

# **PURCHASING MANUAL**

## **RIVANNA WATER & SEWER AUTHORITY AND RIVANNA SOLID WASTE AUTHORITY**

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## I. INTRODUCTION

This Manual has been prepared as a reference and guide for the purchasing policies and procedures adopted by the Rivanna Water & Sewer Authority and the Rivanna Solid Waste Authority (together “Authority”). This Manual is designed to guide all Authority employees involved in some way in the purchasing function in implementing the Authority’s procurement regulations in the acquisition of all goods and services, including construction services to make the policies and procedures clearly understood resulting in a more effective and efficient system.

The requirements of this Manual are intended to assure fair and ethical procurement practices for the cost-effective acquisition of all goods and services, including construction services, and to promote good, continuous relations with suppliers. The Manual is also intended to assure compliance with the Virginia Public Procurement Act, as amended (Virginia Code § [2.2-4300](#) et seq.) and other applicable law. By buying competitively the Authority will obtain maximum value for public funds spent. Nothing in this Manual and no deviation from its guidance by Authority staff is intended to nor shall create rights in any third person, including but not limited to Authority suppliers, contractors, service providers, bidders or proposers.

No person shall purchase or contract for any goods, services, insurance or construction except as provided by this Manual. The Authority shall not be bound by any purchase order or contract made contrary to these procedures. Any person responsible for such purchase shall be held personally liable for such purchase, and, if already paid for out of Authority funds, the amount may be recovered in the name of the Authority.

The Manual shall be subject to the requirements of the Virginia Public Procurement Act as amended. This Manual was adopted with all provisions effective as of July 1, 2013 (Subsequently revised and adopted – October 27, 2015, February 27, 2018). To the extent any provision in this Manual is deemed inconsistent with the Code of Virginia, Title 2.2, Chapter 43, the Virginia Public Procurement Act, whether due to amendment of that Chapter or otherwise, then the provisions of that Chapter shall control as to such inconsistency.

## **II. PURCHASING STAFF ORGANIZATION**

The Executive Director is authorized to enter into, administer, terminate and otherwise manage contracts subject to any approval thresholds that may be established by the Board. The Executive Director, or his designee, shall have the sole authority to authorize, in writing:

- 1) extension of professional services contracts per the renewals authorized in the original terms and conditions of the contract and within the limitations specified in law; and
- 2) use of competitive negotiation for construction services as provided by law.

The Executive Director has delegated to the Director of Finance/Administration the role of Purchasing Agent.

### **The Purchasing Agent:**

- 1) manages the purchasing function, with certain exceptions related to capital project contracts as noted below\*;
- 2) helps set policy; and
- 3) supervises all procedures including interpretation of policies and procedures.

### **The Purchasing Agent is responsible for the:**

- 1) procurement of insurance, goods, non-professional services, and non-capital construction services\*;
- 2) general supervision of all inventories of goods held by the Authority;
- 3) the development and enforcement of specifications;
- 4) the disposal of surplus property;
- 5) the enforcement of these policies and procedures; and
- 6) ensuring that this Manual maintains conformance with the Code of Virginia and other applicable law and with efficient Authority operations.

The Purchasing Agent has delegated certain authority and responsibility to the Buyer and, under the Small Purchase Procedure, to the Managers and Directors. The Purchasing Agent monitors all purchasing activity, including that managed by the Executive Director, for compliance with these rules and regulations and applicable laws.

### **The Accounts Payable/Purchasing Technician is designated the Authority's Buyer and is responsible for:**

- 1) following procedures;
- 2) the selection of vendors and ordering (with certain exceptions noted below\*);
- 3) follow through;
- 4) record keeping; and
- 5) verification of coding of purchases.

The Buyer is under the regular supervision of the Purchasing Agent and delegates Buyer functions to staff as appropriate.

*\*Exception: The hiring of legal and other professional services and the procuring of contracts for construction or capital related projects are managed by the Executive Director with the technical assistance of the Purchasing Agent.*

### **III. POLICY**

Purchasing staff has the responsibility to purchase or contract for all insurance, materials, equipment, professional and non-professional services. The Authority strives to achieve the goal of securing the best value in acquiring materials or services through open and fair competition among vendors. This Manual is intended to assist responsible Authority staff to ensure that all procurements:

- 1) are made in an ethical manner that is impartial and above reproach, with preferential treatment for none;
- 2) are made efficiently and economically through open and fair competition among vendors;
- 3) ensure, at a minimum, that:
  - a) solicitations and contracts are properly advertised, posted and issued;
  - b) the methods of contractor selection and contract type are appropriate to the procurement and represent the Authority's best interest;
  - c) bonding and security are obtained when appropriate;
  - d) contractors have the necessary insurance to protect the Authority's interests;
  - e) liquidated damages, when appropriate, are included in contracts;
  - f) contractors perform in accordance with the terms and conditions of their contracts; and
  - g) payments are made only for goods and services, including construction services, received and authorized in the contract.
- 4) are made only to contractors selected in accordance with the stated evaluation criteria;
- 5) are made without restrictive specifications that limit or inhibit full and open competition;
- 6) are made on a sole-source or limited competition basis only after justification in writing and public posting as required;
- 7) include reasonable efforts to increase the opportunity for participation by business enterprises eligible under the Authority's Disadvantaged Business Enterprise Program;
- 8) are approved at the proper level; and
- 9) have approved funding.

#### IV. ETHICS

The Authority recognizes its special responsibilities under the Code of Virginia and incorporates Article Six, "Ethics in Public Contracting," of the Virginia Public Procurement Act, Article 6, Virginia Code § [2.2-4367](#) et seq., Virginia State and Local Government Conflict of Interests Act, Va. Code § [2.2-3100](#) et seq., Virginia Governmental Frauds Act § [18.2-498.1](#) et seq., and Articles 2 (§ [18.2-438](#) et seq.) and 3 (§ [18.2-446](#) et seq.) of Chapter 10 of Title 18.2 into its Policies and Procedures. The Standards of Conduct section of the Authority Personnel Manual are also part of the behavior requirements.

The following rules should guide Authority employees involved in the procurement process:

- 1) All employees having official responsibility in the procurement process are subject to and should become familiar with its provisions.
- 2) Definitions:
  - a) "Official responsibility" means administrative or operating authority, whether intermediate or final, to initiate, approve, disapprove or otherwise affect a procurement transaction, or any claim resulting therefrom.
  - b) "Procurement transaction" means all functions that pertain to the obtaining of any goods, services or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract and all phases of contract administration.
  - c) "Immediate family" shall mean a spouse, children, parents, brothers and sisters, and any other person living in the same household as the employee.
  - d) "Public employee" shall mean any person employed by a public body, including elected officials or appointed members of governing bodies.
- 3) No employee having official responsibility for a procurement transaction shall participate in that transaction on behalf of the Authority when that employee knows that:
  - a) the employee is contemporaneously employed by a bidder, offeror or contractor involved in the procurement transaction;
  - b) the employee, the employee's partner, or any member of the employee's immediate family holds a position with a bidder, offeror or contractor such as an officer, director, trustee, partner or the like, or is employed in a capacity involving personal and substantial participation in the procurement transaction, or owns or controls an interest of more than five (5) percent;
  - c) the employee, the employee's partner or any member of the employee's immediate family has a pecuniary interest arising from the procurement transaction; or
  - d) the employee, the employee's partner or any member of the employee's immediate family is negotiating, or has an arrangement concerning, prospective employment with a bidder, offeror or contractor.
- 4) Vendor contacts should be limited to the purpose of obtaining information related to an actual Authority purchase.
- 5) No employee will accept any gifts, meals, or free trips prior to the awarding of a purchase contract or subsequent to award of a contract except as may be provided for as a part of the contract.
  - a) Should any bid, proposal or contract require travel outside the Authority's service area, all travel related expenses shall have been provided for as part of the contract or they shall be paid for by the Authority.

- b) This section shall not prohibit employees from accepting items of nominal value which are generally available and are primarily intended for advertising. The Authority has determined nominal value to be \$25.00.
- 6) No employee or former employee having official responsibility for procurement transactions shall accept employment with any bidder, offeror or contractor with whom the employee or former employee dealt in an official capacity concerning procurement transactions for a period of one (1) year from the cessation of employment by the Authority unless the employee, or former employee, provides written notification to the Executive Director prior to commencement of employment by that bidder, offeror or contractor.
- 7) No employee may contract to provide goods or services to the Authority.
- 8) No employee shall have a financial interest in the purchase of Authority surplus material and equipment in excess of \$500 or purchase such surplus material unless allowed by law.

### **Gifts**

The following rules should guide employees' acceptance of gifts related to services provided in the course of their job.

- 1) Employees will not accept any personal gift, favor, service, money, business or professional opportunity, or anything of value which might reasonably be inferred as having the potential to influence the impartial discharge of duties, or as a reward for an official action.
- 2) Gifts should be discouraged. If the gifts cannot be declined gracefully, and are of more than nominal value (see 5b above) the gifts shall be declared surplus property and addressed accordingly unless the gifts are consumables, e.g. cookies, in which they will be set out for all to consume. Employees should bear in mind that the donor of gifts, presents and favors may come to expect or seek preferential treatment. Therefore, the perception of an individual's action is as important as the monetary value of the gift.
- 3) Employees with procurement responsibilities will not accept gifts or money for services the Authority pays them to perform.
- 4) Favoritism, especially as a result of acceptance of a gift or favor, will not be tolerated. Employees will not give any special consideration, treatment or advantage to any vendor or citizen beyond that which is available to every other vendor or citizen.
- 5) Nothing contained herein prohibits employees from attending vendor-sponsored seminars or trade shows where they will benefit from receiving product information and learning of new techniques and product or service trends. Food, drinks and give-away items offered to all participants at such functions may be accepted by Authority employees attending.

## V. AUTHORIZED METHODS OF PROCUREMENT AND THRESHOLDS

### Authorized Purchase Methods

- 1) Field Purchase (See below)
- 2) Small Purchase (Section VII)
  - a) Goods and Services
  - b) Professional Services
- 3) Request for Proposals
  - a) Goods and Services (Section VIII)
  - b) Professional Services (Section IX & X)
- 4) Invitation for Bids (Competitive Sealed Bid) (Section XI)
- 5) Sole Source (Section XV)
- 6) Emergency (Section XVI)
- 7) Cooperative Procurements (Section XVII)
- 8) Public Auction (See below)
- 9) Public-Private Partnership in Education and Infrastructure Act (PPEA) (See below)

### Thresholds – Small or Informal Purchases

- 1) **Under \$1,500 - Field Purchase, Small Purchases \$10,000 and below**

Small purchases under \$1,500 are considered field purchases for operational needs by Directors and Managers (or as delegated) for time and convenience purposes. Field purchases are to be held to a minimum and all are subject to review by the Purchasing Agent. Only in unusual circumstances may \$1,500.00 be exceeded.

Procedures for the purchase of goods and services from \$1,500 to \$10,000 will be prescribed by the Purchasing Agent or the Executive Director. The Purchasing Agent shall from time to time evaluate the use of field purchases and purchases \$10,000 and below to determine whether warehousing of spare parts or the like is advantageous. Single transactions \$10,000 and under do not require competition, though it's always advisable.
- 2) **All Purchases over \$10,000**

All purchases over \$10,000 must have a purchase order.
- 3) **Goods, Non-Professional Services and Construction: \$10,000.01 to \$50,000**

*Requires soliciting at least three (3) written or verbal quotes from valid sources.* Include businesses, if available, from the annual listing provided by the Authorities which includes businesses certified by the Virginia Department of Small Business and Supplier Diversity that sell the products and services most commonly purchased by the Authorities. Requisition to be prepared and a tabulation of the quotes received should be forwarded to Purchasing where the documentation will be audited and, if approved, a purchase order will be prepared and mailed. Files are required for the annual audit. Requisitions without proper documentation may be returned. It is strongly recommended that all quotes over \$10,000 be confirmed in writing.
- 4) **Goods, Non-Professional Services and Construction: \$50,000.01 to \$199,999.99**

*Requires soliciting at least four (4) written quotes from valid sources.* No fewer than four (4) valid sources shall be solicited to submit written quotations for purchases between \$50,000 and \$199,999.99. Include businesses, if available, from the annual listing provided by the Authorities which includes businesses certified by the Virginia Department of Small Business and Supplier Diversity that sell the products and services most commonly purchased by the Authorities.

**5) Professional Services: >\$10,000 - \$80,000**

*Requires soliciting at least four (4) written quotes from valid sources.* Include businesses, if available, from the annual listing provided by the Authorities which includes businesses certified by the Virginia Department of Small Business and Supplier Diversity that sell the products and services most commonly purchased by the Authorities. Professional services are defined in the Glossary (Section XXVII). All other services are classified as non-professional. The VPPA provides the authority for local public bodies to develop procedures to solicit single or term contracts for professional services without requiring competitive negotiation, provided the aggregate or the sum of all phases is not expected to exceed \$80,000 (refer to Small Purchase procedures for professional services Page 13).

**Thresholds – Formal Procurement Procedures**

**1) Professional Services above \$80,000**

Requires a formal Request for Proposal.

**2) Goods and Non-Professional Services: Over \$200,000 and above**

All purchases for goods and non-professional services over \$200,000 must have a formal procurement process, either a competitive sealed bid or competitive negotiation, unless exceptions apply.

**Other Purchasing Methods**

**3) Public Auction**

Upon a written determination made in advance that the purchase of goods, products or commodities from a public auction sale is in the best interests of the public, such items may be purchased at the auction, including online public auctions. The written determination, approved by the Purchasing Agent, is required stating the basis for the determination. All requests for using a public auction on procurements exceeding the formal competitive sealed bidding process requirements must be reviewed and approved by the Executive Director or his designee. The written determination must be retained in the contract file.

**4) Public-Private Partnership in Education and Infrastructure Act (PPEA)**

When authorized in advance by the Board of Directors, the Authority may solicit proposals for projects under the Virginia Public-Private Partnership in Education and Infrastructure Act as an alternative means of procurement to the options represented in this Manual. In soliciting proposals under the PPEA, the Authority shall follow the PPEA Guidelines (previously adopted by the Board of Directors of the RWSA only) and included as **Appendix A** to this Purchasing Manual as adopted by the Board of Directors of both the RWSA and the RSWA in 2013.

The Authority may also receive unsolicited proposals from potential contractors as prescribed in the Authority's PPEA Guidelines.

## **VI. EXEMPTIONS TO PROCUREMENT (QUOTES, BIDS, OR PROPOSALS)**

The Authority has determined that the following categories of purchases are often not susceptible to competitive purchasing and thus are either exempt from the relevant requirements in the purchasing procedure or are treated explicitly in sections of this Manual. However, one quote must be obtained and documented, and a purchase order must be issued for requirements over the delegated purchase limit.

Those categories are:

- 1) purchases less than or equal to the delegated purchase limit of \$10,000;
- 2) The following selected categories of goods and services up to and including the formal competitive process requirement:
  - a) legal services or expert witnesses or other services associated with litigation or regulatory proceedings;
  - b) books, pre-printed materials, reprints and subscriptions (e.g., print or electronic), pre-recorded audio and videocassettes, compact discs, slide presentations, etc., when only available from the publisher/producer;
  - c) academic/research consulting services;
  - d) honoraria, entertainment (speakers, lecturers, musicians, performing artists);
  - e) training that is specialized, proprietary, and not typically available to the general public for which competition is generally unavailable, off-site, and requires a registration fee. Contact the Procurement Division to ascertain if the training being requested is available through an existing contract or another source;
  - f) royalties and film rentals when only available from the producer or protected distributors;
  - g) professional organizational membership dues;
  - h) writers;
  - i) 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);
  - j) photographers other than for graduations and yearbooks, e.g., for official photographs/portraits;
  - k) advertisements such as in newspapers, magazines, journals, radio, television, etc.;
  - l) utility charges, where competition is not practicably available;
  - m) accreditation fees and academic testing services; and
  - n) pumps and other equipment repair services when the initial anticipated cost is expected to be under the delegated purchase limit of \$10,000, but after equipment tear down it is realized additional repair work is needed and the ability to obtain competition is limited due to the circumstances. Documentation of a fair and reasonable price must be made prior to processing payment for any such purchase.
- 3) purchases of used equipment up to and including the formal competitive sealed bidding requirement. This also includes used equipment purchased at a public auction, if determined in writing that the purchase would be in the best interest of the Authority;
- 4) purchases from the federal government, other states and their agencies or institutions, and public bodies, if the terms and conditions of their contract permit such purchases and meet the requirement of the VPPA. Care must be exercised to be certain that the price is fair and reasonable. This exemption

includes all purchased for good and/or services obtained within the Virginia Water and Wastewater Agency Response Network (VA WARN) emergency assistance program;

- 5) surplus property;
- 6) purchases for testing or evaluation services (limited to purchases of quantities considered necessary for complete and adequate testing) not to exceed the dollar threshold defined above for formal procurement of goods and non-professional services;
- 7) emergency purchases (competition obtained when practicable);
- 8) purchase or lease of real estate and easements;
- 9) travel services; and
- 10) purchase under a cooperative procurement contract through another state or local public agency as described in Section XVII of this Manual provided pricing under such contract was competitive.

## VII. SMALL OR INFORMAL PURCHASES

This section covers procedures for informal procurements of goods and non-professional services based on price, to include processes requiring both verbal and written quotes. For thresholds on informal purchases, to include thresholds that require written quotes, see Section V of this Manual. This Section does not include the procurement of non-professional services by competitive negotiations (see Section VIII for competitive procurement procedures).

Your total requirements should be considered in determining the value of the purchase. You cannot use an informal, small purchase to drive a large sole source award later.

### Obtaining Quotes

When you get a verbal or written quote, make sure you get complete information. Oral or written quote records must show:

- 1) name and address of vendor;
- 2) complete item description or service offered;
- 3) price quoted;
- 4) delivery/performance date(s);
- 5) payment terms;
- 6) FOB point (see definition in Glossary); and
- 7) name of person quoting prices, and date received, if not confirmed in writing.

When complete send a requisition with all documentation to Purchasing to have a purchase order issued.

FOB Destination Prepaid and Allowed is preferred and should be requested. You can also request this by asking for “a delivered price”. This is important because title and risk of loss are borne by the vendor until the Authority actually receives the goods. In a written quote “FOB Destination Prepaid and Allowed” should be specified.

### Evaluation

There are three determining factors when evaluating quotes:

- 1) **Responsive:** Did the vendor meet all minimum requirements requested, including specifications payment terms, and delivery time?
- 2) **Responsible:** Is the vendor deemed capable of doing the job, based on references or knowledge of prior jobs? *Since you are selecting the vendors to contact, a majority of the time you should know this before you contact them for a price.*
- 3) **Price:** Is the price reasonable and within budget?

When evaluating price, make sure you have “apples and apples”. Specifically, ensure that the items are equal or meet your minimum requirements, shipping is included in all quotes, and consider reasonable prompt payment discounts.

If the price is not reasonable, or affordable, you can try to get a lower price. You can:

- 1) revise your specifications or delivery schedule and ask everyone to re-quote; or
- 2) cancel the procurement.

You **CANNOT:**

- 1) "Auction"; or
- 2) let vendors know what other quotes are until ***after*** award.

**SOLICIT QUOTES FROM VENDORS YOU BELIEVE ARE QUALIFIED TO DO THE WORK REQUESTED. DO NOT SOLICIT FROM UNQUALIFIED VENDORS.**

## **VIII. REQUEST FOR PROPOSAL - OTHER THAN PROFESSIONAL SERVICES**

Competitive negotiation is a method for purchasing non-professional services, and goods as well as construction in limited circumstances. The “professional services” definition is included in the Glossary to this Manual (Section XXVII). All other services are categorized as non-professional.

Unlike the use of the RFP process for professional services, which prohibits the consideration of cost in the initial evaluation process, cost can be a consideration when using competitive negotiation for other than professional services and should always be included within Evaluation Criteria, though it need not be the sole determining factor.

### **Procedure:**

#### **1) The RFP is prepared and stating in general terms:**

- a) the services sought as well as related contingent services that may be needed;
- b) the time and place for receipt of proposals;
- c) the factors to be used in evaluating proposals, including cost;
- d) the contractual terms and conditions; to include whether services are specific to a single project for the duration of that project, or multiple project for a specific term; and
- e) any unique capabilities or qualifications required of the proposers.

#### **2) A Public Notice of RFP’s exceeding \$200,000 for goods and non-professional services shall be:**

- a) Posted on the eVA website and/or advertised in The Daily Progress and/or Cville Weekly at least ten (10) business days prior to receipt of proposals; and
- b) posted on the Authority’s Procurement website at least ten (10) business days prior to the date set for receipt of proposals.
- c) may be sent directly to firms that have requested to be notified of work;
- d) may be sent to those firms believed to be qualified to perform the work; and
- e) if potential offerors are solicited directly, the Authority must include businesses certified by the Virginia Department of Small Business and Supplier Diversity as a small business, a women-owned business, a minority-owned business, a service disabled veteran-owned business and/or a micro business. Public posting on the eVA website meets this requirement.

### **Proposals are:**

- 1) Received in the manner stated in the RFP, and receipt is documented.
- 2) Proposals not received by the due date and time specified in the RFP shall not be opened and should be returned unopened.
- 3) All RFP responses are to be evaluated:
  - a) Proposals not meeting requirements should be evaluated lower but only bids in response to an IFB may be determined to be nonresponsive.
- 4) Proposals are evaluated solely on the basis of the criteria set forth in the RFP, using the scoring criteria (qualitative and/or quantitative) previously determined, including cost. Prior to scoring, if a proposal is missing any needed information in order to evaluate or the committee has any specific questions regarding information in the proposal, a short period of time may be provided to the offeror to answer questions and provide missing information. A deadline should be set for receipt of the information, and if the offeror does not meet the deadline, it may be necessary to score the proposal lower in the areas affected by the lack of information/questions;
- 5) A short list of firms is developed and presentations or discussions with offerors may be scheduled, as necessary, to clarify material in the proposal, to help determine those fully qualified and best suited.
- 6) A final ranking is done at the completion of the interview process if interviews are conducted, or after receipt of answer to questions, if asked, are received. Negotiations are then conducted with each of the

two or more offerors selected (at least the top two) as being fully qualified and best suited among those submitting proposals.

- 7) After negotiations have been conducted with each offeror selected, the Authority shall select the one (or more than one when allowed by the RFP) which, in its opinion, has made the best proposal and provides the best value, and award the contract to that offeror.
- 8) If the Authority determines, 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.
- 9) When multiple awards have been approved by the Executive Director or Purchasing Agent in advance of the RFP and the terms and conditions of multiple awards have been included in the RFP, awards may be made to more than one offeror.

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

Any offeror may inspect proposal records after the evaluation and negotiation are completed but prior to award of the contract, except in cases where the Purchasing Agent or Executive Director have decided not to accept any of the proposals and to reopen the procurement. All records subject to public disclosure under the Virginia [Freedom of Information Act](#) shall be open to public inspection only after award of the contract.

When the terms and conditions of multiple awards have been included in the RFP in advance, awards may be made to more than one offeror.

#### VPPA

##### **§ 2.2-4302.2. Process for competitive negotiation.**

A (3) For goods, nonprofessional services, and insurance, 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 factors involved in the Request for Proposal, including price if so stated in the Request for Proposal. In the case of a proposal for information technology, as defined in § [2.2-2006](#), a public body shall not require an offeror to state in a proposal any exception to any liability provisions contained in the Request for Proposal. Negotiations shall then be conducted with each of the offerors so selected. The offeror shall state any exception to any liability provisions contained in the Request for Proposal in writing at the beginning of negotiations, and such exceptions shall be considered during negotiation. Price shall be considered, but need not be the sole or primary 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 provides the best value, and shall award the contract to that offeror. When the terms and conditions of multiple awards are so provided in the Request for Proposal, awards may be made to more than one 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

For a detailed sample format for a Request for Proposal refer to the Commonwealth of Virginia Department of General Services, Division of Purchases and Supply, Agency Procurement and Surplus Property Manual (APSPM), Chapter 7, Annex A

Contract awards from all formal Requests for Proposals with competitive negotiation for which fees may exceed \$200,000 shall be made by affirmative action of the Authority's Board of Directors upon recommendation of the Executive Director, except that with respect to awards of contracts for health insurance and related employee benefits contracts affecting open enrollment, and awards of contracts for purchase of chemicals (including GAC materials) used at various plants in the normal course of operations, which the Board's approved yearly operation budget contemplates as an operating expense, no additional affirmative action by the Board shall be required to proceed with the purchase. Affirmative action of the Board may be in the form an approved annual budget and/or capital budget, and approval of Capital Improvement Program. The Executive Director may appoint a Selection Committee to review proposals, conduct competitive negotiations, and rank proposals.

The Executive Director is authorized to award contracts from Request for Proposals whenever fees are \$200,000 or less.

## IX. REQUEST FOR PROPOSAL - PROFESSIONAL SERVICES

Except as otherwise allowed by the Authority's small purchase procedures, competitive negotiation must, by law, be used for purchasing professional services if the estimated cost for such services is expected to be \$80,000 or more. Professional Services are defined in the VPPA as "work performed by an independent contractor within the scope of the practice of accounting, actuarial services, architecture, land surveying, landscape architecture, law, dentistry, medicine, optometry, pharmacy or professional engineering." All other services are categorized as non-professional.

A difference between the RFP process for professional services is that, for professional services, the law prohibits the consideration of cost in the initial evaluation process though it can be considered with the introduction of "non-binding cost estimates" after the responses have been evaluated and a short list developed for interviews.

### Procedure:

#### 1) The RFP is prepared and stating in general terms:

- a) the services sought;
- b) the time and place for receipt of proposals;
- c) the factors to be used in evaluating proposals;
  - i. *The RFP must not request estimates of labor hours or cost for services.*
- d) the contractual terms and conditions; and
- e) any unique capabilities or qualifications required of the proposers.

#### 2) A Public Notice of the RFP shall be:

- a) Posted on the eVA website and/or advertised in The Daily Progress or Cville Weekly at least ten (10) business days prior to receipt of proposals;
- b) posted on the Authority Procurement website at least ten (10) business days prior to receipt of proposals.
- c) may be sent directly to firms that have requested to be notified of work;
- d) may be sent to those firms believed to be qualified to perform the work; and
- e) if potential offerors are solicited directly, the Authority must include businesses certified by the Virginia Department of Small Business and Supplier Diversity as a small business, a women-owned business, a minority-owned business, a service-disabled veteran-owned business and/or a micro business. Public posting on the eVA website meets this requirement.

#### 3) Proposals are:

- a) Received as specified in the RFP and receipt is documented.
- b) Proposals not received by the due date and time specified in the RFP shall not be opened and should be returned unopened.
- c) None of the information in the proposal is disclosed.
- d) All RFP responses are to be evaluated
- e) Proposals not meeting requirements should be ranked lower but only bids in response to an invitation for bid may be determined to be nonresponsive.
- f) Proposals are evaluated solely on the basis of the criteria set forth in the RFP, ranking offerors using previously determined qualitative or quantitative means.
- g) A short list of firms is developed and the Authority shall engage in individual discussions with two or more offerors deemed fully qualified. Repetitive informal interviews are permissible.
- h) *At the discussion stage, the Authority may discuss nonbinding estimates of total project costs, including, but not limited to, life-cycle costing, and where appropriate, nonbinding estimates of price for services.*

- i) At the conclusion of discussions, a final ranking is done on the basis of evaluation factors published in the RFP and all information developed in the selection process to this point.
- j) The Authority shall select, in the order of preference, two or more offerors whose professional qualifications and proposed services are deemed most meritorious.
- k) Negotiations shall then be conducted, beginning with the offeror ranked first.
  - i. If a contract satisfactory and advantageous to the public body can be negotiated at a price considered fair and reasonable, the award shall be made to that offeror.
  - ii. Otherwise, negotiations with that offeror are formally *terminated* and the Authority cannot re-engage that offeror in further negotiations. Then negotiations shall be conducted with the offeror ranked second, and so on until such a contract can be negotiated at a fair and reasonable price.
- l) When multiple awards have been approved in advance of the RFP by the Executive Director or Purchasing Agent and the terms and conditions of multiple awards have been included in the RFP, awards may be made to more than one offeror.

Should the Authority 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.

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

Any offeror may inspect proposal records after the evaluation and negotiation are completed but prior to award of the contract, except in cases where the Purchasing Agent or Executive Director have decided not to accept any of the proposals and to reopen the procurement. All records subject to public disclosure under the Virginia Freedom of Information Act shall be open to public inspection only after award of the contract.

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##### § [2.2-4302.2](#) Process for competitive negotiation.

A (4). For professional services, the public body shall engage in individual discussions with two or more offerors deemed fully qualified, responsible and suitable on the basis of initial responses and with emphasis on professional competence, to provide the required services. Repetitive informal interviews shall be permissible. The offerors shall be encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project, as well as alternative concepts. In addition, offerors shall be informed of any ranking criteria that will be used by the public body in addition to the review of the professional competence of the offeror. The Request for Proposal shall not, however, request that offerors furnish estimates of man-hours or cost for services. At the discussion stage, the public body may discuss nonbinding estimates of total project costs, including, but not limited to, life-cycle costing, and where appropriate, nonbinding estimates of price for services. In accordance with § [2.2-4342](#), proprietary information from competing offerors shall not be disclosed to the public or to competitors. For architectural or engineering services, the public body shall not request or require offerors to list any exceptions to proposed contractual terms and conditions, unless such terms and conditions are required by statute, regulation, ordinance, or standards developed pursuant to § [2.2-1132](#), until after the qualified offerors are ranked for negotiations. At the conclusion of discussion, outlined in this subdivision, on the basis of evaluation factors published in the Request for Proposal and all information developed in the selection process to this point, the public body shall select in the order of preference two or more offerors whose professional qualifications and proposed services are deemed most meritorious.

Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract satisfactory and advantageous to the public body can be negotiated at a price considered fair and reasonable and pursuant to contractual terms and conditions acceptable to the public body, the award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first shall be formally terminated and negotiations conducted with the offeror ranked second, and so on until such a contract can be negotiated at a fair and reasonable price.

Notwithstanding the foregoing, if the terms and conditions for multiple awards are included in the Request for Proposal, a public body may award contracts to more than one 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 and suitable than the others under consideration, a contract may be negotiated and awarded to that offeror.

Contract awards from all formal Requests for Proposals with competitive negotiation which fees may exceed \$200,000 shall be made by affirmative action of the Authority's Board of Directors upon recommendation of the Executive Director. The Executive Director may appoint a Selection Committee to review proposals, conduct competitive negotiations and rank proposals.

The Executive Director is authorized to award contracts from Request for Proposals whenever fees are \$200,000 or less.

## **X. REQUEST FOR PROPOSAL - PROFESSIONAL SERVICES CONTRACTS FOR MULTIPLE PROJECTS AND MULTIPLE YEARS**

A contract for architectural or professional engineering services relating to construction projects may be negotiated by a public body, for multiple projects within limits outlined in the VPPA. The procurement process is the same as that used for professional services.

The VPPA allows such contracts providing:

- 1) the projects require similar experience and expertise;
- 2) the nature of the projects is clearly identified in the Request for Proposal; and
- 3) the contract term is limited to one year or when the cumulative total project fees reach the maximum cost authorized in the VPPA, whichever occurs first.

The Authority may award contracts renewable, with the written approval of the Executive Director, for four additional one-year terms at the option of Authority.

The law requires that in such contracts:

- 1) the fair and reasonable prices, as negotiated, shall be used in determining the cost of each project performed;
- 2) the sum of all such projects within a single one-year term shall not exceed \$6 million; and
- 3) the sum for any single project within a single one-year term shall not exceed \$2.5 million as specified in § [2.2-4303.1](#).

Any unused amounts from the first contract term shall *not* be carried forward to the additional term in determining the sum of all projects within a term. However, costs against the allowed limit for a single project shall be cumulative from the initial one-year term and subsequent additional terms.

Competitive negotiations for such contracts may result in awards to more than one offeror provided:

- 1) the RFP so states; and
- 2) the Authority has established procedures for distributing multiple projects among the selected contractors during the contract term. Such procedures shall prohibit requiring the selected contractors to compete for individual projects based on price.

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#### **§ [2.2-4303.1](#) Architectural and professional engineering term contracting; limitations.**

A. A contract for architectural or professional engineering services relating to multiple construction projects may be awarded by a public body, provided (i) the projects require similar experience and expertise, (ii) the nature of the projects is clearly identified in the Request for Proposal, and (iii) the contract is limited to a term of one year or when the cumulative total project fees reach the maximum authorized in this section, whichever occurs first.

Such contracts may be renewable for four additional one-year terms at the option of the public body. The fair and reasonable prices as negotiated shall be used in determining the cost of each project performed.

B. 2. Any locality with a population in excess of 78,000 or school division within such locality, or any authority, sanitation district, metropolitan planning organization, transportation district commission, or planning district commission, or any city within Planning District 8, the sum of all projects performed in a one-year contract term shall not exceed \$6 million;

C. Competitive negotiations for such architectural or professional engineering services contracts may result in awards to more than one offeror, provided (i) the Request for Proposal so states and (ii) the public body has established procedures for distributing multiple projects among the selected contractors during the contract term. Such procedures shall prohibit requiring the selected contractors to compete for individual projects based on price.

D. 2. Any locality with a population in excess of 78,000 or school division within such locality, or any authority, transportation district commission, or sanitation district, or any city within Planning District 8, the project fee shall not exceed \$2.5 million.

E. For the purposes of subsection B, any unused amounts from one contract term shall not be carried forward to any additional term, except as otherwise provided by the Restructured Higher Education Financial and Administrative Operations Act (§ [23.1-1000](#) et seq.).

## **XI. COMPETITIVE SEALED BID**

Competitive sealed bidding is required for procurements over \$200,000 where performance specifications can be written in specific detail and price is the basis of award. In competitive sealed bidding the Invitation for Bid (IFB) is the tool used to list the purchase specifications or scope of work and all contractual terms and conditions. IFBs are posted on the Authority's Public Announcement Board and the "Proposals & Procurement" section of its website. IFBs may also be posted on other websites such as the state's Virginia Business Opportunities site. IFBs are not required by law to be advertised in newspapers. In addition to the public notice, bids must be solicited directly from potential qualified bidders. At a minimum, any such direct solicitations shall include businesses selected from an electronic list made available by the Virginia Department of Small Business and Supplier Diversity (SBSD). Public posting on the eVA website fulfills the requirement to directly solicit potential qualified bidders and to include businesses certified by SBSB.

Bids shall be received at the specified location and remain unopened in a secure area until the date and time established for opening. When bids are received they should be date and time stamped on the envelope showing the date and time of receipt. The Purchasing Agent shall be responsible for deciding when the receipt deadline has arrived and no bids shall be accepted after that time. Late bids cannot be opened or considered.

Unlike RFP processing, competitive sealed bids are publicly opened and the following information read aloud:

- 1) bidders' names;
- 2) significant unit prices or lot prices as may be deemed appropriate by the Authority;
- 3) discount terms offered, if discount terms are to be considered in making the award,
  - a) if the Authority is certain that it can regularly process payments within a prescribed time frame and wants to consider cash discounts in its evaluation, then it may do so by including a statement in the bid document such as "discounts for prompt payment within    (state number of days, e.g., 10, 20, etc.) days will be considered in determining net low bid"; and
- 4) brand names and model numbers only if requested by the attendees otherwise can be provided on bid tabulation provided later.

Any competitive sealed bidding bidder, upon request, shall be afforded the opportunity to inspect bid records within a reasonable time after opening of all bids but prior to award, except in the event the agency decides not to accept any of the bids and to reopen the contract. Otherwise, bid records shall be open to public inspection only after award of the contract. (VPPA, § [2.2-4342C](#)).

Awards are, by law, based on a determination of the lowest responsive and responsible bidder. Responsible and responsive bidder/offeror are defined in Section XXVII of this Manual. When the terms and conditions of multiple awards are so provided in the IFBs, awards may be made to more than one bidder.

A responsive bid must comply in all material aspects with the terms and conditions and specifications in the IFB. Bids shall be evaluated based upon the requirements set forth in the invitation, which may include special qualifications of potential contractors, life-cycle costing, value analysis, and any other criteria such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose, which are helpful in determining acceptability. Failure to comply with the requirements set forth in the IFB may result in a bid being declared non-responsive. For example, and not by way of limitation: failure to sign the bid; return required bid documents; substitution of a vendor's terms for the Authority's; deletion of terms and conditions stated in the IFB; or failure to offer a product or service that meets the specifications may be grounds for this finding. A non-responsive bid is removed from consideration for award. The Authority has the right to waive informalities.

Caution must be exercised in words used in all aspects of the IFB from specifications to terms and conditions for words such as "may", "should", "could", "will" and "must". If you say a specific action "may cause rejection of the bid" you have leeway to exercise your discretion. However, if you say a specific action "shall cause rejection of the bid" you have no discretion as "shall" is an imperative.

No contract may be awarded to a bidder who is determined by the Purchasing Agent to be non-responsible. The Purchasing Agent must follow the procedure per the [VPPA 2.2-4359](#) for declaration of non-responsibility of a bidder. Responsible bidder/offeror and responsive bidder are defined in Section XXVII of this Manual. In determining the responsibility of a bidder, the following criteria will be considered:

- 1) the ability, capacity or skill of the bidder to perform the contract or provide the services required;
- 2) whether the bidder can perform the contract or provide the service promptly, or within the time specified, without delay or interference;
- 3) the character, integrity, reliability, reputation, judgment, experience and efficiency of the bidder;
- 4) the quality of performance on previous contracts or services, for the Authority or others;
- 5) the previous and existing compliance by a bidder with laws and ordinances relating to the contract or service;
- 6) the sufficiency of the financial resources and ability of the bidder to perform the contract or provide the service;
- 7) the quality, availability, and adaptability of the goods or services to the particular use required;
- 8) the number and scope of any conditions attached to the bid;
- 9) whether the bidder is in arrears to the Authority on a debt or contract or is in default on a surety to the Authority; and
- 10) such other information as may be secured by the Purchasing Agent, having a bearing on the decision to award the contract.

Contract awards from competitively sealed bids exceeding \$200,000 shall be made by affirmative action of the Authority's Board of Directors upon recommendation of the Executive Director, except that with respect to awards of contracts for health insurance and related employee benefits contracts affecting open enrollment, and awards of contracts for purchase of chemicals (including GAC materials) used at various plants in the normal course of operations, which the Board's approved yearly operation budget contemplates as an operating expense, no additional affirmative action by the Board shall be required to proceed with the purchase.

**Negotiation with the Lowest Responsible Bidder:** If the bid from the lowest responsible bidder exceeds available funds, the Authority may negotiate with the apparent low bidder to obtain a contract price within available funds if the solicitation contains the appropriate clause to do so within the IFB, Virginia Code § [2.2-4318](#).

The Authority's process for negotiations includes:

- 1) The requesting department shall provide the Executive Director with a written determination that the apparent low bid exceeds available funds. Such determination shall be confirmed in writing by the Executive Director or his designee. The requesting department shall also provide the Executive Director with a suggested reduction in scope or other suggested bid modification(s) to obtain a contract price within available funds.
- 2) The Executive Director or designee shall advise the lowest responsible bidder in writing that the proposed purchase exceeds available funds. He shall further suggest a reduction in scope or other bid modification(s) for the proposed purchase and invite the lowest responsible bidder to amend its bid based upon the proposed reduction in scope or other bid modification(s).
- 3) Informal discussions shall be commenced with the low bidder, and repetitive informal discussions for the purposes of obtaining a contract within available funds shall be permissible.
- 4) The low bidder shall submit an addendum to its bid, which addendum shall include the change in scope for the proposed purchase, the reduction in price and the new contract value. If the addendum is

acceptable to the Authority, the Authority may award a contract within funds available to the lowest responsible bidder based upon the amended bid proposal.

- 5) The Authority reserves the right to infuse additional funds during, or subsequent to negotiations to meet a negotiated price.
- 6) If the Authority and the lowest responsible bidder cannot negotiate a contract within available funds, all bids shall be rejected.

Determinations of responsiveness and responsibility shall be made by the Purchasing Agent in consultation, if necessary, with the Authority's Attorney.

For a detailed sample format for an Invitation for Bid refer to the Commonwealth of Virginia Department of General Services, Division of Purchases and Supply, Agency Procurement and Surplus Property Manual (APSPM), Chapter 6, Annex B.

## **XII. PREQUALIFICATION PROCESS FOR CONSTRUCTION CONTRACTS**

- 1) The Executive Director or his designee may, in his discretion and when he believes it to be in the best interests of the Authority, require prequalification of prospective contractors to bid on a specific construction project and/or future projects for the Authority defined by category, e.g. mechanical projects for the Authority. The purpose of such prequalification shall be to limit prospective bidders for such construction project to contractors who show themselves to be qualified to construct the project. In addition, the IFB may waive the requirement for certain bonds when the pre-qualification process is used. When the prequalification process is used for a project, only contractors who have complied with the prequalification process and have been determined qualified will be eligible to submit bids for the project.
- 2) The Executive Director or his designee shall develop the appropriate documentation for potential contractors to apply for prequalification. The Executive Director or his designee may prescribe in such documentation specific mandatory requirements contractors must meet to prequalify for specific projects.
- 3) In conducting prequalification of potential contractors, the Executive Director or his designee shall follow this prequalification process and the requirements of Virginia Code § [2.2-4317](#).
- 4) The documentation used in the Authority's prequalification process shall set forth the criteria upon which the qualifications of such contractors will be evaluated. The documentation shall request of prospective contractors only such information as is appropriate for an objective evaluation of all prospective contractors pursuant to such criteria. The documentation shall allow the prospective contractor seeking prequalification to request, by checking the appropriate box, that all information voluntarily submitted by the contractor pursuant to this subsection shall be considered a trade secret or proprietary information subject to the provisions of subsection F of § [2.2-4342](#).
- 5) In all instances in which the Authority requires prequalification of potential contractors for construction projects, advance notice shall be given of the deadline for the submission of prequalification applications. The deadline for submission shall be sufficiently in advance of the date set for the submission of bids for such construction so as to allow the procedures set forth in this subsection to be accomplished.
- 6) At least 30 days prior to the date established for submission of bids or proposals under the procurement of the contract for which the prequalification applies, the Authority shall advise in writing each contractor who submitted an application whether that contractor has been prequalified. In the event that a contractor is denied prequalification, the written notification to the contractor shall state the reasons for the denial of prequalification and the factual basis of such reasons.
- 7) A decision by the Executive Director or his designee denying prequalification under the provisions of this subsection shall be final and conclusive unless the contractor appeals the decision as provided in § [2.2-4357](#).
- 8) The Authority may deny prequalification to any contractor only if the public body finds one of the following:
  - a) the contractor does not have sufficient financial ability to perform the contract that would result from such procurement. If a bond is required to ensure performance of a contract, evidence that the contractor can acquire a surety bond from a corporation included on the United States Treasury list of acceptable surety corporations in the amount and type required by the Authority shall be sufficient to establish the financial ability of the contractor to perform the contract resulting from such procurement;
  - b) the contractor does not have appropriate experience to perform the construction project in question;

- c) the contractor or any officer, director or owner thereof has had judgments entered against him within the past ten years for the breach of contracts for governmental or nongovernmental construction, including, but not limited to, design-build or construction management;
  - d) the contractor has been in substantial noncompliance with the terms and conditions of prior construction contracts with the Authority without good cause. If the Authority has not contracted with a contractor in any prior construction contracts, the public body may deny prequalification if the contractor has been in substantial noncompliance with the terms and conditions of comparable construction contracts with another public body without good cause. The Authority may not utilize this provision to deny prequalification unless the facts underlying such substantial noncompliance were documented in writing in the prior construction project file and such information relating thereto given to the contractor at that time, with the opportunity to respond;
  - e) the contractor or any officer, director, owner, project manager, procurement manager or chief financial official thereof has been convicted within the past ten years of a crime related to governmental or nongovernmental construction or contracting, including, but not limited to, a violation of (i) Article 6 (§ [2.2-4367](#) et seq.) of the Virginia Public Procurement Act, (ii) the *Virginia Governmental Frauds Act* (§ [18.2-498.1](#) et seq.), (iii) Chapter 4.2 (§ [59.1-68.6](#) et seq.) of Title 59.1, or (iv) any substantially similar law of the United States or another state;
  - f) the contractor or any officer, director or owner thereof is currently debarred pursuant to an established debarment procedure from bidding or contracting by any public body, agency of another state or agency of the federal government; and
  - g) the contractor failed to provide to the public body in a timely manner any information requested by the public body relevant to subdivisions a through f of this subsection.
- 9) In determining if a contractor has the “appropriate experience” to be prequalified, the Authority may consider and use specific minimum experience requirements established by the Executive Director or his designee for the specific project. The Authority may also consider the contractor’s past performance on the projects that provide its past experience to determine if the projects provide the appropriate experience required.
  - 10) To the extent any provision in this process is deemed inconsistent with Virginia Code § [2.2-4317](#), whether due to amendment of that statutory provision or otherwise, then the provisions of Virginia Code § [2.2-4317](#) shall control as to such inconsistency.
  - 11) The provisions of this process and its implementation are intended to be severable, and if any provision is deemed invalid, this shall not be deemed to affect the validity of other provisions.
  - 12) This prequalification process does not apply to any procurement done under the Public-Private Education facilities and Infrastructure Act of 2002 (“PPEA”), Code of Virginia § [56-575.1](#), et seq., and is in no way intended to limit the Authority’s discretion in the way it selects contractors under PPEA.
  - 13) A determination that a contractor is prequalified does not necessarily preclude the Authority from determining that such contractor is not responsible following bid opening. Among other things, a change in circumstances or change in information, as well as different criteria allowed to be considered for prequalification versus responsibility, may lead to a different result. For example, a prequalified contractor that becomes debarred between prequalification and bid opening, or a contractor who is subsequently discovered not to have been totally candid in answering its prequalification questionnaire, might be deemed non-responsible.
  - 14) Prequalification of a contractor to bid on one project does not prequalify that contractor to bid on a different project or mean that the contractor will necessarily be deemed to be a responsible bidder for a different project.
  - 15) Neither the Prequalification Process nor its implementation by the Authority shall be deemed to create and contract right in any prospective contractor or to give any prospective contractor any right beyond

that conferred by Code of Virginia § [2.2-4317](#). All prospective contractors shall be responsible for their own expenses in applying for prequalification, and the Authority shall have no liability for any such expense.

### **XIII. BONDS**

#### **Bid Bonds**

Except in cases of emergency or prequalification, all bids or proposals for non-transportation-related construction contracts in excess of \$500,000 shall be accompanied by a bid bond from a surety company selected by the bidder that is legally authorized to do business in Virginia. The specified amount of the bid bond shall not exceed five percent of the amount bid (*Code of Virginia*, § [2.2-4336](#)). For non-transportation-related construction contracts in excess of \$100,000 but less than \$500,000, the bid bond requirements may be waived provided that prospective contractors shall be prequalified for each individual project in accordance with § [2.2-4317](#). However, the Authority may waive the requirement for prequalification of a bidder with a current Class A contractor license for contracts in excess of \$100,000 but less than \$300,000 upon a written determination made in advance by the Authority's governing body that waiving the requirement is in the best interests of the the Authority. The Authority shall not enter into more than 10 such contracts per year.

#### **Performance and Payment Bonds** (*Code of Virginia*, § [2.2-4337](#)).

Unless otherwise authorized in this section, upon the award of any (i) public construction contract exceeding \$500,000 awarded to any prime contractor; (ii) construction contract exceeding \$500,000 awarded to any prime contractor requiring the performance of labor or the furnishing of materials for buildings, structures or other improvements to real property owned by the Authority, or (iii) construction contract exceeding \$500,000 in which the performance of labor or the furnishing of materials will be paid with public funds, the contractor shall furnish to the Authority the following bonds:

- 1) a performance bond in the sum of the contract amount conditioned upon the faithful performance of the contract in strict conformity with the plans, specifications and conditions of the contract;
- 2) a payment bond in the sum of the contract amount. The bond shall be for the protection of claimants who have and fulfill contracts to supply labor or materials to the prime contractor to whom the contract was awarded, or to any subcontractors, in furtherance of the work provided for in the contract, and shall be conditioned upon the prompt payment for all materials furnished or labor supplied or performed in the furtherance of the work; and
- 3) nothing in this section shall preclude the Authority from requiring payment or performance bonds for construction contracts below \$500,000 for non-transportation-related projects.

For non-transportation-related construction contracts in excess of \$100,000 but less than \$500,000, where the performance and payment bond requirements are waived, prospective contractors shall be prequalified for each individual project in accordance with § [2.2-4317](#). However, the Authority may waive the requirement for prequalification of a contractor with a current Class A contractor license for contracts in excess of \$100,000 but less than \$300,000 upon a written determination made in advance by the Authority's governing body that waiving the requirement is in the best interests of the Authority. The Authority shall not enter into more than 10 such contracts per year.

#### **Bonds on Other Than Construction Contracts**

The Authority may require bid, payment, or performance bonds for contracts for goods or services if provided in the Invitation for Bids or Request for Proposal.

#### **Alternative Forms of Security**

A certified check, cashier's check or cash escrow may be accepted in lieu of a bid, payment, or performance bond in the face amount required for the bond. If approved by Authority's attorney, a bidder may furnish a personal bond, property bond or bank or savings institution's letter of credit on certain designated funds in the face amount required for the bid, payment, or performance bond. Approval shall be granted only upon a

determination by the attorney that the alternative form of security proffered affords protection to the Authority equivalent to a corporate surety's bond. (*Code of Virginia*, § [2.2-4338](#)).

#### **XIV. WITHDRAWAL OF BIDS**

The Authority recognizes that errors can occur in bidding and has established procedures for withdrawal of bids for other than construction contracts and incorporates the procedure per § [2.2-4330](#) of the VPPA for withdrawal of a bid for a public construction contract, other than a contract for construction or maintenance of public highways, to provide a consistent and fair means of allowing a bidder to withdraw a bid due to error.

For construction contracts the Authority shall specify which procedure listed under paragraph B will be used in the Invitation for Bids.

##### **Procedure for withdrawal of a bid for other than a construction contract:**

A bidder for *other than a contract for construction* may withdraw a bid from consideration if the price was substantially lower than the other bids due solely to a mistake therein, provided the bid was submitted in good faith, and the Purchasing Agent, in his sole discretion, determines in writing that the mistake was a clerical mistake as opposed to a judgmental mistake, and was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of the bid, or if the purchasing agent determines that it is in the best interest of the Authority to allow the withdrawal of the bid.

- 1) The bidder shall give notice in writing to the Purchasing Agent of a claim of right to withdraw a bid within two business days after the conclusion of the opening of the bids. The Purchasing Agent may, if there is sufficient cause to suspect an error exists, suggest that a bidder review a bid and offer an opportunity to withdraw the bid in question.
- 2) If the Purchasing Agent denies the withdrawal of a bid under the provisions of this section, he or she shall notify the bidder in writing stating the reasons for the decision.
- 3) No bid may be withdrawn under this section when the result would be to award 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%).
- 4) If a bid is withdrawn under the authority of this section, the lowest remaining bid shall be deemed to be the low bid.

**Withdrawal of a bid for a public construction contract**, other than a contract for construction or maintenance of public highways shall be in accordance with Virginia Code repeated below:

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##### **§ [2.2-4330](#) Withdrawal of bid due to error.**

A. A bidder for a public construction contract, other than a contract for construction or maintenance of public highways, may withdraw his bid from consideration if the price bid was substantially lower than the other bids due solely to a mistake in the bid, provided the bid was submitted in good faith, and the mistake was a clerical mistake as opposed to a judgment mistake, and was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn.

If a bid contains both clerical and judgment mistakes, a bidder may withdraw his bid from consideration if the price bid would have been substantially lower than the other bids due solely to the clerical mistake, that was an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid that shall be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn.

B. One of the following procedures for withdrawal of a bid shall be selected by the Authority and stated in the advertisement for bids:

1. bidder shall give notice in writing of his claim of right to withdraw his bid within two business days after the conclusion of the bid opening procedure and shall submit original work papers with such notice; or

2. Where the Authority opens the bids one day following the time fixed for the submission of bids, the bidder shall submit to the public body or designated official his original work papers, documents and materials used in the preparation of the bid at or prior to the time fixed for the opening of bids. The work papers shall be delivered by the bidder in person or by registered mail. The bidder shall have two hours after the opening of bids within which to claim in writing any mistake as defined herein and withdraw his bid. The contract shall not be awarded by the Authority until the two-hour period has elapsed.

Under these procedures, the mistake shall be proved only from the original work papers, documents and materials delivered as required herein. The work papers, documents and materials submitted by the bidder shall, at the bidder's request, be considered trade secrets or proprietary information subject to the conditions of subsection F of § [2.2-4342](#).

C. The Authority may establish procedures for the withdrawal of bids for other than construction contracts (see A above).

D. No bid shall be withdrawn under this section 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.

E. If a bid is withdrawn in accordance with this section, the lowest remaining bid shall be deemed to be the low bid.

F. 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.

G. The Authority shall notify the bidder in writing within five business days of its decision regarding the bidder's request to withdraw its bid. If the Authority denies the withdrawal of a bid under the provisions of this section, it shall state in such notice 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. At the same time that the notice is provided, the Authority shall return all work papers and copies thereof that have been submitted by the bidder.

Bids can always be withdrawn at any time before the time specified for opening.

## **XV. SOLE SOURCE**

Competitive procedures are waived when a determination is made that the goods or services required are practicably available from only one source. The procurement record for a sole source procurement must include the appropriate approval in support of the action to forego the competitive process, and be posted to the Authority's website identifying that which is being procured, the contractor selected, and the date of the decision.

Negotiations for a sole source contract or purchase order award may commence without providing for full and open competition only after the Purchasing Agent justifies the use of such actions in writing, certifies the accuracy and completeness of the justification, and obtains any required approvals. A justification must contain sufficient facts and rationale to justify the use of the sole source method. In making this determination, the Purchasing Agent shall determine whether there is, in fact, only one vendor practicably available to provide the goods and services. Prior to making a determination, the Purchasing Agent may conduct their own investigation, request additional information or consult with the Authority's attorney. If the request is denied the normal procurement procedures will be followed.

Before award of any sole source procurement, the proposed price must be determined to be fair and reasonable using the method most appropriate to the procurement.

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#### **§ [2.2-4303](#) Methods of procurement.**

E. Upon a determination in writing that there is only one source practicably available for that which is to be procured, a contract may be negotiated and awarded to that source without competitive sealed bidding or competitive negotiation. The writing shall document the basis for this determination. The public body shall issue a written notice stating that only one source was determined to be practicably available, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted on the Department of General Services' central electronic procurement website or other appropriate websites, and in addition, public bodies may publish in a newspaper of general circulation on the day the public body awards or announces its decision to award the contract, whichever occurs first. Posting on the Department of General Services' central electronic procurement website shall be required of any state public body. Local public bodies are encouraged to utilize the Department of General Services' central electronic procurement website to provide the public with centralized visibility and access to the Commonwealth's procurement opportunities.

## **XVI. EMERGENCY**

Reasonable steps shall be taken to avoid using non-competitive emergency procurement methods. An emergency situation occurs when the failure to acquire the goods, services, or construction in a timely manner would seriously threaten the health or safety of any person; the preservation or protection of property; the continuation of necessary Authority functions; or the Authority's compliance with legal requirements.

Parts or services greater than \$10,000 when time or other circumstance does not permit full review may be classed an emergency if so approved by the Executive Director or the Purchasing Agent. For parts and services \$10,000 and less the Small Purchase Procedure shall apply.

For an emergency purchase the employee responsible should find an appropriate source and then direct the vendor to proceed. Even in an emergency, the procurement shall be made with such competition as is practicable under the circumstances, obtaining a fair and reasonable price, and documenting the procurement action. In an emergency competition is not necessarily limited to cost. Since immediate action is required, factors such as delivery, availability and response time can be more critical than cost. By definition an emergency purchase should immediately address the problem. Emergency procurements must be limited to only the emergency procurement need. Additional goods and services not needed for the emergency procurement are not allowed.

When placing an emergency order, the following information must be obtained from the vendor and entered on a confirming requisition to be sent to the Purchasing Agent:

- 1) accurate prices if possible (for services this may be hourly rates for services and equipment);
- 2) payment terms;
- 3) method of shipment (Ship Via);
- 4) delivery date or completion date (the purchase must immediately address the problem so this should not be in terms of weeks or months);
- 5) accurate FOB point;
- 6) how ordered (by telephone, email, fax, etc.);
- 7) first and last name of vendor representative who accepts the order; and
- 8) obtain a written quote (email or fax is acceptable) if possible.

On the requisition clearly indicate that this is a "Confirming Telephone Order (or email or fax)" complete with:

- a) the date the order was phoned in;
- b) the name of the person at the company accepting the order;
- c) the name of the departmental personnel placing the order; and
- d) details of all other quotes solicited and/or received.

Include with the requisition an explanation of:

- a) the emergency, stating the urgent nature of the emergency;
- b) the reasons this vendor was selected; and
- c) all details of the agreement made with the vendor.

The Purchasing Agent will review the transaction and process the requisition through normal channels. If goods or services have been ordered or received, no purchase order will be issued. The requisition will be submitted to the appropriate director for review.

Emergency procedures may be utilized only to purchase the goods or services necessary to address the emergency. Subsequent requirements shall be obtained using normal purchasing procedures. The emergency

purchase procedure is not intended to be used to cover inadequate planning or control or to by-pass the normal procedure.

The Authority shall issue a written notice stating that the contract is being awarded on an emergency basis, identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted on the Authority website.

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F. 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. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file. The public body shall issue a written notice stating that the contract is being awarded on an emergency basis, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted on the Department of General Services' central electronic procurement website or other appropriate websites, and in addition, public bodies may publish in a newspaper of general circulation on the day the public body awards or announces its decision to award the contract, whichever occurs first, or as soon thereafter as is practicable. Posting on the Department of General Services' central electronic procurement website shall be required of any state public body. Local public bodies are encouraged to utilize the Department of General Services' central electronic procurement website to provide the public with centralized visibility and access to the Commonwealth's procurement opportunities.

## **XVII. USE OF STATE AND OTHER COOPERATIVE CONTRACTS AND JOINT PROCUREMENTS**

The Authority may participate in, sponsor, conduct, or administer a joint procurement agreement on behalf of or in conjunction with one or more other public bodies, or public agencies or institutions or localities of the several states, of the United States or its territories, the District of Columbia, the U.S. General Services Administration, or the Metropolitan Washington Council of Governments, for the purpose of combining requirements to increase efficiency or reduce administrative expenses in any acquisition of goods, services, or construction (VPPA § [2.2-4304.A](#)).

The Authority may from time to time participate in, sponsor, conduct, or administer a cooperative procurement agreement with one or more public bodies for reasons of efficiency and/or cost savings in accordance with the VPPA § [2.2-4304.B](#).

The most commonly used cooperative contracts are state contracts, including:

- 1) [Virginia State Contracts](#);
- 2) [Virginia Information Technology Agency Contracts](#);
- 3) Virginia Office of Fleet Management [Fuel Programs](#);
- 4) [Division of Engineering and Buildings](#); and
- 5) Other Virginia localities and authorities.

The Authority may purchase from another public body's contract or from the contract of the Metropolitan Washington Council of Governments or the Virginia Sheriffs' Association even if it did not participate in the request for proposal or invitation to bid, if the request for proposal or invitation to bid specified that the procurement was a cooperative procurement being conducted on behalf of other public bodies, except for:

- a) contracts for architectural or engineering services; or
- b) construction, except for the installation of artificial turf and track surfaces, including all associated and necessary construction, which shall not be subject to the limitations prescribed in this subdivision.

Consistent with applicable federal regulations and provided the terms of the contract permit such purchases, the Authority may purchase goods and nonprofessional services from a U.S. General Services Administration contract. The [GSA Cooperative Purchasing Program](#) makes available GSA Schedules 70 and 84. GSA Schedule 70 is available for the acquisition of Information Technology goods and services and Schedule 84 contracts are available for the acquisition of security, fire and law enforcement equipment. Note that some GSA contracts are pre-qualification lists with the direction to compete amongst those vendors that have been prequalified, so a procurement process may still be required. Follow the direction of the specific GSA schedule.

If a vendor recommends a cooperative contract to you, the Purchasing Agent should be consulted to ensure the contract is in compliance with all legal requirements and can be used by the Authority.

The Authority will generally be responsible for contracting directly with the vendor under cooperative contracts.

## **XVIII. PURCHASE REQUISITION**

A requisition is a request for goods or services necessary for the day to day operation of a department. It is to be filled in COMPLETELY as shown below and sent to Purchasing. Be sure you allow adequate time for processing, ordering and shipping. The requisition is used to collect all information to support the issuance of the Purchase Order described in Section XX.

All purchases over \$10,000 must be placed on a purchase requisition. Requisitioned purchases are reviewed for appropriateness, required approvals, and funds availability.

All requisitions must be approved by the department director, their delegate or the Purchasing Agent before a purchase order is prepared:

- 1) Director of Administration/Finance, approving director for:
  - a) Administration Department; and
  - b) Information Systems Department
- 2) Director of Engineering and Maintenance, approving director for:
  - a) Engineering Department; and
  - b) Maintenance Department
- 3) Director of Operations, approving director for:
  - a) Laboratory Department;
  - b) Wastewater Department; and
  - c) Water Department
- 4) Executive Director, approving director for:
  - a) Solid Waste Operations; and
  - b) Recycling Operations

### **Purchase Requisition Instructions:**

- 1) **Requester:** person to contact for further information
- 2) **Date:** date requisition is completed
- 3) **For:** facility and what used for or on
- 4) **Budget Acct:** account from which payment is to be made
- 5) **Vendor Information:** if you have received quotes and selected a vendor put all pertinent information on the selected vendor – legal name, address, contact name, phone number, fax number and email address. If this has been purchased from a vendor before, if you know where it's available or if you've talked about it to a particular vendor, put that vendor's name here or list under Vendor Research below or attach a separate sheet.
- 6) **Vendor Data:** indicate the appropriate box and provide detail if either Only Source or Best Vendor (and not the lowest cost) and provide reasons under Vendor Research or attach an additional sheet.
- 7) **Quantity:** how many of what unit such as each (ea), dozen (dz), pounds (lbs), square feet (sf), square yards (sy) etc.
- 8) **Part number:** any identification, from catalog, parts list, manual or the like. Indicate source of information. If known provide the serial number here.
- 9) **Description:** Fill in with the most complete description possible including size, color, manufacturer, model number, special requirements.

- 10) **Unit Cost:** price per unit
- 11) **Total Cost:** total cost for that line item
- 12) **Vendor Research:** If you have received quotes and selected a vendor put all pertinent information on the selected vendor and information on the solicitations and, if applicable, attach all written quotes. If Purchasing is soliciting bids/proposals and this has been purchased from a vendor before, if you know where it's available or if you've talked about it to a particular vendor, put that vendor's name here. If there are multiple possible sources available attach a separate sheet
- 13) Approved, Verified, Purchase Order # and date will be completed by the Purchasing Agent

Confirming requisitions are to be used after an emergency purchase of goods or services.

## **XIX. SPECIFICATIONS**

### **Purpose**

To describe as completely and accurately as reasonably possible the goods or services required and to allow purchase of those goods or services on a competitive basis with the goal that the Authority receives the best value for the level of quality required.

The Virginia Public Procurement Act [§2.2-4300](#) (C) requires “that specifications reflect the procurement needs of the purchasing body rather than being drawn to favor a particular vendor” and that “all procurement procedures be conducted in a fair and impartial manner” and “that rules governing contract awards be made clear in advance of competition”. Specifications must be written to allow for competitive bids and not to arbitrarily exclude a particular firm or product. They're written so as to promote competition.

### **Preparation**

Specifications are developed by purchasing staff with the assistance of the other Authority staff, vendors, other agencies, and other resources. Contact with prospective contractors is allowed to learn industry capabilities but care must be taken to not use information provided to create a proprietary non-competitive specification. Also, no person who, for compensation, prepares an Invitation to Bid or Request for Proposal for or on behalf of the Authority shall:

- 1) submit a bid or proposal for that procurement or any portion thereof; or
- 2) disclose to any bidder or offeror information concerning the procurement which is not available to the public.

However, the Authority may permit such person to submit a bid or proposal for that procurement or any portion thereof if Authority, in writing, determines that the exclusion of such person would limit the number of potential qualified bidders or offerors in a manner contrary to the best interests of the Authority (*Code of Virginia*, [§ 2.2-4373](#)).

Specifications and purchase descriptions shall state Authority needs in a manner designed to promote full and open competition or maximum practicable competition based on the nature of the goods and services including construction being procured.

To the maximum practicable extent requirements should be stated in terms of:

- 1) functions to be performed;
- 2) performance required; or
- 3) essential physical characteristics.

Requirements should be defined in terms that enable and encourage the offer of commercial items to the extent that commercial items that meet Authority needs are available.

The Authority may describe a requirement by use of a brand name. Unless otherwise provided in the solicitation, the name of a certain brand, make or manufacturer does not restrict bidders to the specific brand or manufacturer named. The brand name description shall be used only when adequate specifications or a more detailed purchase description cannot be reasonably employed. When using a brand name or equal purchase description, the description shall also list the salient characteristics and minimum acceptable features. Restrictive provisions or conditions may be used only to the extent necessary to satisfy Authority needs. Any article that the public body in its sole discretion determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. If the Authority justifies, in writing, use of a brand name only specification, then state as “brand name-no substitute.”

## **XX. PURCHASE ORDER**

The purchase order is a legal contract between the Authority and the vendor specified to deliver the goods or services. The vendor is to deliver the goods or services specified at the quoted prices and the Authority is obligated to pay the amount shown in the time specified.

A purchase order is prepared from an approved requisition (see Section XVII.) after all necessary information has been obtained by one of the purchase methods previously outlined and after the availability of funds has been verified. Purchase orders are assigned by the Purchasing Agent or Accounts Payable/Purchasing Technician and are valid only when signed by the Purchasing Agent or his/her designee.

The purchase order is distributed as follows:

- 1) **Vendor Copy**: This is the vendor's authorization to ship as specified.
- 2) **Purchasing Copy**: Retained in Purchasing as permanent record. Provides reference for order, record of receipt and vendor performance. Filed after completed with all associated documents in completed purchase order history files.
- 3) **Requestor Copy**: Sent to using agency for their records. Should be checked against requisition immediately upon receipt to insure that goods or services ordered are as requested. To be used as reference when receiving and inspecting goods or approving service performance. It is also to be used to acknowledge receipt of the goods or performance of the service and returned for payment processing with packing tickets attached to ultimately be filed in vendor files

Confirming purchase orders are used to document orders that were placed by telephone to help ensure speedy delivery and are so marked to avoid duplicate orders. Purchase orders can have attached agreements with additional terms over the standard form purchase order or specifications detailing the services or goods to be provided and are part of the purchase order if referenced.

## **XXI. CHANGE ORDER & CONTRACT MODIFICATIONS**

Any modification in a purchase order or contract requires issuance of a change order. This is legal authorization for the change to be made by the vendor and for the Authority to accept and pay for goods or services that vary from those originally ordered.

To change a purchase order a requisition is required specifying the change required and authorized, whether it be to the quantity, specification or price. The requisition should be clearly marked "Change to Purchase Order Number\_\_\_\_\_". A purchase order is then prepared as before except that it will indicate that it is a change order. The body of the order will explain the purpose of the change order. If a price change is involved it will show an "adjusted net total". It will, in the body, reflect the change made whether to quantity, delivery or price requisition in the case of a purchase order.

Where a formal contract exists, a change order or contract modification request form, with appropriate approvals, is required for the issuance of a change order or contract modification. All change orders and contract modifications must be approved and issued by the Purchasing Agent, Executive Director or the Board of Directors as required below.

ALL CHANGES TO A CONTRACT MUST BE IN WRITING. This provides legal authority for the change and also provides a record of the history of the delivery/performance for future reference.

A contract may include provisions for modification of the contract during performance, but no fixed-price contract may be increased by more than the allowable increase specified in the VPPA, § [2.2-4309](#), without the advance written approval of the Board of Directors. This limitation applies to the aggregate change orders in a contract. The term of an existing contract may be extended for services to allow completion of any work undertaken but not completed during the original term of the contract.

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#### **§ [2.2-4309](#). Modification of the contract.**

- A. A public contract may include provisions for modification of the contract during performance, but no fixed-price contract may be increased by more than twenty-five percent of the amount of the contract or \$50,000, whichever is greater, without the advance written approval of the governing body. In no event may the amount of any contract, without adequate consideration, be increased for any purpose, including, but not limited to, relief of an offeror from the consequences of an error in its bid or offer.
- B. Any public body may extend the term of an existing contract for services to allow completion of any work undertaken but not completed during the original term of the contract.
- C. Nothing in this section shall prevent any public body from placing greater restrictions on contract modifications.
- D. The provisions of this section shall not limit the amount a party to a public contract may claim or recover against a public body pursuant to § 2.2-4363 or any other applicable statute or regulation. Modifications made by a political subdivision that fail to comply with this section are voidable at the discretion of the governing body, and the unauthorized approval of a modification cannot be the basis of a contractual claim as set forth in § 2.2-4363.

## **XXII. PROCUREMENT UNDER ASSISTANCE AGREEMENTS**

Procurements funded with federal, state, or local funds, shall be guided by the Purchasing Manual except as necessary to conform to the requirements of the funding source, provided that such conformance does not violate the terms and conditions of other applicable federal, state, or local laws.

Under the Virginia Public Procurement Act, Article 3, Exemptions and Limitation, § [2.2-4343](#) the Authority is authorized to conform to mandatory conditions on Federal grants or contracts that are in conflict with the Act if the Board of Directors determines in writing that such conformation is in the public interest. The specific provision of the Act conflicting with the special conditions shall be identified.

No such conflict is yet apparent in the Environmental Protection Agency's Procurement under Assistance Agreements (40 CFR Part 33) with which the Authority must comply as a condition of receiving EPA State Revolving Loan funds. Therefore, the Agreements are regarded for the purposes of compliance as a part of this Manual. The Agreements in certain circumstances generally place more stringent procurement requirements upon the Authority for certain circumstances than does the Procurement Act.

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#### § [2.2-4343](#). **Exemption from operation of chapter for certain transactions.**

(B) Where a procurement transaction involves the expenditure of federal assistance or contract funds, the receipt of which is conditioned upon compliance with mandatory requirements in federal laws or regulations not in conformance with the provisions of this chapter, a public body may comply with such federal requirements, notwithstanding the provisions of this chapter, only upon the written determination of the governing body, in the case of political subdivisions, that acceptance of the grant or contract funds under the applicable conditions is in the public interest. Such determination shall state the specific provision of this chapter in conflict with the conditions of the grant or contract.

## **XXIII. DISADVANTAGED BUSINESS PROGRAM**

### **Purpose**

By adoption of this program the Authorities affirm their policy to make every reasonable effort to maintain and increase opportunities for small, minority and women owned businesses, micro businesses and businesses owned by service-disabled veterans to participate in Authority purchasing activities.

### **Definitions**

Minority individual means an individual who is a citizen of the United States or a legal resident alien and who satisfies one or more of the following definitions:

- 1) "African American" means a person having origins in any of the original peoples of Africa and who is regarded as such by the community of which this person claims to be a part.
- 2) "Asian American" means a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands, including but not limited to Japan, China, Vietnam, Samoa, Laos, Cambodia, Taiwan, Northern Mariana, the Philippines, a U.S. territory of the Pacific, India, Pakistan, Bangladesh, or Sri Lanka and who is regarded as such by the community of which this person claims to be a part.
- 3) "Hispanic American" means a person having origins in any of the Spanish-speaking peoples of Mexico, South or Central America, or the Caribbean Islands or other Spanish or Portuguese cultures and who is regarded as such by the community of which this person claims to be a part.
- 4) "Native American" means a person having origins in any of the original peoples of North America and who is regarded as such by the community of which this person claims to be a part or who is recognized by a tribal organization.

A minority-owned business means a business that is at least 51% owned by one or more minority individuals who are U.S. citizens or legal resident aliens, or in the case of a corporation, partnership, or limited liability company or other entity, at least 51% of the equity ownership interest in the corporation, partnership, or limited liability company or other entity is owned by one or more minority individuals who are U.S. citizens or legal resident aliens, and both the management and daily business operations are controlled by one or more minority individuals.

A women-owned business means a business that is at least 51% owned by one or more women who are U.S. citizens or legal resident aliens, or in the case of a corporation, partnership, or limited liability company or other entity, at least 51% of the equity ownership interest is owned by one or more women who are U.S. citizens or legal resident aliens, and both the management and daily business operations are controlled by one or more women.

A small business means a business, independently owned and controlled by one or more individuals who are U.S. citizens or legal resident aliens, and together with affiliates, has 250 or fewer employees, or average annual gross receipts of \$10 million or less averaged over the previous three years. One or more of the individual owners shall control both the management and daily business operations of the small business.

A micro business means a certified Small Business under the SWaM Program and has no more than twenty-five (25) employees AND no more than \$3 million in average annual revenue over the three-year period prior to their certification.

Service-disabled veteran means a veteran who (i) served on active duty in the United States military ground, naval, or air service, (ii) was discharged or released under conditions other than dishonorable, and (iii) has a service-connected disability rating fixed by the United States Department of Veterans Affairs.

A service disabled veteran business means a business that is at least 51% owned by one or more service disabled veterans or, in the case of a corporation, partnership, or limited liability company or other entity, at least 51% of the equity ownership interest in the corporation, partnership, or limited liability company or other entity is

owned by one or more individuals who are service disabled veterans and both the management and daily business operations are controlled by one or more individuals who are service disabled veterans.

### **Policy**

The Authorities through their employees and agents shall make reasonable efforts to increase and maintain opportunities for small, minority, micro, service disabled veterans and women owned businesses to participate in Authority purchasing procedures. All such efforts shall be consistent with all local, state, and federal laws and regulations and with the other sections of this Purchasing Manual. Following are examples of actions the Authority shall take to promote purchasing of facilities, equipment, materials, supplies and services from disadvantaged businesses:

- 1) assuring such businesses are included on bidder's lists;
- 2) assuring solicitation of such businesses when appropriate;
- 3) dividing purchases when economically feasible to promote broader participation;
- 4) establishing delivery schedules whenever feasible to encourage broader participation;
- 5) using the services of the Small Business Administration, the Office of Minority Business Enterprise, local professional and business organizations, and other groups to help promote participation of such businesses; and
- 6) requiring prime contractors to take such affirmative action steps when letting subcontracts.

### **Responsibilities**

Responsibilities for development, implementation and management of this program rest with the Purchasing Agent, who shall:

- 1) develop means to ensure inclusion of disadvantaged businesses on Authority bidder lists and to ensure they have open opportunity to compete for purchasing contracts;
- 2) develop and maintain lists of disadvantaged businesses for prime contractor use;
- 3) develop a system to monitor program effectiveness;
- 4) plan and conduct training seminars as necessary for disadvantaged businesses; and
- 5) participate when able to in small and/or minority, service-disabled veteran or female owned business purchasing exhibitions.

### **Procedures**

Authority purchasing staff shall follow these procedures as a minimum effort to implement this program:

- 1) provide copies as requested of RFP's and IFB's;
- 2) remain open and cooperative in answering questions regarding the program;
- 3) encourage disadvantaged businesses to compete for Authority purchases; and
- 4) review bid and proposal specifications to ensure they protect the Authority's interests and conform to legal requirements without unnecessarily restricting disadvantaged firms from bidding or proposing.

## **XXIV. DISPOSAL OF SURPLUS PROPERTY**

From time to time the Authority may choose to dispose of surplus property that is either in excess of requirements, no longer used, obsolete, worn out, or scrapped. The Purchasing Agent shall use his/her best judgment to dispose of surplus property by one of the following means:

Surplus materials means personal property including, but not limited to, materials, supplies, equipment, and recyclable items, but does not include property as defined in *Code of Virginia*, § [2.2-1147](#) (real property or real estate), that is determined to be surplus.

Surplus property must be handled carefully and stored properly, in a manner that minimizes breakage or damage from rough handling, improper stacking, excessive wear, or inappropriate storage outside that exposes property to weather, or any other poor storage condition. Surplus property, including recyclable materials, shall NOT be taken for personal use or personal sale by any Authority employee.

### **Methods of Disposal**

**Sales/Transfers to Governmental Institutions:** Sales may be made to governmental entities at the item's fair market value. Occasionally, a no-cost transfer is appropriate, for example, to facilitate a cooperative program between governmental institutions. Donations of surplus property may be utilized for items which remain unsold after a public sale or when the cost of handling the sale would exceed expected returns. Donations will only be authorized for governmental entities and non-profits providing services to the local community. A donation or no-cost transfer shall be approved by the Executive Director. Sales to other public bodies are not governed by the VPPA.

**Competitive Sealed Bidding:** Property may be sold by competitive sealed bidding on an individual item or lot basis. Advertisements may be posted on the Authority's Bid Board, in newspapers, web sites, and/or solicitations are sent to persons or firms on bidder's lists maintained by the Purchasing Agent.

**Department of General Services Office of Surplus Property Management:** The Authority is authorized to use the services or facilities of the Commonwealth's DGS/OSPM to dispose of their surplus property, pursuant to the OSPM policies, procedures, and guidelines. For questions or information about the disposal of surplus property contact the Director, DGS/OSPM at (804) 236-3675 or email [statesurplus@dgs.virginia.gov](mailto:statesurplus@dgs.virginia.gov) with a description of their surplus material. Proceeds from the sale of the surplus property shall be returned to the Authority minus a service fee. The service fee charged by the Department shall be consistent with the fee charged by the Department to state public bodies.

**Advertisement for a fixed price:** The sale price shall be at fair market value. Sale shall be advertised to the public and notices may be sent to persons or firms known to be interested in the sale. Procedures must be established for sale on a "first come - first served" basis such as a sale at designated location and specific time when sale shall be open to the public.

**Fixed price sale:** Surplus property may be offered to the public at a set- or fixed-price with approval of the Executive Director. The sales price of an item is based on known sales experience and/or assessed current market value. Generally, set-price sales should be publicly advertised at least a week in advance including the procedures established for the sale.

**Negotiated Sale:** Under exceptional circumstances, surplus property may be sold through negotiation, such as when property has not been sold despite efforts of public sales, or where timely removal from the department's premises is crucial.

**On-line Public Auctions:** Property may be sold through internet on-line auctions, which generally allows items to remain at the Authority while posted for sale. Surplus items may be sold through a contracted on-line auction vendor or through the Commonwealth's DGS/OSPM Division which has contracted with a vendor for on-line auction sales.

**Live Public Auction:** A live advertised public auction may be conducted if sufficient surplus property exists and the value is sufficient to justify the expenses and labor including the fee paid for advertising and an auctioneer. The auctioneer should be obtained using the required procurement procedures based on the expected fee or through an available cooperative agreement.

**Recycling:** Recycling of eligible unsold surplus property such as computer monitors, large amounts of surplus paper products, etc. is strongly encouraged.

**Spot Bid:** For the disposal of scrap materials such as aluminum, steel, brass, copper wire, etc., the spot bid procedure may be used for selling items. This procedure involves contacting buyers on an informal basis to determine the best price under the current market conditions. Use of this method streamlines the disposal effort and eliminates storage of items until a sufficient quantity is available for competitive sealed bidding. The Spot Bidding procedure is also authorized for the Authority's sale of recyclable material received at solid waste centers including the McIntire Recycling Center.

**Trade-ins:** Obsolete, worn out, inactive, or uneconomical operating equipment may be traded in on the purchase of new equipment. Trade-in procedures should not be used if the monetary allowance offered is substantially below the known current sales price less expected administration costs associated with other disposal options. Items for trade-in must be fully described on the requisition and purchase order with the trade-in allowance shown on the purchase order. Authority property may not be used as credit on future purchases or to pay for a service provided to the Authority.

**Computers and other information technology (IT) Assets including copiers:** The state has a contract available to public bodies for the provision of Secure Data Destruction and Recycling Services available on the Virginia Information Technology (VITA) website. Prior to the disposal, regardless of the method used, sale, trade, recycling or any other transfer of computers or other IT assets, the Purchasing Agent must ensure that all hard drives or other sources of secure data or any other confidential Authority data or personal identifying information of employees have been removed.

**Disposition and Accountability of Federally Funded Property:** Disposition of any material or equipment purchased with Federal Funds must be accounted for in accordance with current Federal regulations.

**Purchases by Authority Employees and Their Families.**

Except within the limits noted below, the *Code of Virginia*, § [2.2-3100](#) of the Conflict of Interests Act prohibits employees and their immediate family from engaging in certain transaction with a public employer, including purchasing surplus property valued at over \$500. An employee's immediate family includes a spouse, children, parents, brothers and sisters, and any other person living in the same household as the employee. A \$500 limit to purchasing surplus property applies to surplus property sales, such as auctions or internet sales even if the buyer works for a different agency than the selling agency unless the property is purchased in any sale of surplus property at uniform (fixed) prices that are available to the public. Employees of the Authority should not purchase property if they influence the maintenance, surplus designation, pricing or disposition of the property item.

## **XXV. DEBARMENT OF PROSPECTIVE CONTRACTORS**

### **General**

The Purchasing Agent may, in the public interest and consistent with § [2.2-4321](#) of the VPPA, Debarment, debar a prospective contractor (including a prospective subcontractor, supplier, insurer or surety) for any of the causes listed in section 1 below, using procedures described in section 2. The existence of a cause for debarment under section 1, however, does not necessarily require that the contractor be debarred. The seriousness of the contractor's acts or omissions and any mitigating factors should be considered in making any debarment decision. When debarment occurs, such debarment shall be considered to be just cause for cancellation of any existing contracts held by the person or business debarred.

#### **1) Causes**

The purchasing agent may, after consulting with the Authority's attorney, debar a prospective contractor for any of the following causes:

- a) Conviction of, or civil judgment establishing the contractor's:
  - i. commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public contract or subcontract;
  - ii. commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property;
  - iii. commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of the prospective contractor;
  - iv. failing to disclose a condition constituting a conflict of interest by any officer, director, owner, partner, or agent of the vendor in a contract or purchase order awarded by Authority;
  - v. conviction under state or federal antitrust statutes arising out of the submission of bids or proposals; or
  - vi. conviction of any officer, director, owner, partner, or agent of the vendor of any criminal offense involving public contracting.
- b) Violation of the terms of a government contract or subcontract so serious as to justify debarment, such as (but not limited to) willful failure to perform in accordance with the terms of one (1) or more contracts, or a history of failure to perform, or of unsatisfactory performance of one (1) or more contracts.
- c) Debarment by a federal, state or local government, a public authority, or other agency or entity subject to public procurement laws and requirements.
- d) Any other cause of so serious or compelling a nature that it affects the present responsibility of a government contractor or subcontractor.

#### **2) Debarment Procedures**

The following procedures governing the debarment decision-making process are designed to be as informal as practicable, consistent with principles of fundamental fairness:

- a) Notice to contractor.
  - i. Debarment shall be initiated by advising the prospective contractor, by hand-delivery or by certified mail, return receipt requested, that debarment is being considered. Such notice shall include the reasons for the proposed debarment in terms sufficiently detailed to put the contractor on notice of the conduct or transaction(s) upon which the debarment is based, and shall identify the specific period of debarment under consideration. Unless a response is received from the prospective contractor within ten (10) working days of the date of this notice, the Purchasing Agent's decision shall be

final. For the purposes of this subsection the "date of the notice" shall be deemed to be the date on which the notice is hand-delivered to the contractor or is deposited in the United States Mail.

- b) Opportunity of contractor to respond.
  - i. The prospective contractor or his authorized representative may submit to the purchasing agent, in writing, and within ten (10) working days of the date of the notice described in subparagraph 3(a), any information or argument that the contractor deems relevant to the proposed debarment, including, without limitation, any specific information that raises a genuine dispute as to a fact that is material to the purchasing agent's findings or conclusions. Following timely receipt of information from the contractor, the purchasing agent shall review the proposed debarment and shall, within ten (10) working days thereafter, render a final determination. During the ten-day review period, the prospective contractor shall provide the purchasing agent with such additional information as he may request in order to complete his review of the proposed debarment.

**3) Appeals**

A decision to debar or suspend shall be final and conclusive, unless the debarred or suspended person within five (5) working days after receipt of the decision protests the decision in writing to the Executive Director. The Executive Director shall issue a decision in writing within ten (10) working days after receipt of the protest stating the reasons for the action taken. This decision shall be final unless legal action as provided for in § [2.2-4364](#) Code of Virginia is taken within ten (10) working days of the Executive Director's decision.

**2) Notice of Decision**

A copy of the decision to debar or suspend shall be mailed or otherwise furnished immediately to the debarred or suspended person, with a copy to the Executive Director.

**3) Period of Debarment**

A debarment shall be and remain effective for a period commensurate with the seriousness of the cause, as determined by the purchasing agent in his discretion, but shall not exceed three (3) years or for the length of the contract upon which debarment is based, whichever is longer.

## **XXVI. VENDOR APPEALS PROCEDURE**

While the Authority is authorized in § [2.2-4365](#) of the VPPA, to “establish an administrative procedure for hearing (i) protests of a decision to award or an award, (ii) appeals from refusals to allow withdrawal of bids, (iii) appeals from disqualifications and determinations of non-responsibility, and (iv) appeals from decisions on disputes arising during the performance of a contract, or (v) any of these” the Authority has determined that the Virginia Public Procurement Act and the courts provide adequate review and remedies of Authority procurement practices. Therefore, no other administrative appeals procedure has been established.

**Any inquiring vendors should be directed to the Virginia Public Procurement Act, Article 5, Remedies, and their contract or purchase order if applicable.**

## XXVII. GLOSSARY OF COMMONLY USED TERMS

### **available funds**

The term Available Funds means that the authority has or shall have the funds available for the project. This includes existing approved budget and additional funds approved by the Authority for potential use prior to entering into negotiations with the lowest responsible bidder

### **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.

### **brand name or equal specification**

A specification limited to one or more items by manufacturers' names or catalogue numbers to describe the standard of quality, performance, and other salient characteristics needed to meet requirements and which provides for the submission of equivalent products.

### **business**

Any type of corporation, partnership, limited liability company, association, or sole proprietorship operated for profit.

### **change order (unilateral)**

A written order signed and unilaterally issued by the Authority directing any contractor to make changes which the "changes" clauses of the contract authorizes the Authority to order without the consent of the contractor.

### **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.

### **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 bidding**

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

### **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;

### **contract**

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.

### **contract modification**

Any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provision of any contract accomplished by mutual action of the parties of the contract.

### **contractor**

Any person having a contract with the Authority.

### **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.

### **direct or indirect participation in procurement process**

Involvement through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity.

### **disadvantaged business**

A business which is owned or controlled by a majority of persons, not limited to members of minority groups, who have been deprived of the opportunity to develop and maintain a competitive position in the economy because of social disadvantages.

### **F.O.B. (free on board)**

Term designating ownership of shipped goods and assigning liability for freight costs and damaged or lost goods. Most commonly used are:

- a) *Shipping Point* - Prepay and Add: title of goods passes to buyer when goods leave vendors' dock, buyer is liable for loss or damage in transit; seller pays freight costs and adds to invoice
- b) *Destination* - Prepaid and allowed: title passes to buyer upon receipt; seller is liable for loss or damage in transit; seller pays freight costs; preferred

### **governing body**

The Board of Directors.

### **immediate family**

A spouse, children, parents, brothers and sisters, and any other person living in the same household as the employee.

### **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.

**invitation for bids**

A document, containing or incorporating by reference the specifications or scope of work and all contractual terms and conditions, that is used to solicit written bids for a specific requirement for goods or nonprofessional services.

**late bid or proposal**

A bid or proposal which is received at the place designated in the Invitation for Bids or Request for Proposals after the deadline established by the solicitation.

**liquidated damages**

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

**minority individual:**

an individual who is a citizen of the United States or a non-citizen who is in full compliance with United States immigration law and who satisfies one or more of the following definitions:

- a) "African American" means a person having origins in any of the original peoples of Africa and who is regarded as such by the community of which this person claims to be a part.
- b) "Asian Americans" means a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands, including but not limited to Japan, China, Vietnam, Samoa, Laos, Cambodia, Taiwan, Northern Marinas, the Philippines, a U. S. territory of the Pacific, India, Pakistan, Bangladesh or Sri Lanka and who is regarded as such by the community of which this person claims to be a part.

c) "Hispanic American" means a person having origins in any of the Spanish speaking peoples of Mexico, South or Central America, or the Caribbean Islands or other Spanish or Portuguese cultures and who is regarded as such by the community of which this person claims to be a part.

d) "Native American" means a person having origins in any of the original peoples of North America and who is regarded as such by the community of which this person claims to be a part or who is recognized by a tribal organization.

**minority-owned business**

Minority-owned business means a business concern that is at least 51% owned by one or more minority individuals or in the case of a corporation, partnership or limited liability company or other entity, at least 51% of the equity ownership interest in the corporation, partnership, or limited liability company or other entity is owned by one or more minority individuals and both the management and daily business operations are controlled by one or more minority individuals.

**nonprofessional services**

Any services not specifically identified as professional services in the definition of professional services.

**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.

**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.

**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.

**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.

**public body**

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, and empowered by law to undertake the activities described in this chapter.

**request for proposals**

All documents, whether attached or incorporated by reference, utilized for soliciting proposals; the RFP procedure requires negotiation with offerors 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.

**responsive bidder:** A person or firm who has submitted a bid which

conforms in all material respects to the Invitation for Bids.

**services**

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.

**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.

**small business**

An independently owned or operated business by one or more persons who are citizens of the United States or non-citizens who are in full compliance with United States immigration law, which, together with affiliates, has 250 or fewer employees, or average annual gross receipts of \$10 million or less averaged over the previous three years.

**sole source**

A product or service which is practicably available only from one source.

**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.

**SWAM**

The acronym SWAM, includes small businesses, women-owned businesses and minority-owned businesses.

**termination for convenience**

The termination by the owner, 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.

**Virginia Public Procurement Act (VPPA)**

Chapter 43 of Title 2.2, *Code of Virginia*, which enunciates the public policies pertaining to governmental procurement from non-governmental sources.

**women-owned business**

A business concern that is at least 51% owned by one or more women who are citizens of the United States or non-citizens who are in full compliance with United States immigration law, or in the case of a corporation, partnership or limited liability company or other entity, at least 51% of the equity ownership interest is owned by one or more women who are citizens of the United States or non-citizens who are in full compliance with United States immigration law, and both the management and daily business operations are controlled by one or more women who are citizens of the United States or non-citizens who are in full compliance with the United States immigration law.