchasing personnel during the performance of their duties or as a result of the performance of their duties.
- i. Sale, under nonemergency conditions, of building materials, supplies, or equipment for any building or structure constructed by or for the Commonwealth by an independent contractor 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*, § 2.2-3101 and § 2.2-4374).
- j. Sale, under nonemergency conditions, of building materials, supplies or equipment for any building or structure constructed by or for the Commonwealth by any person who has provided or is currently providing design services specifying a sole source for such materials, supplies or equipment to be used in such building or structure to the independent contractor employed by the Commonwealth to furnish architectural or engineering services in which such person has a personal interest as defined in *Code of Virginia*, § 2.2-3101.
- k. Sale of goods or services to the Commonwealth when such sale is prohibited by any debarment then in effect.
- l. Consent of the firm or individual being debarred.
- m. Conviction of any criminal offense involving public contracting. Examples include, but are not limited to, bribery (*Code of Virginia*, § 18.2-447) and knowingly making a false statement in regard to collusion on a solicitation (*Code of Virginia*, § 18.2-498.4). Conviction for any of the above of any officer, director, owner, partner, agent, or related business entity of a vendor shall constitute grounds for the removal of the vendor.
- n. Court judgment finding a violation of either federal or state antitrust laws.
- o. Conviction of any offenses indicating a lack of moral or business integrity.
- p. Failure to pay procurement costs pursuant to a contract termination for default.

It is not necessary that there be a judicial determination of violations contained in subparagraphs a. through l. and p. for debarment to occur.

If the debarring official finds that the cause for debarment reflects on the contractor'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 shall apply to all goods and services within the purview of the debarring agency (DPS).

7.21 **Ineligibility or Disqualification of Manufacturer**. Should any manufacturer commit any of the acts described in paragraph 7.20, bids offering material, equipment, or supplies manufactured by that firm may be rejected even though the bid is submitted by a vendor in good standing.

7.22 **Debarment Period**. Debarment shall be for a period of ninety (90) days to three (3) years, at the discretion of the debarring official, except as follows. The debarment for subparagraphs m., n., and o. of paragraph 7.20 shall be for a period of three (3) years. The debarment for subparagraph p. of paragraph 7.20 shall be for a period of one year or until the procurement costs are paid or until the contract breach is resolved, whichever is longer. Debarment shall commence upon notification, or if later, upon expiration of any existing debarments.

Notwithstanding the prescribed duration of the debarment, at the discretion of the Director of DPS a debarment may be lifted or suspended at any time if it is in the best interest of the Commonwealth. A debarred individual or firm can apply for reinstatement at any time in writing to the debarring official citing actions taken to remedy the reason for debarment or prevent recurrence of the situation that caused the debarment action to be taken and otherwise indicating that lifting or suspension of the debarment would be in the best interest of the Commonwealth. Examples of actions that the Director may take into consideration include, but are not limited to:

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

7.23 **Suspension**. Suspension is a type of ineligibility based upon adequate evidence that a vendor has committed any of the grounds for debarment as listed in this manual under paragraph 7.20. In the event that an indictment against a vendor or its principles exists for any of the reasons listed in this manual, paragraphs 7.20 m., n., or o., the indictment shall constitute adequate evidence for suspension. The period of suspension shall not exceed one year unless requested by the Office of the Attorney General. The process for suspension will be governed by the same procedures used for debarment/ineligibility.

Adequate evidence means information sufficient to support the reasonable belief that a particular act or omission has occurred.

APPENDIX A

DEFINITIONS

Absolute Preference: An absolute preference is one in which a state will only consider bids from resident contractors residing within that state.

Affiliate: Affiliate means an individual or business that controls, is controlled by, or is under common control with another individual or business. A person controls an entity if the person owns, directly or indirectly, more than 10 percent of the voting securities of the entity. For the purposes of this definition "voting security" means a security that (i) confers upon the holder the right to vote for the election of members of the board of directors or similar governing body of the business or (ii) is convertible into, or entitles the holder to receive, upon its exercise, a security that confers such a right to vote. A general partnership interest shall be deemed to be a voting security.

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

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

Alternative Dispute Resolution (ADR): any procedure used voluntarily to resolve issues in controversy without the need to resort to litigation. These procedures include, but are not limited to, mediation, fact-finding, and arbitration.

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

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

Best Value: The overall combination of quality, price, and various elements of required services that in total are optimal relative to a public body's needs, as predetermined in a solicitation. Best value concepts may be applied when procuring goods and nonprofessional services, but not construction or professional services. The criteria, factors, and basis for the consideration of best value and the process for the consideration of best value shall be as stated in the procurement solicitation (*Code of Virginia*, § 2.2-4301).

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

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

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

Boiler Plate: General Terms and Conditions.

Business: Business means any type of corporation, partnership, limited liability company, association, or sole proprietorship operated for profit.

Claim: A written assertion or demand, by one of the parties to a contract, which seeks, as a contractual right, payment of money, adjustment of contract terms, or other relief, for injury, loss, or damage arising under or relating to the contract.

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

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

Competitive Negotiation: A method for purchasing goods and services, usually of a complex and technical nature whereby qualified individuals or firms are solicited by means of a Request for Proposals (RFP). 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.

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. Competitive sealed bidding shall not be used to contract for professional services.

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

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

Construction: Construction shall mean building, altering, repairing, improving or demolishing any structure, building or highway, and any draining, dredging, excavation, grading or similar work upon real property (*Code of Virginia*, § 2.2-4301).

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

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

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

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

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

Contract Officer, Purchase Officer, Buyer: A D19 CSB employee whose primary assignment is purchasing goods or services.

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

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

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

Debarment: An action taken by the Director of the Division of Purchases and Supply (DPS), or designee (debaring officials), within the scope of their procurement authority, to exclude individuals or firms from contracting with state agencies for particular goods or nonprofessional services for specified periods of time (*Code of Virginia*, § 2.2-4321).

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

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

Dispute: disagreement between parties to a contract over performance or other contract term requiring administrative action to resolve. See protest, alternative dispute resolution.

Division of Purchases and Supply (DPS): The Division of Purchases and Supply is a division of the Department of General Services. DGS/DPS is the State's centralized purchasing agency for materials, equipment, supplies, nonprofessional service and printing. DGS/DPS prescribes the rules and regulation for the purchase of materials, supplies, equipment, nonprofessional services, and printing (*Code of Virginia*, § 2.2-1109 et al).

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

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

Employment Services Organization: An organization that provides employment services to individuals with disabilities that is an approved Commission on the Accreditation of Rehabilitation Facilities (CARF) accredited vendor of the Department of Rehabilitative Services.

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 (VPPA)* covers "Ethics in Public Contracting" (*Code of Virginia*, §§ 2.2-4367 through 2.2-4377).

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

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

Fair Market Value: The price that is agreed upon by buyers and sellers in the open market who are familiar with market conditions and not under any compulsion to buy or sell, provided the price is substantiated by specific data. There may be more than one way to ascertain fair market value, including determining the lowest price at which private, commercial sources have recently sold or offered substantially similar goods/services to the purchasing agency or to other public or private entities.

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

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

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

Goods: Material, equipment, supplies, printing, and automated data processing hardware and software (*Code of Virginia*, § 2.2-4301).

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

Informality: A minor defect or variation of the 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*, § 2.2-4301).

Information Technology: telecommunications, automated data processing, databases, the Internet, management information systems, and related information, equipment, goods, and services.

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

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

Late Bid or Proposal: A bid or proposal which is received at the place designated in the Invitation for Bids or Request for 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 non-specification materials in manufacture, or missing internal parts such as a gasket, gear, or electrical circuit, etc.

Multiple Awards: The award of multiple contracts for goods or services, meeting the same specifications, resulting from one solicitation. When a Multiple Award clause is included in an Invitation for Bids/Request for Proposals, awards may be made to more than one bidder/offeror (*Code of Virginia*, § 2.2-4301). This is appropriate in situations where the award of a single contract would be impractical and awards are limited to the least number of suppliers necessary for a workable contract program.

Must, Shall: As used in specifications or requirements of a Request for Proposals (RFP), the terms "must" and "shall" identify requirements whose absence will have a major negative impact on the suitability of the proposed solution. Items labeled as "should" or "may" are highly desirable, although their absence will not have a large impact and would be useful, but are not necessary.

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

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

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

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

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

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

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

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

Potential Bidder or Offeror: A person who, at the time an agency awards or proposes to award a contract, is engaged in the sale or lease of goods, or the sale of services, insurance or construction of the type to be procured under such contract, and who at such time is eligible and qualified in all respects to perform that contract, and who would have been eligible and qualified to submit a bid or proposal had the contract been procured through competitive sealed bidding or competitive negotiation (*Code of Virginia*, § 2.2-4301).

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

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

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

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

Professional Services: Shall mean work performed by an independent contractor within the scope of the practice of accounting, actuarial services, architecture, land surveying, landscape architecture, dentistry, law, medicine, optometry, pharmacy, or professional engineering. “Professional Services” shall also include services of an economist procured by the State Corporation Commission (*Code of Virginia*, § 2.2-4301).

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

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

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

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

Purchase Order: A document used by District 19 CSB to execute a purchase transaction with a vendor. It serves as notice to a vendor that an award has been made and that performance can be initiated under the terms and conditions of the contract.

Purchasing Agency: Agency purchasing goods or services.

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.

Responsible Bidder or Offeror: A person or firm who has the capability, in all respects, to perform fully the contract requirements and the moral and business integrity and reliability which will assure good faith performance, and who has been prequalified, if required (*Code of Virginia*, § 2.2-4301).

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

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

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

Services: Services are any activities performed by an independent contractor wherein the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials and supplies (*Code of Virginia*, § 2.2-4301).

Shall, Must: As used in specifications or requirements of a Request for Proposals (RFP), the terms "must" and "shall" identify requirements whose absence will have a major negative impact on the suitability of the proposed solution. Items labeled as "should" or “may” are highly desirable, although their absence will not have a large impact and would be useful, but are not necessary.

Should, May: As used in a Request for Proposals (RFPs), the terms "should" or “may” are highly desirable, although their absence will not have a large impact and would be useful, but are not necessary.

Single Source: A single response to a competitive solicitation wherein competition was available but only one response was received..

Software: All applications software, whether packaged or requiring development, and all systems software such as assemblers, compilers, CPU performance measurement systems, database 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), Quick Quote, Faxback Request, telephone calls, or any other document issued by the state and/or District 19 CSB to obtain bids or proposals for the purpose of entering into a contract.

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

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

Sponsorship: Any monetary or non-monetary benefit exceeding nominal value and received by a Commonwealth public body from a non-Commonwealth entity not excluding funding from vendors in support of conferences or other events.

Subcontractor: Subcontractor means any entity that has a contract to supply labor or materials to the contractor to whom the contract was awarded or to any subcontractor in the performance of the work provided for in such contract.

Surplus Property: Property which is in excess of the needs of an agency and which is not required for its foreseeable need. The property may be used or new, but possess some usefulness for the purpose for which it was intended or for some other purpose. It includes scrap, which is material that is damaged, defective, or deteriorated to the extent that it has no value except for its basic material content. Surplus Property must be disposed of in accordance with *Code of Virginia*, § 2.2-1124.

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

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

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

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

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

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

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

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

Vendor: One who sells goods or services.

Virginia Public Procurement Act: Chapter 43 of Title 2.2, *Code of Virginia*, which enunciates the public policies pertaining to governmental procurement from nongovernmental sources.

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

APPENDIX B

Section I

TERMS AND CONDITIONS & INSTRUCTIONS TO VENDORS

These terms and conditions apply to purchases between the agency or institution and the contractor, unless otherwise modified in writing on the face of the PO.

1. This contractual agreement is subject to the terms and conditions of District 19 CSB *Vendors Manual* and any revisions thereto, as published by the Department of General Services, Division of Purchases and Supply.
2. Goods or Services delivered must be strictly in accordance with bid referred to and shall not deviate in any way from terms, conditions or specifications of the bid. Equipment, materials and/or supplies delivered on this order shall be subject to inspection and test upon receipt. If rejected, same shall remain the property of the vendor.
3. Purchase Order number shall be shown by vendor on all related invoices, delivery memoranda, bills of lading, packages and/or correspondence.
4. A SEPARATE INVOICE FOR THIS PURCHASE ORDER OR FOR EACH SHIPMENT THEREON SHALL BE RENDERED IMMEDIATELY FOLLOWING SHIPMENT. ALL COPIES SHALL BE FORWARDED DIRECT TO AGENCY AT INVOICE ADDRESS SHOWN.
5. STATE SALES AND USE TAX CERTIFICATE OF EXEMPTION, FORM ST-12 WILL BE ISSUED UPON REQUEST, IF YOU DO NOT HAVE SAME ON FILE.
6. DELIVERIES AGAINST THIS ORDER MUST BE FREE OF EXCISE OR TRANSPORTATION TAXES, EXCISE TAX EXEMPTION REGISTRATION NO. 54-73-0076K MAY BE USED WHEN REQUIRED.
7. In the absence of other contractual terms, payment shall be due 30 days after receipt of proper invoice, or material/service, whichever is the later.
8. If discount for prompt payment is allowed, the discount period will begin on the date of receipt of proper invoice, or material, whichever is the later.
9. In case of default by the successful bidder, or failure to deliver the supplies or services ordered by the time specified, District 19 CSB after due notice (oral or in writing), may procure them from other sources and hold vendor responsible for any excess cost occasioned thereby.
10. No substitution, change or deviation shall be made without written authority from District 19 CSB by Purchase Order Change.
11. Vendors and contractors providing goods to District 19 CSB under this order herewith assure District 19 CSB that they are conforming to the provision of the *Civil Rights Act of 1964* as amended, as well as the *Virginia Fair Employment Contracting Act of 1975* as amended, where applicable.

12. This Purchase Order/Contract shall be governed in all respects, whether as to validity, construction, capacity, performance or otherwise by the laws of the Commonwealth of Virginia.

13. All prices unless otherwise specified are net F.O.B. Destination with transportation charges prepaid.

14. If shipment is made by freight or express and charges added to invoice, the original bill of lading properly receipted shall accompany invoice. All charges must be prepaid.

15. Vendors and contractors performing work on District 19 CSB owned or leased facilities or property shall, during the entire term of the contract, maintain at a minimum, the insurance coverages as listed in the *Vendors Manual* and any revisions thereto.

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

Section II

- A. *VENDORS MANUAL*
- B. APPLICABLE LAWS AND COURTS
- C. ANTI-DISCRIMINATION
- D. ETHICS IN PUBLIC CONTRACTING
- E. IMMIGRATION REFORM AND CONTROL ACT OF 1986
- F. DEBARMENT STATUS
- G. ANTITRUST
- H. MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS
- I. CLARIFICATION OF TERMS
- J. PAYMENT
- K. PRECEDENCE OF TERMS
- L. QUALIFICATIONS OF BIDDERS OR OFFERORS
- M. TESTING AND INSPECTION
- N. ASSIGNMENT OF CONTRACT
- O. CHANGES TO THE CONTRACT
- P. DEFAULT
- Q. TAXES
- R. USE OF BRAND NAMES
- S. TRANSPORTATION AND PACKAGING
- T. INSURANCE
- U. ANNOUNCEMENT OF AWARD
- V. DRUG-FREE WORKPLACE
- W. NONDISCRIMINATION OF CONTRACTORS
- X. AVAILABILITY OF FUNDS
- AA. BID PRICE CURRENCY
- BB. AUTHORIZATION TO CONDUCT BUSINESS IN THE COMMONWEALTH

These General Terms and Conditions are required for use in written solicitations issued by District 19 Community Services Board for procurements that are subject to this manual unless changed, deleted or revised by the legal advisor to this agency. Wording will be edited to fit the type of solicitation (IFB or RFP) by deleting letters below that are inappropriate for the solicitation. For service contracts clauses, Q, R, and S are normally not applicable and may be omitted. For goods contracts, the Letter T is normally not applicable and may be omitted. **Refer to the State APSPM (Agency Procurement Surplus Property Manual) for more General Terms and Conditions as needed.**

- A. **VENDORS MANUAL:** This solicitation is subject to the provisions of District 19 Community Services Board *Vendors Manual* and any changes or revisions thereto, which are hereby incorporated into this contract in their entirety. The procedure for filing contractual claims is in section 7.19 of the *Vendors Manual*. A copy of the manual is normally available for review at the purchasing office and is accessible on the Internet at www.d19csb.com under “Vendors Manual” on the “Vendor” tab.
- B. **APPLICABLE LAWS AND COURTS:** This solicitation and any resulting contract shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be

brought in the courts of the Commonwealth. The Contractor shall comply with all applicable federal, state and local laws, rules and regulations.

- C. **ANTI-DISCRIMINATION:** By submitting their (bids/proposals), (bidders/offerors) certify to CSB that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and § 2.2-4311 of the *Virginia Public Procurement Act (VPPA)*. If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (*Code of Virginia*, § 2.2-4343.1E).

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

1. During the performance of this contract, the contractor agrees as follows:
 - a. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 - b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.
 - c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.
 2. The contractor will include the provisions of 1. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.
- D. **ETHICS IN PUBLIC CONTRACTING:** By submitting their (bids/proposals), (bidders/offerors) certify that their (bids/proposals) are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other (bidder/offeror), supplier, manufacturer or subcontractor in connection with their (bid/proposal), and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.
- E. **IMMIGRATION REFORM AND CONTROL ACT OF 1986:** By entering into a written contract with District 19 CSB, the Contractor certifies that the Contractor does not, and shall not during the performance of the contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

- F. **DEBARMENT STATUS:** By submitting their (bids/proposals), (bidders/offerors) certify that they are not currently debarred by the Commonwealth of Virginia from submitting bids or proposals on contracts for the type of goods and/or services covered by this solicitation, nor are they an agent of any person or entity that is currently so debarred.
- G. **ANTITRUST:** By entering into a contract, the contractor conveys, sells, assigns, and transfers to District 19 CSB all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by District 19 CSB under said contract.
- H. **MANDATORY USE OF CSB FORM AND TERMS AND CONDITIONS FOR IFBs AND RFPs**
(Insert wording below appropriate to the solicitation type as indicated):

Failure to submit a bid on the official District 19 CSB form provided for that purpose shall be a cause for rejection of the bid. Modification of or additions to any portion of the Invitation for Bids or Unsealed Bid may be cause for rejection of the bid; however, District 19 CSB reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a bid as nonresponsive. As a precondition to its acceptance, District 19 CSB may, in its sole discretion, request that the bidder withdraw or modify nonresponsive portions of a bid which do not affect quality, quantity, price, or delivery. No modification of or addition to the provisions of the contract shall be effective unless reduced to writing and signed by the parties.

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

J. **PAYMENT:**

1. **To Prime Contractor:**

- a. Invoices for items ordered, delivered and accepted shall be submitted by the contractor directly to the payment address shown on the purchase order/contract. All invoices shall show the state contract number and/or purchase order number; social security number (for individual contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations).
- b. Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.
- c. All goods or services provided under this contract or purchase order, that are to be paid for with public funds, shall be billed by the contractor at the contract price, regardless of which public agency is being billed.
- d. The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or the date of offset when offset proceedings have been instituted as authorized under the *Virginia Debt Collection Act*.

- a. **Unreasonable Charges.** Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges which appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, District 19 CSB shall promptly notify the contractor, in writing, as to those charges which it considers unreasonable and the basis for the determination. A contractor may not institute legal action unless a settlement cannot be reached within thirty (30) days of notification. The provisions of this section do not relieve an agency of its prompt payment obligations with respect to those charges which are not in dispute (*Code of Virginia*, § 2.2-4363).

2. To Subcontractors:

- a. A contractor awarded a contract under this solicitation is hereby obligated:
 - (1) To pay the subcontractor(s) within seven (7) days of the contractor's receipt of payment from District 19 CSB for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or
 - (2) To notify District 19 CSB and the subcontractor(s), in writing, of the contractor's intention to withhold payment and the reason.
- b. The contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all amounts owed by the contractor that remain unpaid seven (7) days following receipt of payment from District 19 CSB, except for amounts withheld as stated in (2) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier contractor performing under the primary contract. A contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of District 19 CSB.

K. **PRECEDENCE OF TERMS:** The following General Terms and Conditions *VENDORS MANUAL*, *APPLICABLE LAWS AND COURTS*, *ANTI-DISCRIMINATION*, *ETHICS IN PUBLIC CONTRACTING*, *IMMIGRATION REFORM AND CONTROL ACT OF 1986*, *DEBARMENT STATUS*, *ANTITRUST*, *MANDATORY USE OF DISTRICT 19 CSB FORM AND TERMS AND CONDITIONS*, *CLARIFICATION OF TERMS*, *PAYMENT* shall apply in all instances. In the event there is a conflict between any of the other General Terms and Conditions and any Special Terms and Conditions in this solicitation, the Special Terms and Conditions shall apply.

L. **QUALIFICATIONS OF (BIDDERS/OFFERORS):** District 19 CSB may make such reasonable investigations as deemed proper and necessary to determine the ability of the (bidder/offeror) to perform the services/furnish the goods and the (bidder/offeror) shall furnish to District 19 CSB all such information and data for this purpose as may be requested. District 19 CSB reserves the right to inspect (bidder's/offeror's) physical facilities prior to award to satisfy questions regarding the (bidder's/offeror's) capabilities. District 19 CSB further reserves the right to reject any (bid/proposal) if the evidence submitted by, or investigations of, such (bidder/offeror) fails to satisfy District 19 CSB that such (bidder/offeror) is properly qualified to carry out the obligations of the contract and to provide the services and/or furnish the goods contemplated therein.

- M. **TESTING AND INSPECTION**: District 19 CSB reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.
- N. **ASSIGNMENT OF CONTRACT**: A contract shall not be assignable by the contractor in whole or in part without the written consent of District 19 CSB.
- O. **CHANGES TO THE CONTRACT**: Changes can be made to the contract in any of the following ways:
1. The parties may agree in writing to modify the terms, conditions, or scope of the contract. Any additional goods or services to be provided shall be of a sort that is ancillary to the contract goods or services, or within the same broad product or service categories as were included in the contract award. Any increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.
 2. District 19 CSB, Purchasing Department may order changes within the general scope of the contract at any time by written notice to the contractor. Changes within the scope of the contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The contractor shall comply with the notice upon receipt. The contractor shall be compensated for any additional costs incurred as the result of such order and shall give the Purchasing Agency a credit for any savings. Said compensation shall be determined by one of the following methods:
 - a. By mutual agreement between the parties in writing; or
 - b. By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the contractor accounts for the number of units of work performed, subject to the Purchasing Agency's right to audit the contractor's records and/or to determine the correct number of units independently; or
 - c. By ordering the contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The contractor shall present the Purchasing Agency with all vouchers and records of expenses incurred and savings realized. The Purchasing Agency shall have the right to audit the records of the contractor as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the Purchasing Agency within thirty (30) days from the date of receipt of the written order from the Purchasing Agency. If the parties fail to agree on an amount of adjustment, the question of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the procedures for resolving disputes provided by the Disputes Clause of this contract or, if there is none, in accordance with the disputes provisions of District 19 CSB *Vendors Manual*. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this contract shall excuse the contractor from promptly complying with the changes ordered by the Purchasing Agency or with the performance of the contract generally.
- P. **DEFAULT**: In case of failure to deliver goods or services in accordance with the contract terms and conditions, District 19 CSB, after due oral or written notice, may procure them from other sources and hold the contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which District 19 CSB may have.

- Q. **TAXES:** Sales to District 19 CSB are normally exempt from State sales tax. State sales and use tax certificates of exemption, Form ST-12, will be issued upon request. Deliveries against this contract shall usually be free of Federal excise and transportation taxes. District 19 CSB excise tax exemption registration number is VA 001297919.
- R. **USE OF BRAND NAMES:** Unless otherwise provided in this solicitation, the name of a certain brand, make or manufacturer does not restrict (bidders/offerors) to the specific brand, make or manufacturer named, but conveys the general style, type, character, and quality of the article desired. Any article which the public body, in its sole discretion, determines to be the equivalent of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. The (bidder/offeror) is responsible to clearly and specifically identify the product being offered and to provide sufficient descriptive literature, catalog cuts and technical detail to enable District 19 CSB to determine if the product offered meets the requirements of the solicitation. This is required even if offering the exact brand, make or manufacturer specified. Normally in competitive sealed bidding only the information furnished with the bid will be considered in the evaluation. Failure to furnish adequate data for evaluation purposes may result in declaring a bid nonresponsive. Unless the (bidder/offeror) clearly indicates in its (bid/proposal) that the product offered is an equivalent product, such (bid/proposal) will be considered to offer the brand name product referenced in the solicitation.
- S. **TRANSPORTATION AND PACKAGING:** By submitting their (bids/proposals), all (bidders/offerors) certify and warrant that the price offered for FOB destination includes only the actual freight rate costs at the lowest and best rate and is based upon the actual weight of the goods to be shipped. Except as otherwise specified herein, standard commercial packaging, packing and shipping containers shall be used. All shipping containers shall be legibly marked or labeled on the outside with purchase order number, commodity description, and quantity.
- T. **INSURANCE:** By signing and submitting a bid or proposal under this solicitation, the bidder or offeror certifies that if awarded the contract, it will have the following insurance coverage at the time the contract is awarded. For construction contracts, if any subcontractors are involved, the subcontractor will have workers' compensation insurance in accordance with §§ 2.2-4332 and 65.2-800 et seq. of the *Code of Virginia*. The bidder or offeror further certifies that the contractor and any subcontractors will maintain these insurance coverage during the entire term of the contract and that all insurance coverage will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

MINIMUM INSURANCE COVERAGES AND LIMITS REQUIRED FOR MOST CONTRACTS:

1. Workers' Compensation - Statutory requirements and benefits. Coverage is compulsory for employers of three or more employees, to include the employer. Contractors who fail to notify the Commonwealth of increases in the number of employees that change their workers' compensation requirements under the *Code of Virginia* during the course of the contract shall be in noncompliance with the contract.
2. Employer's Liability - \$100,000.
3. Commercial General Liability - \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Commercial General Liability is to include bodily injury and property damage, personal injury and

advertising injury, products and completed operations coverage. The Commonwealth of Virginia must be named as an additional insured and so endorsed on the policy.

- 4. Automobile Liability - \$1,000,000 combined single limit. (Required only if a motor vehicle not owned by the Commonwealth is to be used in the contract. Contractor must assure that the required coverage is maintained by the Contractor (or third party owner of such motor vehicle.)

<u>Profession/Service</u>	<u>Limits</u>
Accounting	\$1,000,000 per occurrence, \$3,000,000 aggregate
Architecture	\$2,000,000 per occurrence, \$6,000,000 aggregate
Asbestos Design, Inspection or Abatement Contractors	\$1,000,000 per occurrence, \$3,000,000 aggregate
Health Care Practitioner (to include Dentists, Licensed Dental Hygienists, Optometrists, Registered or Licensed Practical Nurses, Pharmacists, Physicians, Podiatrists, Chiropractors, Physical Therapists, Physical Therapist Assistants, Clinical Psychologists, Clinical Social Workers, Professional Counselors, Hospitals, or Health Maintenance Organizations.)	\$1,725,000 per occurrence, \$3,000,000 aggregate
(Limits increase each July 1 through fiscal year 2031, as follows: July 1, 2013 - \$2,100,000, July 1, 2014 - \$2,150,000. This complies with <i>Code of Virginia</i> § 8.01-581.15.	
Insurance/Risk Management	\$1,000,000 per occurrence, \$3,000,000 aggregate
Landscape/Architecture	\$1,000,000 per occurrence, \$1,000,000 aggregate
Legal	\$1,000,000 per occurrence, \$5,000,000 aggregate
Professional Engineer	\$2,000,000 per occurrence, \$6,000,000 aggregate
Surveying	\$1,000,000 per occurrence, \$1,000,000 aggregate

U. **ANNOUNCEMENT OF AWARD:** Upon the award or the announcement of the decision to award a contract as a result of this solicitation, the purchasing agency will publicly post such notice on the District 19 CSB website: (www.d19csb.com) for a minimum of 10 days.

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

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

W. **NONDISCRIMINATION OF CONTRACTORS:** A bidder, offeror, or contractor shall not be discriminated against in the solicitation or award of this contract because of race, religion, color, sex,

national origin, age, or disability, faith-based organizational status, any other basis prohibited by state law relating to discrimination in employment or because the bidder or offeror employs ex-offenders unless District 19 CSB, has made a written determination that employing ex-offenders on the specific contract is not in its best interest. If the award of this contract is made to a faith-based organization and an individual, who applies for or receives goods, services, or disbursements provided pursuant to this contract objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the public body shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursements from an alternative provider.

- X. **AVAILABILITY OF FUNDS:** It is understood and agreed between the parties herein that the agency shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this agreement.
- Y. **BID PRICE CURRENCY.** Unless stated otherwise in the solicitation, bidders/offerors shall state bid/offer prices in US dollars.
- Z. **AUTHORIZATION TO CONDUCT BUSINESS IN THE COMMONWEALTH:** A contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the *Code of Virginia* or as otherwise required by law. Any business entity described above that enters into a contract with a public body pursuant to the *Virginia Public Procurement Act* shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the contract. A public body may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.

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