OLD DOMINION UNIVERSITY

DEPARTMENT OF PROCUREMENT SERVICES

PROCUREMENT MANUAL

REVISED July 2023

Table of Contents

VISION, MISSION AND VALUES OF THE PROCUREMENT SERVICES DEPARTMENT 4
Our Vision 4
Our Mission 4
Our Values 4
CHAPTER ONE: PROCUREMENT AUTHORITY AND RESPONSIBILITY 5
1. Overview 5
CHAPTER TWO: PROCUREMENT OVERVIEW 7
I. Background 7
II. PROCUREMENT Cycle 8
CHAPTER THREE: SUPPLIER DIVERSITY/SWaM 9
Compliance 9
CHAPTER FOUR: eVA BUSINESS PLAN 10
1. PURPOSE 10
2. BUSINESS RULES 10
CHAPTER FIVE: PURCHASING CARD (PCard) ADMINISTRATION 14
Purpose 14
A. Commonwealth Program 14
B. Administration 14
C. Use of Commonwealth's Program 14
D. PCard Policy and Procedures 14
CHAPTER SIX: REQUISITIONS 15
CHAPTER SEVEN: SPECIFICATIONS 16
1. Definition 16
2. Responsibility for Development of Specifications 16
3. Types of Specifications 16
CHAPTER EIGHT: SOURCES OF SUPPLY 19
1. GENERAL 19
CHAPTER NINE: METHODS OF PROCUREMENT 21
1. LEGISLATIVE REQUIREMENTS: 21
2. METHODS OF PROCUREMENTS 21
CHAPTER TEN: COOPERATIVE PURCHASING 27
1. Authority ("Rules" §6) 27

CHAPTER ELEVEN: CONTRACT ADMINISTRATION 29
CHAPTER TWELVE: CONTRACT TYPES AND PRICING ARRANGEMENTS 30
CHAPTER THIRTEEN: REMEDIES, PROTESTS AND DISPUTES 32
II. Ineligibility 32
III. Appeal of Denial of Withdrawal of Bid 32
IV. Determination of Non-responsibility 33
V. Protest of Award or Decision to Award 34
VI. Effect of Appeal Upon Contract 35
VII. Stay of an Award During Protest 35
VIII. Contractual Disputes 35
IX. Legal Actions 36
X. Administrative Appeals Procedure 37
XI. Alternative Disputes Resolution 37
CHAPTER FOURTEEN: SURPLUS PROPERTY 38
1. DISPOSALS & SURPLUS PROPERTY 38
CHAPTER FIFTEEN: ETHICS IN PROCUREMENT 40
1. Ethics in Procurement 40
CHAPTER SIXTEEN: FREEDOM OF INFORMATION ACT (FOIA) 42
GLOSSARY / DEFINITIONS 43
ANNEXES 52

VISION, MISSION AND VALUES OF THE PROCUREMENT SERVICES DEPARTMENT

Our Vision is to be a world class Procurement Services organization and a trusted partner who delivers outstanding customer service, fosters collaborative relationships, and provides significant value in all procurement related efforts.

Our Mission is to provide timely, innovative, value-added procurement and property control solutions to our Customers through collaboration and strategic planning while continuing to be responsible stewards of Commonwealth and university resources as well as customer service focused to deliver solutions that add value and streamline business processes to support the University's goals and initiatives.

Our Values are:

Integrity. - Consistently honest and fair conduct in business and personal dealings.

Professionalism. - Maintaining an attitude that promotes and reinforces positive interactions conducive to producing quality work.

Customer Service. - Anticipating, meeting, and exceeding customer needs.

Legality. - Adherence to the law in all decisions.

Accountability. - Taking personal responsibility for what we do to ensure that our actions reflect the best interests of the University.

The Department of Procurement Services embraces the NIGP Code of Ethics and the ODU Code of Ethics.

CHAPTER ONE: PROCUREMENT AUTHORITY AND RESPONSIBILITY

1. OVERVIEW

The Procurement Services Procurement Manual identifies policies which govern the procurement of goods, services and construction for the University. The purpose of this manual is to provide guidelines for the University in carrying out the procurement of goods, services and construction for the University.

Old Dominion University is governed by *Subchapter 2 of the Restructured Higher Education Financial and Administrative Operations Act, § 23-38.88 et seq. of the Code of Virginia and Chapters 824 and 829, Acts of Assembly, 2008, specifically the Rules Governing Procurement of Goods, Services, Procurement and Construction by a Public Institution of Higher Education ("Rules"), the Memoranda of Understanding between the University and the Commonwealth.*

The Executive Director for Strategic Sourcing & Payment Solutions shall have such procurement authority as delegated by the President to the Vice President of Administration and Finance in accordance with *University Policy 1500 – Authority for Signing Contracts.*

A. Delegated Authority:

i. *General Purchases*

The Executive Director for Strategic Sourcing & Payment Solutions will have the unlimited authority to execute purchase orders for (a) goods and services, (b) non-capital construction, (b) blanket and term contracts for goods and services, and (d) hotel accommodation and related service agreements.

The Executive Director for Strategic Sourcing & Payment Solutions will have authority to execute formal contracts for (a) goods and services, (b) non-capital construction, and (c) blanket and term contracts for goods and services that do not exceed $500,000.

ii. *Capital Construction*

The Executive Director for Strategic Sourcing & Payment Solutions will have authority to execute capital construction and Architectural and Engineering Services contracts that do not exceed $500,000.

iii. *Sole Source and Emergency Procurements*

The Executive Director for Strategic Sourcing & Payment Solutions will have authority to execute sole source and emergency contracts that do not exceed $500,000.

iv. *Revenue Contracts*

The Executive Director for Strategic Sourcing & Payment Solutions will have authority to execute revenue contracts and contracts that involve signing bonuses and/or rebates where the revenue aspect of the contract is not expected to exceed $50,000.

v. *Change Order and Contract Modifications*

The Executive Director for Strategic Sourcing & Payment Solutions will have authority to execute change orders and/or contract modifications for goods and services that do not exceed 25% of the original contract amount or $50,000, whichever is greater.

B. **Exceptions to Delegation of Purchasing Authority:**

i. The Executive Director for Strategic Sourcing & Payment Solutions may not execute change orders for any Capital Construction or Architecture and Engineering services purchase orders or contracts that involve monetary increase.
ii. The Executive Director for Strategic Sourcing & Payment Solutions may not execute change orders and/or contract modifications that were originally executed by the President or Vice President.
iii. The Executive Director for Strategic Sourcing & Payment Solutions may not execute contracts or documents for the conveyance or acquisition of free interests in real estate.
iv. The Executive Director for Strategic Sourcing & Payment Solutions may not execute or obligate the University with respect to employment contracts permanent or temporary University employees.
v. The Executive Director for Strategic Sourcing & Payment Solutions may not execute Lease Agreements or other documents of behalf of Old Dominion University between it, The Virginia College Building Authority, Signet Trust company as Trustee and the Commonwealth of Virginia.
vi. The Executive Director for Strategic Sourcing & Payment Solutions may not execute contracts of behalf of the University to establish special tuition contracts.

B. The Executive Director for Strategic Sourcing & Payment Solutions may re-delegate this authority to those deemed appropriate and in the best interest of the University.

C. Budget Unit Directors may be granted authority as follows:
   i. $5,000 delegated purchasing authority for contract and non-contract purchases. All eVA orders require a departmental expenditure limit approver to address internal controls required for electronic receiving. Departments that have special needs may be granted authority in excess of afore stated limits as authorized by the Executive Director for Strategic Sourcing & Payment Solutions.

D. Purchasing Card (PCard) holders are delegated individual levels of authority, up to the Cardholder's limit, for acquisition of goods and services as described in this manual. (See PCard procedures in Chapter Ten)

All personnel delegated purchasing authority shall be responsible for using that authority in conformance with the University procurement policies and procedures.

The Department of Procurement Services is authorized to procure goods, services, construction, and insurance as required by the University.

The Executive Director for Strategic Sourcing & Payment Solutions is responsible for the interpretation of this Manual.

CHAPTER TWO: PROCUREMENT OVERVIEW

I. BACKGROUND

The legislative provisions and requirements for the "Rules", and the "VPPA" (Chapters 43 and 43.1) governing the University's procurements and processes require that the University shall:

A. Seek competition to the maximum practical degree while also considering the complexity and type of procurement method chosen for procurement transaction, the term of the resulting contract(s) and the likely extent of competition;

B. Conduct all procurements in an open, fair, and impartial manner and avoiding any impropriety or the appearance of any impropriety;

C. Make procurement rules clear in advance of any competition;

D. Provide access to the University's business to all qualified vendors, firms, and contractors, with no potential bidder or offeror excluded arbitrarily or capriciously, while allowing the flexibility to engage in cooperative procurements and to meet special needs of the University;

E. Ensure that specifications for purchases are fairly drawn so as not to favor unduly a particular vendor; and

F. Provide for the free exchange of information between the University, vendors, firms, or contractors concerning the goods or services sought and offered while preserving the confidentiality of proprietary information.

II. PROCUREMENT CYCLE

The general flow is outlined below describing the roles of the Department and Procurement Services though-out the procurement cycle. As deemed appropriate or as necessary, the various roles and responsibilities may change.

Campus Requesting Department

- Recognizes the need for goods/services
- Ensures adequate funds are budgeted
- Develops specifications/statement of needs for the goods/services
- Submits a requisition to Procurement Services if the need exceeds the Department's delegated purchasing authority.

Procurement Services

- Reviews specifications for completeness and accuracy
- Determines the procurement method
- Solicits, evaluates, and negotiates as allowed, quotations, bids or proposals and makes an award
- Issues a Purchase Order and/or contract

Campus Requesting Department

- Administers the contract in accordance with the contract requirements, including specifications/statement of needs, terms and conditions and pricing
- Completes electronic receiver in Banner (eReceiver) in a timely manner facilitate prompt payment to vendor
- Administers the contract in compliance with the University's Contract Administration Policy and Procedures

Procurement Services

- Re-allocates or disposes of surplus equipment.

CHAPTER THREE: SUPPLIER DIVERSITY/SWaM

The University develops and submits a University Small, Woman-Owned and Minority-Owned (SWaM) Plan on an annual basis. The plan is approved by the President or designee and is submitted to the Commonwealth's Department of Small Business and Supplier Diversity. All individuals with procurement authority shall comply with the University's SWaM Plan.

Prior to the issuance of any purchasing authority, eVA and/or the PCard, employees must complete an online SWaM Training located on the Procurement Services website. The purpose of the Commonwealth's and Old Dominion University SWaM program is to increase opportunities, participation and contract awards for Department of Small Business and Supplier Diversity (DSBSD) certified SWaM businesses in support of the Commonwealth of Virginia's SWaM goals. Old Dominion University submits an annual SWaM Plan to the Commonwealth of Virginia. The University's performance against its SWaM Plan is monitored by the state and compliance with the plan can directly affect the University's level of purchasing authority. The most recent SWaM Plan can be found on the SWaM page of the Department of Procurement Services website.

While the University's direct purchases with DSBSD registered SWaM vendors are counted toward our SWaM goal, the SWaM spend by University subcontractors is also reportable. The University developed and utilizes language that requires offerors to provide their plan of intent to utilize SWaM businesses during the performance of the contract. This information is required with proposal submittals or as requested by the procurement officer. No contract will be awarded unless this information is provided as specified and/or requested.

The University routinely requests reports of DSBSD SWaM certified subcontractor utilization from contract vendors during the performance of the contract. These reports indicate the amount of spend to SWaM vendors by the appropriate SWaM certification category. Reports are collected by the Department of Procurement Services. The University may deem the vendor to be in breach of contract and may withhold final payment or a part of the retainage should the vendor fail to provide required reports.

Compliance

The University certifies that its policies and procedures comply with the SWaM purchasing regulations and/or guidelines set forth in the *"Rules"* Document, Administrative directives, and Executive Order 35 issued July 2019.

Detailed information regarding the University's SWaM Plan can be found in the SWaM Plan located on the Procurement Services website.

CHAPTER FOUR: eVA BUSINESS PLAN

eVA is the Commonwealth of Virginia's web-based purchasing system designed to enable state agencies, authorities, boards and institutions to solicit and purchase goods and services more efficiently and effectively. As stated in the Board of Visitors Policy 1627 Procurement Reporting Exemptions, the University will utilize eVA as its primary procurement tool supplemented by the PCard and any other approved processes deemed necessary.

1. PURPOSE

eVA is used to maximize efficiency and effectiveness in procurement to the maximum feasible degree; increase spend with Department of Small Business and Supplier Diversity (DSBSD) certified small businesses through the effective use of eVA procurement tools; maximize spend with eVA registered vendors; and maximize spend through term and blanket contracts, i.e., ODU, State and VASCUPP contracts.

2. BUSINESS RULES

- All non-exempt procurement transactions in excess of $5,000, should be entered into eVA.
- Transactions under $500 may be processed via the PA01 form located on the Procurement Services website or the purchasing card (PCard) if allowed per PCard policies.
- Transactions under $5,000 may be processed by decentralized departments via purchasing card (PCard) up to the cardholder's transaction limit if allowable per PCard policies or eVA.
- Campus department users who have been trained in eVA and/or PCard and SWaM compliance have delegated authority to procure goods and services from contract or SWAM certified vendors up to $5,000 via eVA and/or Purchasing card (PCard) up to their approved transaction limit (with exceptions as approved by Procurement Services).
- Procurement Officers are authorized to use independent judgment and analysis and may award purchases to a DSBSD certified micro- business up to $10,000 where available and when prices are fair and reasonable not to exceed 5% of non-SWAM vendor.
- eVA QuickQuote may be utilized for non-exempt, non-contract procurements between $10,000 and $100,000 to increase competition and potential SWaM spend.
- eVA's VBO tools shall be utilized for all non-contract, non-exempt, goods, professional and non-professional services of $100,000 and above.

I. eVA ACCESS AND USE

Individuals can request access to eVA by submitting an eVA Account Request Form signed by their department head/budget unit director. eVA users are able to access eVA using their Midas ID and password and can only perform functions that have been assigned to them. Users are able to initiate a purchase and the purchase will be finalized upon completion of the designated eVA approval flow.

Training for the specific use of eVA is addressed through scheduled training sessions for new eVA users. Training information and user guides are located on the Procurement Services website and refresher training scheduled as needed.

eVA access is not granted until the following criteria are met:

- A completed eVA Account Request Form is received in Procurement Services

- eVA Acceptable Use Acknowledgement Form is received in Procurement Services
- Online SWaM Training has been completed by the person requesting an eVA account
- eVA Training has been completed by the person requesting an eVA account

II. PROCUREMENT RECORDS

All eVA generated procurement records are stored in the eVA system and can be accessed by Procurement Services at any time. Completed eVA transactions are imported into Banner and are accessible to Accounts Payable to support payments to vendors. Electronic receivers are required to be completed via Banner to authorize payments to vendors. Currently, Procurement Services maintains all documents related to formal solicitations, while PCard records are centrally maintained in the end user department.

eVA PO Category Guidelines

All eVA Purchase Orders require the entry of a purchase order (PO) category. Purchase order categories are entered on the "Add Title" screen of the eVA purchase requisition in the PO Category field. PO Categories are based on vendor registration type and/or the eVA exempt category listing. A guide to the appropriate use of PO Categories is listed below.

- **R01 - Routine:** Should be used for all routine purchases with the exception of the exempt categories orders (see Exempt Category List below).
- **S01 - Sole Source:** Should only be used for sole source purchases **greater than $10,000.**
- **E01 - Emergency:** Should only be used for emergency purchases.
- **X02 - Exclusion Exempt:** Should be used for purchases for one of the eVA exempt categories listed below.

Exempt Category List

The following may be processed using the Purchasing Card up to Cardholder's Limit or eVA by issuing an eVA purchase order with an **X02 PO Category**:

1. Purchases made using the DPS statewide contract for Express Delivery Services.
   Example:
   - United Parcel Services – contract #91026
2. Purchases made by a university employee or agent while located in another country and the required goods/services are purchased from a vendor located in that country and the purchased goods/services will be used in the country where they are purchased.
3. Advertisements such as newspapers, magazines, journals, radio, television, etc.
4. Professional organizational membership dues and training classes sponsored by the professional organizations when payment is made directly to the professional organization sponsoring the training classes. (both Budget Unit Director and Dean/Director approval is required for processing organizational membership dues. This is a paper process with manual routing required.)
5. Conference registrations
6. Accreditation fees and academic testing services
7. Individual or group travel and lodging (PCard cannot be used). Group travel over $50, 000 should be entered as R01. This includes Enterprise Rental.
8. Surplus property
9. Exhibition rental fees for exhibitions of historical artifacts or original works of art. (The rental fee may include charges other than the rental of the exhibition, such as transportation costs.)

10. Goods or personal services for direct use by the recipients of programs specified in the *Code of Virginia* §2.2-4345, if the procurement is made for an individual recipient. Contracts and/or spot purchases for the bulk procurement of goods or services for the use of recipients shall not be exempted.
11. Medical (Health Care) Services when the service is provided by a hospital or an individual licensed and authorized by law to engage in the prevention, diagnosis, or treatment of human illness, injury, or physical disability, mental health, mental retardation, substance abuse, or emotional condition. Contracts and purchase orders between the agency or institution and temporary service providers or independent laboratory testing companies are not exempt from purchasing through eVA.
12. Purchases made using the DPS authorized multi-state drug contract
13. Revenue contracts, e.g., scrap, recycling or contracts with $0 payment made by the Commonwealth such as contracted out bookstore services, Food service operations.
    Examples:
    - Aramark – FIN 231354443 for on campus dinning and catering
    - Aramark – FIN 231664232 for food service operations for the Ted Constant Convocation Center
    - Follett Higher Education Group
    - Under Armour – FIN 521990078
14. Government-to-government purchases; other than purchases from mandatory sources (VCE is not considered exempt. VCE should be entered as R01.)
15. Individuals providing instructional services in conjunction with a contract between an institution of higher education, including community colleges, and a local business or industry for non-credit workforce development classes to be provided by the institution of higher education.
16. Purchases made via closed loop systems or automated inventory control systems for items for resale (Drugs (only POS)
17. Intercollegiate athletic event entrance and related fees (e.g., tournament entrance fees)

The following **prepayments** may be processed in eVA:

1. Honoraria
2. Entertainment - speakers, lecturers, musicians, performing artists
3. Intercollegiate athletic game referees, officials, and umpires, etc.

Notes: a. If vendor is an *Individual,* the *Independent Personal Services Certification (IPSC)* form and associated process must be followed.
b. If vendor is a *Company*, the use of the *Standard Engagement Agreement (SEA) will support scope of services and payment* authorization *request.*

The following may be exempt from processing in eVA and should be processed via a Payment Document/Memo Only:

1. Real estate leases
2. Purchases from public auctions (non-electronic)
3. Contracts with commercial fisherman for replenishment, research and stock assessment activities
4. Financing when goods/services procured from one source are being financed by another (i.e., third party) source. The financing exclusion does not apply to lease purchases.
5. Business and/or financial transactions to which public procurement regulations do not apply. Examples include debt service payments, Medicare and Medicaid payments, and child support payments.
6. Award of grants by agencies and institutions to public bodies or tax exempt non-profit charitable organizations. This exception does not apply to the expenditure of grant funds by agencies and institutions for the purchase of goods and/or services (see *APSPM* 13.8e).

7. Public utilities (electric, natural gas, water, sewer)
8. Local funds owned by trust-agent organizations (e.g., student organizations). These funds are non-state and are not owned and controlled by the university. The university's sole responsibility is writing checks out of a local account maintained on behalf of the organization that owns the funds. This exclusion does not include Auxiliary Enterprises.

CHAPTER FIVE: PURCHASING CARD (PCard) ADMINISTRATION

Purpose

The purpose of this chapter is to provide an overview for the use of the Commonwealth of Virginia's Purchasing Card (PCard) Program at Old Dominion University (the University). The guidance identified herein provides information regarding the proper use of the PCard. The PCard provides departmental cardholders with flexibility to conduct small dollar procurement transactions.

A. Commonwealth Program

The Commonwealth of Virginia, through competitive negotiations, has established a purchasing card program for all Commonwealth agencies and institutions, and the use of this program is governed by the Commonwealth Accounting Policies and Procedures (CAPP) Manual and the University's Purchasing Card Policy and Procedures.

B. Administration

It is the responsibility of Procurement Services to develop, implement, monitor, and enforce the policies and procedures governing the use of the Purchasing Card (PCard) Program by Old Dominion University employees. The oversight for this program is provided by the University's PCard Program Administrator, as designated by the Director for Procurement Services.

C. Use of Commonwealth's Program

Purchasing cards may be issued to full or part time classified employees or faculty members of the University. The Cardholder and their respective Supervisor/University department shall assume full and ultimate liability for employees' use of the card and ensuring that all transactions are in compliance with Commonwealth, University and PCard and procurement policies, regulations and procedures.

D. PCard Policy and Procedures

The University PCard Policy and Procedures are located on the Procurement Services website.

PCards are not issued until the following criteria are met:

- A completed PCard application is received in Procurement Services
- PCard online training has been completed is received in Procurement Services
- Online SWaM Training has been completed by the person requesting a PCard as well as their approver/supervisor
- The cardholder has been added to the Signature Authority list for the budget codes they are requesting pcard access
- PCard training has been completed by the person requesting the PCard (It is also recommended that Approvers/Supervisors attend training).

CHAPTER SIX: REQUISITIONS

A requisition is an internal document by which a department provides detailed description (specification) of the requested goods and/or services to Procurement Services. Requisitions must be properly authorized and approved by the budget unit director or designee with signature authority for the budget being charged prior to submitting to Procurement Services or they are returned to the originating department. When a department submits a requisition, they are certifying that the item is budgeted and necessary, and that they will appropriately administer the contract resulting from the requisition.

eVA users:
Prepare and submit purchase requisition (PR) in eVA, regardless of dollar value. Requisitions are processed electronically in eVA through the established approval work flow and can be sent directly to the vendor for purchases under departmental delegated authority. Requisitions submitted over departmental delegated authority roll electronically to Procurement Services for review and final approval.

Non-eVA users:
Provided on an exception basis only, Departments should have an eVA requester. Prepare online requisitions (found on the Forms page of the Procurement Services website) for requests that exceed delegated authority and submit to Procurement Services for processing. Non-eVA users may also utilize the 'Small Purchase Procedure' included in Chapter Nine of this Manual for the purchase of all goods and services $500 or less when the University's PCard for the required goods/services cannot be used.

CHAPTER SEVEN: SPECIFICATIONS

1. DEFINITION

The term, "specification," refers to that portion of a requisition or solicitation that describes the physical or functional characteristics or the nature of a good, service or construction item required by a using agency. It may include a description of any requirement for inspecting, testing, or preparing a good, services or construction item for delivery. A specification may include requirements for samples, prototypes, warranty and packaging. The term specification is often used interchangeably with the terms, "purchase description," "purchase specification," "purchase requirement," "commercial item description," "scope of work," and "statement of work".

2. RESPONSIBILITY FOR DEVELOPMENT OF SPECIFICATIONS

The requesting department has the responsibility for developing applicable specifications for procurement transactions. The purpose of a specification is to identify a user's needs and requirements for requested goods and/or services. Therefore, specifications should be developed to comply with the requirements of the *"Rules"* document which states:

i. Competition be sought to the maximum feasible degree;
ii. Specifications reflect the procurement needs of the purchasing body rather than being drawn to favor a particular

Prior to release of a specification, Procurement Services will provide guidance and must be confident that any subsequent solicitation process will result in a fair and equitable competitive procurement and award.

3. TYPES OF SPECIFICATIONS

There are several types of specifications. The development, selection and use of a particular type is dependent upon the situation, time, information available and needs of the user.

A. PERFORMANCE SPECIFICATIONS: Performance specifications (also known as Functional Specifications) are preferred since they communicate what a product is to do, rather than how it is to be built.

Required performance characteristics

- (minimum/maximum) to include speed, storage, production capacity, usage, ability to perform a specific function;
- Operational requirements, such as limitations on environment, water or air cooling, electrical requirements;
- Site preparation requirements for which the contractor will be responsible, such as electricity, plumbing, or for which the City will be responsible;
- Compatibility requirements with existing equipment or programs;
- Conversion requirements for maintaining a current equipment or system until switching to the new equipment or system;
- Installation requirements;
- Delivery date;
- Maintenance requirements;
- Supplies and parts requirements;
- Quantity and method of pricing;
- Warranty; and
- Service location and response time.

B. **DESIGN SPECIFICATIONS:** Design specifications employ dimensional and other physical requirements and concentrate on how a product is fabricated, rather than on what it should do. Design specifications are normally prepared by architects and engineers for construction or custom manufactured products.

C. **BRAND NAME**: Unless otherwise specified, when a specification includes a manufacturer's brand name or model number, the University may consider alternate brands or models of equal or greater quality. The determination of an equal will be the decision of the University.

D. **SCOPE OF WORK FOR SERVICES**: The following is an outline of the types of information that should be included in a scope of work for procurement of professional or non-professional services:

i. General Requirements. Describe the contractor's responsibility to provide a service or produce a specific study, design or report for the using agency.

ii. Specific Requirements. Address the specific tasks, sub-tasks, parameters and limitations which must be considered in producing the final service, study, design or report. Such factors may include, but not necessarily be limited to following:

- Details of work environment;
- Minimum or desired qualifications;
- Amount of service needed;
- Location of service;
- Definition of service unit;
- Time limitations;
- Travel regulations or restrictions;
- Special equipment required; and
- Other factors affecting working environment.

iii. University Provided Materials or Services. List any plans, reports, statistics, space, personnel, or other University provided items that must be used by the contractor.

iv. Deliverables, Reports and Delivery Dates. Identify the specific delivery dates for all documentation or other products the contractor must furnish. Be clear about the expectations of the University for the Contractor's Performance.

v. Evaluation Criteria. A critical element of any Request for Proposal is the criteria to be used to evaluate the proposals from the offerors. Criteria shall be listed in the order of relative importance. They must be clear and capable of evaluation based on the material presented in the proposals. Following are some acceptable criteria that have been used successfully in the past:

a. Technical approach or technical solution proposed in the offeror's response;
b. Experience of the firm in performing work of a similar scope to that contained in the RFP;
c. Experience of the proposed team/staff in performing work of a similar scope to that contained in the RFP;
   - References;
   - Financial stability and responsibility of the offeror; and
   - Cost of the proposed goods or services.

E. Contact with Vendor

Departments are encouraged to contact and rely on representatives and/or suppliers and manufacturers as sources for assistance and gathering information when developing purchase requirements. However, such assistance shall be considered "normal sales" effort and **shall not** entitle vendor(s) to any preference.

F. Specifications "Do's" And "Don'ts"

DO'S

- Use the word, "shall," to describe a command or mandatory requirement;

- Use the words, "should" or "may," to describe an advisory or optional requirement;
- Be specific and detailed in presenting mandatory requirements; and
- State a requirement of fact once and avoid duplication.

DON'TS

- Present something as mandatory if it is really only optional;
- Write specifications that restrict response to a single bidder/offeror; and
- Place bid/proposal administrative or contractual terms in the specification/scope of services portion of the document.

CHAPTER EIGHT: SOURCES OF SUPPLY

This chapter discusses the sources of supply available to Old Dominion University purchasers. While, as noted below, the University's preferred source of supply is vendors holding current term contracts, other sources are sometimes more efficient or are mandated by law. University purchasers should have a general understanding of their use.

1. GENERAL

The University is required to use those mandatory sources under the conditions outlined herein. While the University encourages the use of the non-mandatory sources identified, it is not required.

It is important that for use of non-mandatory sources, special emphasis is placed on eVA-registered vendors and on SBSD certified small, women-owned and minority-owned businesses.

Reference the ***Mandatory Contract Use Policy*** found on the Procurement Services webpage.

A. Mandatory Sources

i. University Term Contracts:

These terms contracts have been put in place to obtain more favorable pricing, reduce lead time for processing orders, and reduce overall administrative costs, and ***shall be used*** by University departments unless the department can justify in writing that:

a. The goods and/or services offered do not meet their immediate needs;
b. More favorable pricing can be obtained by either use of another contract or by "spot" quote/solicitation; or
c. The contract vendor cannot satisfactorily provide the goods and/or services within the requested time frame.

Note: The acquisition of term contract goods and/or services from other than the specified contract vendors without the above required justification may result in the requestor and associated department's loss of all decentralized purchasing authority, including the use of the University's Purchasing Card (PCard), if applicable.

Procurement Services policy related to mandatory use of University developed contracts is located on the Procurement Services website.

B. Virginia Correctional Enterprises (VCE):

The University may purchase goods and services produced or manufactured by State correctional facilities, which are supported in whole or in part with State funds, when required to do so by the "Rules" or Memoranda of Understanding. While the University is not required to use Virginia Correctional Enterprises (VCE) as a mandatory source, the University encourages the use of VCE when available above $5,000 per transaction. Departments are encouraged to review cost of existing University and other cooperative contracts for all related goods below $5,000. Information on the goods and services available from VCE is contained in the VCE catalog. Institutions may submit purchase orders directly to Correctional Enterprises or VCE Partnership companies. Institutions with critical needs should contact the Correctional Enterprises, Customer Service.

For related products above $5,000, written releases are required. Written concurrences or "waivers" may be granted by VCE if they do not offer the desired products, do not offer a compatible product, or are unable to meet a reasonable required delivery date. Written waivers may be provided by email transmission, facsimile transmission or formal letter/memo. When written waivers are granted and if it is within the agency's delegated purchasing authority, the procurement be made directly by the requesting department by using the appropriate transaction method. If it exceeds the requesting department's delegated authority, the procurement request shall be forwarded to Procurement Services for processing.

C. **Non-Mandatory Sources**

i. Optional Use Term Contracts

Cooperative Term contracts that may have been established by:

a. VASCUPP institutions
b. DGS/DPS
c. VITA
d. VDOT, or
e. Other governmental agencies, cooperative purchasing consortiums or institutions within their delegated authority.

ii. Nonprofits/Sheltered Workshops

The University may purchase goods and services from nonprofit sheltered workshops without competition.

iii. Used Equipment

For assistance and guidance on the purchase of used equipment, please contact Procurement Services.

D. **SPECIAL APPROVALS**

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

- Capital Outlay Related Services: Department of General Services/Division of Engineering and Buildings.
- Use of charter transportation: Department of Aviation, Secretary of Education
- Software: Reference ODU's IT software review requirements here.
- Tents: Reference Facilities Management Tents, Stages & Amusement guidelines
- Vehicles: Reference Facilities Management Vehicle guidelines

CHAPTER NINE: METHODS OF PROCUREMENT

This chapter shall provide guidance for procurement transactions with nongovernmental contractors, including legislative requirements and the various type methods of procurement.

Procurement Services shall determine the most appropriate methods of procurement based on the requested good and/or services. The individual components for each method of procurement shall be at the discretion of the Procurement Officer and may vary based on the specifications/scope of work and the needs of the department.

1. LEGISLATIVE REQUIREMENTS:

A. All public contracts with nongovernmental contractors for the purchase or lease of goods, or for the purchase of services, insurance or construction, shall be awarded after competitive sealed biding, or competitive negotiation as provided in this chapter, unless otherwise authorized by law.

B. Professional Services shall be procured by competitive negotiation. Qualification-based selection shall be used for design services.

C. Goods, services, or insurance may be procured by competitive sealed bidding or competitive negotiation or any other method not prohibited by law.

D. Construction may be procured only by competitive sealed bidding, except that competitive negotiation may be used in the following instances upon a determination made in advance by the University and set forth in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to the public, which writing shall document the basis for this determination:
   i. By the University on a fixed price design-build basis or not-to-exceed-construction management basis under the VPPA Chapter 43.1 and shall comply with Board of Visitor Policy 1623;
   ii. By the University for the construction, alteration, repair, renovation, or demolition of buildings; or
   iii. By the University for the construction of highways and any drainage, dredging, excavation, grading, or similar work upon real property.

E. Small construction projects less than $3 million, not specifically identified as professional services, may be procured under the methods of procurement for Goods and Services specified in the VPPA, Chapter 43.

2. METHODS OF PROCUREMENTS:

There are seven (7) typical methods of procurement for goods, insurance and nonprofessional services. This section outlines those methods and the requirements, as follows:

A. **Small Purchases:**

i. The *"Rules"* permits the University to establish small purchase procedures, if adopted in writing, not requiring competitive sealed bidding or competitive negotiation for single or term contracts if the aggregate or sum of all phases is not expected to exceed $100,000; however, such small purchase procedures shall provide for competition wherever practicable.

ii. The solicitation methods used for small purchases may be written Request for Quotations and/or Internal Pricing, up to the user's delegated purchasing authority. Internal Pricing is the procurement from existing University contracts, VASCUPP contracts, State contracts, or other cooperative contracts.

iii. The use of the University's PCard shall be encouraged as the preferable small purchasing tool, where applicable, up to the PCard holder's transaction limit if allowable by PCard policy.

iv. Small Purchasing Procedure for the Purchase of Goods and Services $500 or Less:

1. Process transactions via use of the University's PCard whenever possible and practicable; **or,** if not allowable by the PCard policy,
2. Utilize the referenced *Authorization for Purchase (PA01)* form (or other forms as approved by Procurement Services) as follows:
    a. Prepare the PA01 form located on the Procurement Services website for purchases $500 or less. Assign a departmental tracking number and provide the vendor with the tracking number to reference on their invoice.
    b. Upon receipt of goods or services and vendor's invoice, complete the remainder of the PA01 form located on the Procurement Services website ensuring that all information is entered. Submit form and associated invoice to invoice@odu.edu.
    c. Additional guidance related to the use of the PA01 form may be found on the Procurement Services website.
3. Reference the University's Small Purchasing Procedures located on the Procurement Services website.

B. **Competitive Sealed Bidding:**

A formal method of procurement that is often utilized when the goods or services can be clearly specified, the estimated cost is over $100,000 and the award is made based upon the lowest responsive and responsible bidder.

C. **Competitive Negotiation:**

1. A formal method of procurement, typically used for complex or technical goods and services over $100,000 where specifications or scope of work cannot be clearly defined, or when negotiations is advantageous, and contract award is based on evaluation criteria stated in the RFP.
2. Services procured through competitive negotiations fall into two (2) categories: *Professional Services* and *Other Than Professional Services*.
    i. Competitive negotiations shall be used for professional services >$80,000 and may be used for non- professional services above $100,000 as deemed appropriate by Procurement Services.
    ii. Construction services may be procured via competitive negotiations when legislative and University requirements as stated herein have been met**.**
3. **Selection Advisory Committee:**
    a. A Selection Advisory Committee (SAC) may be established when selecting a firm for professional and non-professional service through use of competitive negotiations when the compensation for such services is expected to exceed $80,000 for Professional Services, or $100,000 for non-professional services.
    b. When a SAC is established:
        i. The Executive Director for Strategic Sourcing & Payment Solutions, or designee, shall appoint a SAC to (i) evaluate proposals based on the criteria set forth in the RFP and (ii) make recommendation for award.
        ii. The SAC will be composed of three or more principal staff personnel and other individuals as determined by the Procurement Services Manager or

designee, to include, but not be limited to:

iii. The funding/owner department/school has the authority to recommend committee members, all of which may be voting members. However, funding/owner department/school personnel shall not make up more than fifty percent of the SAC.

iv. The SAC shall be limited to a maximum of seven (7) participants unless otherwise authorized by the Executive Director for Strategic Sourcing & Payment Solutions or designee.

v. The SAC participants shall comply with the Ethics portion of the VPPA/"Rules".

vi. The SAC shall be chaired by the designated Procurement Officer, who too shall have voting rights. All communication, correspondence and conversations regarding the procurement shall remain confidential until after the award.

c. All recommendations from the SAC for short-list of Proposers and/or selection of award shall be forwarded to the designated Procurement Officer for review, and if approved, shall then be forwarded to the Executive Director for Strategic Sourcing & Payment Solutions for final approval to move forward.

D. **Procedures - Professional Services [*"Rules"* §4.3.a., Competitive Negotiation] other than Construction Related:**

a. Proposals received shall be opened at the date, time and place stated in the RFP. This session is open to the public. The names of firms submitting proposals shall be read aloud. No other information shall be provided at that time.

b. Proposals received will be reviewed, evaluated and ranked.

c. The University 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.

d. Repetitive informal interviews shall be permissible.

e. 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.

f. 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.

g. 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, the award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first shall be formally terminated and negotiations conducted with the offeror ranked second, and so on until such a contract can be negotiated at a fair and reasonable price.

Should the University 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.

E. **Professional Services for Capital Outlay or Construction Related Architectural & Engineering Services:**

a. The University will follow the procedures in the VPPA, Chapters 43 and 43.1, as applicable, and the CPSM for procurement of professional services.

b. Working with the Director of Design and Construction, the Executive Director for Strategic Sourcing & Payment Solutions or designee will manage the initial procurement (solicitation, evaluation and award) of these contracts.

c. The Executive Director for Strategic Sourcing & Payment Solutions or designee, will maintain record files of the procurement solicitation, evaluation and award.

d. The Director of Design and Construction will maintain record copies of professional services contract administration documents.

F. **Other than Professional Services [*"Rules" Document* §4.3.b., *Competitive Negotiation*] Excluding Capital Outlay Construction:**

a. Proposals received shall be opened at the date, time and place stated in the RFP. This session is open to the public. The names of firms submitting proposals shall be read aloud. No other information shall be provided at that time.

b. Proposals received will be reviewed, evaluated and ranked.

c. 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 included in the Request for Proposal, including price if so stated in the Request for Proposal.

d. Negotiations shall then be conducted with each of the offerors so selected.

e. Price shall be considered, but need not be the sole determining factor.

f. 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 overall proposal, and shall recommend award the contract to that offeror.

g. Awards may be made to more than one offeror.

h. Should the public body determine in writing and in its sole discretion that only one offeror has made the best proposal, a contract may be negotiated and awarded to that offeror.

G. **Other than Professional Services ["VPPA Chapter 43.1, Competitive Negotiation] for Capital Outlay or Construction:**

a. **Design-Bid-Build:**

i. The Vice President of Administration and Finance or designee may approve the use of Design-Bid-Build.

ii. Working with the Design and Construction and/or Facilities Management, the Procurement Services will procurement process, to include: DOLI request for projects >$250,000, IFB solicitation, evaluation, award, and contract development and execution.

iii. Should proposal prices exceed construction budget, Procurement Services has the authority to negotiate with apparent low bidder, if provision for same was included in the IFB.

iv. The Executive Director for Strategic Sourcing & Payment Solutions or designee shall have the authority to execute all CO-8 Contracts up to $500,000.
v. The Executive Director for Strategic Sourcing & Payment Solutions or designee shall have the authority to execute all associated Change Orders that (i) don't increase cumulative total of contract >$500,000, and (ii) don't exceed 25% of initial contract amount.
vi. All contracts that exceed $500,000, must be executed by the Vice President for Administration and Finance.
vii. All change orders that exceed (i) $500,000 or (ii) exceed 25% of initial contract costs shall be executed by the Vice President for Administration and Finance.

b. **Design-Build (DB) or Construction Management At Risk (CMAR)**

i. The use of an alternative construction delivery method for DB and/or CMAR shall comply with:
   1. the VPPA, Chapter 43.1;
   2. the Secretary of Administration's most recent Alternative Construction Procurement Procedures for DB and/or CMAR;
   3. the most current version of DEB's CPSPM.
ii. Prior to solicitation, a written determination must be submitted to and approved by DEB for use of the Fixed-Price Design-Build (DB) or not-to-exceed Construction Management At Risk (CMAR) method of procurement
iii. The written determination shall include justification to support that use of DB or CMAR is more advantageous to the University.

H. **Sole Source ["Rules" Document §5.E., Methods of Procurement]:**

(a) Upon a determination in writing that there is only one source practicably available for that which is to be procured, a contract may be negotiated and awarded to that source without competitive sealed bidding or competitive negotiation. The writing shall document the basis for this determination.

(b) The University 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.
The public notice for transactions over $200,000 shall be published on the Department of General Services' website for the Commonwealth's central electronic procurement system and may be published on other appropriate websites.

© Procurement Services staff shall make every effort to encourage SWaM participation whenever available.

I. **Emergency Purchases ["Rules" Document §5.F., Methods of Procurement]:**

An emergency is a situation in which (1) an immediate threat to the public health, safety or welfare is involved; (2) or immediate action is required to protect or preserve public properties without delay.

(a) In cases 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.
(b) The University 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.

(c) The public notice for transactions over $200,000 shall be published on the Department of General Services' website for the Commonwealth's central electronic procurement system and may be published on other appropriate websites.
(d) Procurement Services staff shall make every effort to encourage SWaM participation whenever available.

J. **Public Auction [*"Rules" Document* §5.I., *Methods of Procurement*]:**
Upon a determination made in advance by the Institution and set forth in writing 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 writing shall document the basis for this determination.

K. **Reverse Auctioning [*"Rules" Document* §5.J., *Methods of Procurement*]:**
The purchase of goods or nonprofessional services, but not construction or professional services, may be made by reverse auctioning.

CHAPTER TEN: COOPERATIVE PURCHASING

1. AUTHORITY ("RULES" §6)

Old Dominion University is authorized to participate in, sponsor, conduct, utilize, or administer a cooperative procurement arrangement on behalf of or in conjunction with public bodies, public or private health or educational institutions, other public or private organizations or entities, including public-private partnerships, charitable organizations, health care provider alliances or purchasing organizations or entities, or with public agencies or institutions or group purchasing organizations of the several states, territories of the United States, or the District of Columbia, for the purpose of combining requirements to effect cost savings or reduce administrative expense in any acquisition of goods and services, other than professional services.

The Institution may purchase from any authority, department, agency, institution, city, county, town, or other political subdivision of the Commonwealth's contract 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 being conducted on behalf of other public bodies and/or included cooperative contract language. In such instances, deviation from the procurement procedures set forth in these "Rules" and the administrative policies and procedures established to implement these "Rules" shall be permitted.

Notwithstanding all of the above, use of cooperative contracts shall conform to the business requirements of the Commonwealth's electronic procurement system, including the requirement for payment of applicable fees. Nothing herein shall prohibit the payment by direct or indirect means of any administrative fee that will allow for participation in any such arrangement.

A. Procedures

If a Department becomes aware of a cooperative contract that may be of benefit for the University to use, the Department should submit in eVA a Purchase Requisition for the goods or services required. The Requisition should include a quote from the requested vendor to include contract number and associated contract pricing, and a notice to Procurement Services explaining the existence of the contract with as much information as is available to assist Procurement Services with locating the contract and associated documentation. Procurement Services will review request, and as necessary, contact the vendor to secure associated contract documents and agreement to allow the University to use the contract. Procurement Services shall have the final determination for use of any cooperative contract agreements.

If a Department is aware that other institutions are planning to seek bids or proposals for a commodity and/or service that the Department needs, a Purchase Requisition should be submitted with the estimated quantities. The Requisition should contain information to assist Procurement Services in arranging for a combined bid or request for proposal with the other jurisdiction. Sufficient time should be allowed to coordinate the combined bid. Procurement Services shall have the final determination for participation in any solicitation process for cooperative contract agreements.

I. Procurement Officers shall review available statewide contracts (including but not limited to: VASCUPP, DP&S Contracts, VDOT, VITA, DEB, GSA, E&I, etc.) in advance of any solicitation to determine if such contracts meet the business goals and objectives of the University. This requirement shall apply to Old Dominion University Contracts, including but not limited to contracts intended for cooperative use. The solicitation and/or award of a contract or purchase order by an authorized procurement officer shall constitute compliance of this requirement. No further documentation in the contract file is required.

CHAPTER ELEVEN: CONTRACT ADMINISTRATION

Contract administration is the management of all facets of a contract to ensure that all parties' performance is in accordance with the specifications/scope of work, terms and conditions of the contractual agreement including receiving, inspection, and authorization for payment. The integrity of the public purchasing process demands that goods or services be furnished, received, invoiced and paid as specified in the contract.

Contract administration includes all actions taken by the University relative to a specific contract after the award. The Department of Procurement Services should assemble and maintain a master listing of all Old Dominion University term contracts to include the initial period and number of renewals. For assistance with contract administration, contact the Department of Procurement Services at 683-3105.

After issuance of a formal contract award document, which generally results from an RFP or IFB, where deemed appropriate, the Department of Procurement Services will designate a contract administrator(s) in writing. The contract administrator shall be responsible for ensuring that the goods or services are provided in accordance with the terms of the contract. All vendor noncompliance shall be documented and may be reported on a Procurement Complaint Form and submitted to the contractor with a copy to Procurement Services.

Authority and Responsibility for Contract Administration

It shall be the responsibility of Procurement Services to interpret the content of contract administration section stated herein. Departments are responsible for all administrative duties associated with the management of contract(s) assigned. This includes due diligence in all aspects of contract management to include all reporting and financial responsibilities.

For additional assistance and guidance regarding Contract Administration, refer to the Contract Administration policy and associated on-line training posted on the Procurement Services website.

CHAPTER TWELVE: CONTRACT TYPES AND PRICING ARRANGEMENTS

This chapter will provide an overview of the various type contracts and/or delivery methods used for the acquisition of goods, services, insurance and construction. Typically, the customer's specific needs and requirements are the primary elements considered when selecting the applicable contract type and/or delivery method. Procurement Services will provide necessary guidance to its customer's for selection of the appropriate contract type and/or delivery method for each associated procurement transaction.

The type of contract and pricing arrangement will stipulate the type and extent of required administrative efforts. The most widely used is the 'firm fixed-price' contract type, which is typically less costly to administer. It primarily requires proper receiving of the specified goods/services, and verification of the contract pricing components.

The following contract types describe special administrative considerations:

A. Requirements-Type Contracts. Effective administration of open-ended agreements requires that the Department of Procurement Services or designated contract administrator maintain a record of the degree of activity against these contracts verifying the activity is within the scope of the contract and is paid in accordance with the contracted price. Contractor performance and contract expenditure activity should always be examined prior to the exercise of any renewal provision or re-solicitation.

B. Time and Materials Contracts. It is essential that billed costs be analyzed (and challenged when appropriate) prior to approval for payment. There is no incentive for contractors to contain costs when using this type of contract. The University has an obligation to verify the legitimacy and accuracy of any costs submitted for reimbursement. When a time and materials agreement is used, the University must request a detailed job estimate and evaluate the reasonableness of its cost elements before authorizing the work to be performed. If it is determined that the estimate is not reasonable or in accordance with the terms of the contract, negotiations or the solicitation of additional estimates should be considered. Invoices should specify the amount and type of labor that is contained in the contract with the associated rates and the material costs so that verification of contract terms and pricing can be accomplished. The material costs should be supported with documentation as required in the contract (i.e., price list or invoiced cost).

C. Consultant Services. When the services of a consultant are utilized, especially when analysis and research are involved and the contractor's performance results in a written report or other document (i.e., the deliverable), it is imperative that the contract administrator periodically check the contractor's performance and assure that it is progressing to the degree anticipated. Crucial milestone or progress reports may be required to be submitted by the contractor in the solicitation which would assist in post-award administration of the contract. If performance is found not to be up to expectations, the contractor shall be given a "cure" notice with specific guidance on what must be done to adequately meet performance expectations.

D. Revenue Sharing Contracts. Service contracts for the management of cash operations (e.g., food services, canteen or bookstore operations, etc.) commonly permit the University to share in the revenues these activities generate rather than require any expenditure of funds. Commissions should normally be based as a percentage of gross receipts, and there should be some incentive for the contractor to contain costs. It is imperative that the University have some ability to verify gross sales under agreements of this type. Consideration should be given to consulting with internal auditors for administrative suggestions and/or requesting an annual audit. In addition, the disposition of any

purchased capital equipment at termination, and additions to real property during the term of the agreement should also be addressed in the contract. Any attempts to establish such contracts may include input from the University's legal advisor to assure compliance with *Code of Virginia,* § 2.2-1802 and Virginia Constitution, Article X, Sect. 7.

E. Multi-Departmental Contracts. Contracts that include terms and conditions and pricing schedules to be utilized by all University departments. Multi-departmental contracts do not encumber funds and may not have a designated contract administrator. Departments who use these contracts will generally be responsible for contract administration. Each contract should be reviewed to determine the specifics of the contract. For questions regarding multi-departmental contracts, please contact the Department of Procurement Services.

CHAPTER THIRTEEN: REMEDIES, PROTESTS AND DISPUTES

I. The University follows the "Rules" §54 for any and all appeals, disputes, protests and remedies (bidder, offeror, contractor) for (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 following paragraphs provide guidance on procedures related to the various types of appeals, disputes, protests and remedies governed by "Rules" §54.

II. INELIGIBILITY (*"Rules"* **§***47)*

A. Any bidder, offeror or contractor refused permission to participate, or disqualified from participation, in public contracts to be issued by the Institution shall be notified in writing. Prior to the issuance of a written determination of disqualification or ineligibility, the Institution shall:

(i) Notify the bidder in writing of the results of the evaluation,
(ii) Disclose the factual support for the determination, and
(iii) Allow the bidder an opportunity to inspect any documents that relate to the determination, if so requested by the bidder within five business days after receipt of the notice.

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

If the evaluation reveals that the bidder, offeror or contractor should be allowed permission to participate in the public contract, the Institution shall cancel the proposed disqualification action. If the evaluation reveals that the bidder should be refused permission to participate, or disqualified from participation, in the public contract, the Institution shall so notify the bidder, offeror or contractor. The notice shall state the basis for the determination, which shall be final unless the bidder institutes legal action as provided in §54 of the *"Rules"*.

B. If, upon appeal, it is determined that the action taken was arbitrary or capricious, or not in accordance with the Constitution of Virginia, applicable state law or regulations, the sole relief shall be restoration of eligibility.

III. **APPEAL OF DENIAL OF WITHDRAWAL OF BID** (*"Rules"* **§***48)*

A decision denying withdrawal of bid shall be final and conclusive unless the bidder institutes legal action as provided in the *"Rules"* §54.

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

If, upon appeal, it is determined that the decision refusing withdrawal of the bid was not an honest exercise of discretion, but rather was arbitrary or capricious or not in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid, the sole relief shall be withdrawal of the bid.

IV. DETERMINATION OF NON-RESPONSIBILITY (*"Rules"* §*49)*

Following public opening and announcement of bids received on an Invitation to Bid, the institution shall evaluate the bids in accordance with the definition of "competitive sealed bidding." At the same time, the institution shall determine whether the apparent low bidder is responsible. If the institution so determines, then it may proceed with an award in accordance with the definition of "competitive sealed bidding" as defined in the *"Rules"* §*4.* If the institution determines that the apparent low bidder is not responsible, it shall proceed as follows.

i. Prior to the issuance of a written determination of non-responsibility, the institution shall:

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

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

iii. Such notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within 10 days after the receipt of the notice by invoking administrative procedures of § 55 of the *"Rules"*, if available, or in the alternative by instituting legal action as provided in § 54 of the *"Rules"*.

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

If, upon appeal it is determined that the decision of the public body was not an honest exercise of discretion, but rather was arbitrary or capricious or not in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the

Invitation to Bid, and the award of the contract in question has not been made, the sole relief shall be a finding that the bidder is a responsible bidder for the contract in question or directed award or both. If it is determined that the decision of the public body was not an honest exercise of discretion, but rather was arbitrary or capricious or not in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms of the Invitation to Bid, and an award of the contract has been made, the relief shall be as set forth in the *"Rules"* §*50.B.*

A bidder contesting a determination that he is not a responsible bidder for a particular contract shall proceed under this section, and may not protest the award or proposed award under the *"Rules"* §*49.C*.

Nothing contained in this section shall be construed to require an institution, when procuring by competitive negotiation, to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous.

V. PROTEST OF AWARD OR DECISION TO AWARD *("Rules"* §*50)*

Any bidder or offeror, who desires to protest the award or decision to award a contract, shall submit the protest in writing to the Institution, or an official designated by the Institution, no later than 10 days after the award or the announcement of the decision to award, whichever occurs first. Public notice of the award or the announcement of the decision to award shall be given by the Institution in the manner prescribed in the terms or conditions of the Invitation to Bid or Request for Proposal. Any potential bidder or offeror on a contract negotiated on a sole source or emergency basis who desires to protest the award or decision to award such contract shall submit the protest in the same manner no later than 10 days after posting or publication of the notice of such contract as provided in §5 of the *"Rules"*.

However, if the protest of any actual or potential bidder or offeror depends in whole or in part upon information contained in public records pertaining to the procurement transaction that are subject to inspection under §34 of the *"Rules"*, then the time within which the protest shall be submitted shall expire 10 days after those records are available for inspection by such bidder or offeror under §34, or at such later time as provided in this section. No protest shall lie for a claim that the selected bidder or offeror is not a responsible bidder or offeror. The written protest shall include the basis for the protest and the relief sought. The Institution or designated official shall issue a decision in writing within 10 days stating the reasons for the action taken. This decision shall be final unless the bidder or offeror appeals within 10 days of receipt of the written decision by invoking administrative procedures meeting the standards of §55 of the *"Rules"*, if available, or in the alternative by instituting legal action as provided in §54.

Nothing in this subsection shall be construed to permit a bidder to challenge the validity of the terms or conditions of the Invitation to Bid or Request for Proposal. The use of Alternative Dispute Resolution (ADR) shall constitute an administrative appeal procedure meeting the standards of §55 of the *"Rules"*.

If prior to an award it is determined that the decision to award is arbitrary or capricious, then the sole relief shall be a finding to that effect. The Institution shall cancel the proposed award or revise it to comply with the law. If, after an award, it is determined that an award of a contract was

arbitrary or capricious, then the sole relief shall be as hereinafter provided. Where the award has been made but performance has not begun, the performance of the contract may be enjoined. Where the award has been made and performance has begun, the Institution may declare the contract void upon a finding that this action is in the best interest of the public. Where a contract is declared void, the performing contractor shall be compensated for the cost of performance up to the time of such declaration. In no event shall the performing contractor be entitled to lost profits.

Where the Institution, or an official designated by it, determines, that there is probable cause to believe that a decision to award was based on fraud or corruption or on an act in violation of the *"Rules"*, the Institution, designated official may enjoin the award of the contract to a particular bidder.

VI. EFFECT OF APPEAL UPON CONTRACT *("Rules"* §*51)*

Pending final determination of a protest or appeal, the validity of a contract awarded and accepted in good faith in accordance with the *"Rules"* shall not be affected by the fact that a protest or appeal has been filed.

VII. STAY OF AN AWARD DURING PROTEST (*"Rules"* §*52*)

An award need not be delayed for the period allowed a bidder or offeror to protest, but in the event of a timely protest as provided in § 50 of the *"Rules"*, or the filing of a timely legal action as provided in § 54, no further action to award the contract shall be taken unless there is a written determination that proceeding without delay is necessary to protect the public interest or unless the bid or offer would expire.

VIII. CONTRACTUAL DISPUTES *("Rules"* §*53)*

A. Contractual claims, whether for money or other relief, shall be submitted in writing no later than 60 days after final payment. However, written notice of the contractor's intention to file a claim shall be given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing herein shall preclude a contract from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of claims shall not delay payment of amounts agreed due in the final payment.

B. The Institution shall include in its contracts a procedure for consideration of contractual claims. Such procedure, which may be contained in the contract or may be specifically incorporated into the contract by reference and made available to the contractor, shall establish a time limit for a final decision in writing by the Institution. If the Institution has established administrative procedures meeting the standards of § 55 of the *"Rules"*, such procedures shall be contained in the contract or specifically incorporated in the contract by reference and made available to the contractor. The Institution may require the submission of contractual claims pursuant to any contract to Alternative Dispute Resolution (ADR) as an administrative procedure.

C. A contractor may not invoke administrative procedures meeting the standards of § 55 of the *"Rules"*, if available, or institute legal action as provided in § 54, prior to receipt of the Institution's decision on the claim, unless the Institution fails to render such decision within the time specified in the contract.

D. The decision of the Institution shall be final and conclusive unless the contractor appeals within six months of the date of the final decision on the claim by instituting legal action as provided in §54.

IX. LEGAL ACTIONS *("Rules" §54)*

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

(i) An honest exercise of discretion, but rather was arbitrary or capricious;
(ii) In accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid; or
(iii) In the case of denial of prequalification, based upon the criteria for denial of prequalification set forth in subsection B of §14 of the *"Rules"*.
In the event the apparent low bidder, having been previously determined by the Institution to be not responsible in accordance with §4 of the *"Rules"*, is found by the court to be a responsible bidder, the court may direct the Institution to award the contract to such bidder in accordance with the requirements of this section and the Invitation to Bid.

B. A bidder denied withdrawal of a bid under §23 of the *"Rules"* may bring an action in the appropriate circuit court challenging that decision, which shall be reversed only if the bidder establishes that the decision of the Institution was not

(i) An honest exercise of discretion, but rather was arbitrary or capricious or
(ii) In accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid.

C. A bidder, offeror or contractor, or a potential bidder or offeror on a contract negotiated on a sole source or emergency basis in the manner provided in §5 of the *"Rules"*, whose protest of an award or decision to award under §50 of the *"Rules"* is denied, may bring an action in the appropriate circuit court challenging a proposed award or the award of a contract, which shall be reversed only if the petitioner establishes that the proposed award or the award is not:

(i) An honest exercise of discretion, but rather is arbitrary or capricious or
(ii) In accordance with the Constitution of Virginia, applicable state law or regulation, or the terms and conditions of the Invitation to Bid or Request for Proposal.

D. If injunctive relief is granted, the court, upon request of the Institution, shall require the posting of reasonable security to protect the Institution.

E. A contractor may bring an action involving a contract dispute with the Institution in the appropriate circuit court. Notwithstanding any other provision of law, the Comptroller shall not be named as a defendant in any action brought pursuant to the *"Rules"* or §33.1-387 of the Code of Virginia, except for disputes involving contracts of the Office of the Comptroller or the Department of Accounts.

F. A bidder, offeror or contractor need not utilize administrative procedures meeting the standards of §55 of the *"Rules"*, if available, but if those procedures are invoked by the bidder, offeror or contractor, the procedures shall be exhausted prior to instituting legal action concerning the same procurement transaction unless the Institution agrees otherwise.

G. Nothing herein shall be construed to prevent the Institution from instituting legal action against a contractor.

X. ADMINISTRATIVE APPEALS PROCEDURE (*"Rules"* §*55)*

Although the University is authorized to establish an administrative appeals procedure, it has chosen not to develop such procedures, but rather will rely on legal action for such determinations ("*Rules" §56*). However, the University reserves the right the use Alternate Dispute Resolution (ADR) for hearing appeals from decisions on disputes arising during the performance of a contract or when it is deemed to be in the best interested of the University.

XI. ALTERNATIVE DISPUTES RESOLUTION (*"Rules"* §*56)*

The Institution may enter into agreements to submit disputes arising from contracts entered into pursuant to these *"Rules"* to arbitration and utilize mediation and other alternative dispute resolution procedures. However, such procedures shall be nonbinding and subject to §2.2-514 of the Code of Virginia, as applicable.

CHAPTER FOURTEEN: SURPLUS PROPERTY

1. DISPOSALS & SURPLUS PROPERTY

Surplus is equipment purchased with University funds which has reached the end of its useful life and/or is considered obsolete. The purpose for surplus property is to maximize the benefit of surplus property by either reassigning or maximizing revenue generated from disposal. The Department of Procurement Services shall be responsible for the disposition of all surplus property. Departments shall not dispose of any surplus assets, regardless of salvage value.

Once a department determines they have an item to turn in, a "Equipment Turn-In Form" is submitted to Procurement Services. Procurement Services determines if the item has value. The surplus property with value may be stored in the Procurement Services Surplus Warehouse or in the requesting campus department, if appropriate due to logistical challenges. The Surplus Property Warehouse is a secured area but surplus property may be viewed when accompanied by authorized Procurement Services staff.

Once an item is identified as surplus property, the items are made available to be reissued to Departments for a limited amount of time.

Any and all proceeds received for the disposition of equipment shall be deposited into the appropriate account as directed by the Vice President for Administration and Finance.

B. Methods of Disposal

Procurement Services shall be authorized to use any disposal method deemed to be in the best interest of the University. Those methods include, but shall not be limited to the following:

i. Sale: If the surplus item is considered to have salvage value, the University may dispose of the equipment by:
   a) Public Auction
   b) Set-Price Sales
   c) Sealed Bids
   d) E-auction

ii. Sale of Scrap: Many items that are no longer usable may have a residual value. Property Control may arrange for the sale of scrap items.

iii. Trade In: Cost allowance provided by vendor for purchase of new equipment. Department shall not trade in equipment for credit toward the purchase of new equipment without the advanced approval of the Department of Procurement Services.

iv. Donation: Procurement Services may approve the donation of surplus items to another state or local governmental agency.

v. Cannibalization: Disassembling an item to use its components for repair or maintenance of a similar item is authorized only if cannibalization has more potential value and benefit than disposal or trade-in of the item. Procurement Services must grant approval before an item is cannibalized and removed from the Department's property list.

vi. Hazardous Materials: The University disposes of surplus items that may have environmental issues or impact through the University's recycling program, Environmental Health or the Department of General Services, Division of Purchases and Supply in Richmond.

vii. Sales to Employees: To avoid any appearances of impropriety in the disposition program, employees of Procurement Services that have a direct responsibility for surplus property sales, may not purchase surplus items. Employees without connection to the item being disposed of may purchase surplus property through public auction, set-price sales, sealed bids or e-auction.

viii. Security of Property: Departments are responsible for the reasonable care and security of items declared surplus during the entire disposal process.

ix. Disposal of Computer Data: OCCS Data Center - Disposal of Data Compliance Procedure

CHAPTER FIFTEEN: ETHICS IN PROCUREMENT

1. **ETHICS IN PROCUREMENT:** Persons conducting procurements on behalf of Old Dominion University are bound by the ethical requirements of the University Code of Ethics and *Virginia Public Procurement Act,* which requires that:

   "All procurements be conducted in a fair and impartial manner with avoidance of impropriety or ***appearance of impropriety***" (Emphasis added.)

As a general injunction, therefore, persons engaged in procurement are to ensure that their actions are not only consistent with law and regulation but must ***appear*** to be above reproach. Article Six of the *Virginia Public Procurement Act*, entitled Ethics in Public Contracting, sets out specific requirements for avoidance of conflict of interest which bear restating here:

> ***§ 2.2-4369. Proscribed participation by public employees in procurement transactions.*** *-- Except as may be specifically allowed by subdivisions A. 2, 3 and 4 of § 2.2-3112, no public employee having official responsibility for a procurement transaction shall participate in that transaction on behalf of the public body when the employee knows that:*
>
> *1. the employee is contemporaneously employed by a bidder, offeror or contractor involved in the procurement transaction;*
>
> *2. 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 the procurement transaction, or owns or controls an interest of more than five percent;*
>
> *3. 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*
>
> *4. 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.*

Article Six also contains specific guidance concerning acceptance of gifts and admonitions against acceptance of kickbacks.

> ***§ 2.2-4371. Prohibition on solicitation or acceptance of gifts; gifts by bidders, offerors, contractor or subcontractors prohibited.***
>
> *A. No public employee having official responsibility for a procurement transaction shall solicit, demand, accept, or agree to accept from a bidder, offeror, contractor or subcontractor any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal or minimal value, present or promised, unless consideration of substantially equal or greater value is exchanged. The public body may recover the value of anything conveyed in violation of this subsection.*

B. No bidder, offeror, contractor or subcontractor shall confer upon any public employee having official responsibility for a procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is exchanged.

§ 2.2-4372. Kickbacks.

A. No contractor or subcontractor shall demand or receive from any of his suppliers or his subcontractors, as an inducement for the award of a subcontract or order, any payment, loan, subscription, advance, deposit of money, services or anything, present or promised, unless consideration of substantially equal or greater value is exchanged.

B. No subcontractor or supplier shall make, or offer to make, kickbacks as described in this section.

C. No person shall demand or receive any payment, loan, subscription, advance, deposit of money, services or anything of value in return for an agreement not to compete on a public contract.

D. If a subcontractor or supplier makes a kickback or other prohibited payment as described in this section, the amount thereof shall be conclusively presumed to have been included in the price of the subcontract or order and ultimately borne by the public body and shall be recoverable from both the maker and recipient. Recovery from one offending party shall not preclude recovery from other offending parties.

Since the *Virginia Public Procurement Act* makes willful violation of the provisions of Article Six a Class 1 misdemeanor, which is a criminal offense, persons engaged in public procurement are well advised to be knowledgeable of and comply with the requirements contained therein.

CHAPTER SIXTEEN: FREEDOM OF INFORMATION ACT (FOIA)

Old Dominion University adheres to the Virginia Freedom of Information Act, Code of Virginia §2.2-3700 et seq.

A. **Public inspection of certain records.**

Except as provided in this section, all proceedings, records, contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen, or any interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

i. Cost estimates relating to a proposed procurement transaction prepared by or for a public body shall not be open to public inspection.

ii. Any competitive sealed bidding bidder, upon request, shall be afforded the opportunity to inspect bid records within a reasonable time after the opening of all bids but prior to award, except in the event that the public body decides not to accept any of the bids and to reopen the contract. Otherwise, bid records shall be open to public inspection only after award of the contract.

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

iv. Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records.

v. Trade secrets or proprietary information submitted by a bidder, offeror or contractor in connection with a procurement transaction or prequalification application submitted pursuant to subsection B of §2.2-4317 shall not be subject to the *Virginia Freedom of Information Act* (§ 2.2-3700 et seq.); however, the bidder, offeror or contractor shall (i) invoke the protections of this section prior to or upon submission of the data or other materials, (ii) identify the data or other materials to be protected, and (iii) state the reasons why protection is necessary.

GLOSSARY / DEFINITIONS

Note: for procurement terms not listed in this glossary, please refer to the NIGP Dictionary, which is included by reference.

Appeal
Action taken by a bidder, offeror (actual or prospective) or by a vendor to seek a hearing before a disinterested person or panel or in an appropriate circuit court challenging a decision in accordance with *"Rules"* §55.

Best Value
The overall combination of quality, price, and various elements of required services that are in total optimal relative to a public body's needs. (*"Rules"* §3).

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

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

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

Blanket Purchase Agreement (BPA)
An arrangement under which a purchaser contracts with a vendor to provide the purchaser's requirements for an item(s) or a service, on an as-required and over-the-counter basis. Properly prepared, such an arrangement sets a limit on the period of time it is valid and the maximum amount of money which may be spent at one time or within a specified period and specifically identifies these persons authorized to accept goods.

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

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

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

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

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

Construction
Construction shall mean building, altering, repairing, improving or demolishing any structure, building or highway, and any draining, dredging, excavation, grading or similar work upon real property. (*"Rules" §4)*

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

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

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

Contract Administration
The management of all facets of a contract to assure the vendor's total performance is in accordance with the contractual commitments and that the obligations of the vendor under the terms and conditions of the contract are fulfilled, including receiving, inspection and authorization for payment.

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

Contract, Cost-Plus-A-Percentage-Of-Cost
A form of contract which provides for a fee or profit at a specified percentage of the vendor's actual cost of accomplishing the work. Except in case of emergency affecting the public health, safety or welfare and for some insurance contracts, no public contract shall be awarded on the basis of cost plus a percentage of cost (*"Rules" §24*).

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

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

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

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

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

Contract Officer, Purchase Officer, Buyer
An **employee of the institution** whose primary assignment is purchasing goods or services.

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

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

Debarment
An action taken to exclude individuals or vendors from contracting with institutions for particular goods or nonprofessional services for specified periods of time (*"Rules"* §18).

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

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

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

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

Drug-Free Workplace
A drug-free workplace is a site for the performance of work done in connection with a specific contract awarded to a contractor in accordance with the Virginia Public Procurement Act, the employees of who are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession, or use of any controlled substance or marijuana during the performance of the contract.

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

Ethics
Pertaining to or relative to moral action, conduct, motive or character; as ethical emotion; professionally right or befitting; conforming to professional standards of conduct. The *Virginia Public Procurement Act* covers "Ethics in Public Contracting" (*"Rules" §57*).

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

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

Goods
Material, equipment, supplies, printing, and automated data processing hardware and software (*"Rules"* §4).

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

Informality
A minor defect or variation of a bid or proposal from the exact requirements of the invitation for bids, or the request for proposals, which does not affect the price, quality, quantity, or delivery schedule for the goods, services or construction being procured (*"Rules"* §4).

Inspection
Examination and testing of goods and services to determine whether the goods and services furnished conform to contract requirements, an important component of contract administration.

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

Late Bid or Proposal

A bid or proposal which is received at the place designated in the invitation for bids or request for proposals after the deadline established by the solicitation.

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

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

Multiple Awards
The award of contracts to more than one bidder. When a solicitation in its terms and conditions so provides, awards may be made to more than one vendor (*"Rules" §4)*. Appropriate in situations where the award of a single contract would be impractical and awards are limited to the least number of suppliers necessary to satisfy program requirements.

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

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

Nonprofessional Services
Any services not specifically identified as professional services in the definition of professional services within *Rules" §4* and includes small construction projects valued not over $1 million; Small construction projects valued not over $1 million, not specifically identified as professional services, may be procured under methods of procurement for Goods and Services *("Rules" §4)*

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

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

Offeror
A person who makes an offer in response to a request for proposals.

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

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

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

Potential Bidder or Offeror
A person who, at the time the Institution negotiates and 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 the 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 (*"Rules" §4)* .

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

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

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

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

Professional Services
Work performed by an independent contractor within the scope of the practice of accounting, actuarial services, architecture, land surveying, landscape architecture, law, dentistry, medicine, optometry, pharmacy or professional engineering. (*"Rules" §*4).

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

Proprietary Specification
One that restricts the acceptable products or services to those of one manufacturer or vendor. A common example would be a specification by brand name which **excludes** consideration of proposed "equals".
Although all sole source specifications are proprietary, all proprietary specifications are not sole source.
Proprietary items may be available from several distributors through competitive bidding.

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

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

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

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

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

Request for Proposals (RFP)
All documents, whether attached or incorporated by reference, utilized for soliciting proposals; the RFP procedure requires negotiation with offerors (to include prices) as distinguished from competitive bidding when using an invitation for bids (*"Rules" §*4).

Responsible Bidder or Offeror
A person or vendor who has the capability, in all respects, to perform fully the contract requirements and the moral and business integrity and reliability which will assure good faith performance, and who has been prequalified, if required (*"Rules" §*4).

Responsive Bidder
A person or vendor who has submitted a bid which conforms in all material respects to the Invitation for Bids (*"Rules" §*4).

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

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

Services
Services means any work performed by an independent vendor wherein the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials and supplies (*"Rules" §*4).

Sheltered Workshops
A work-oriented rehabilitative facility with a controlled working environment and individual goals which utilizes work experience and related services for assisting the handicapped person to progress toward normal living and a productive vocational status (*"Rules" §*4).

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

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

Solicitation
An invitation for bids (IFB), a request for proposals (RFP), telephone calls, or any other document issued by the Commonwealth to obtain bids or proposals for the purpose of entering into a contract.

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

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

Surplus Property
Property which is in excess of the needs of an agency and which is not required for its foreseeable need. The property may be used or new, but possesses some usefulness for the purpose for which it was intended or for some other purpose. It includes scrap, which is material that is damaged, defective, or deteriorated to the extent that it has no value except for its basic material content.

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

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

Term Contracting

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

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

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

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

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

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

Vendor
One who sells goods or services.

ANNEXES

Clicking on active links in this section will open a document in a web browser.

State Policies and Procedures

Commonwealth of VA Purchasing Manual for Institutions of Higher Education and Their Vendors
Commonwealth Accounting Policies and Procedures (CAPP) Manual
Level II *"Rules"* Document
Higher Education Restructuring Act
Level II MOU Requirements

Board of Visitor Policies

1621 - Asset and Surplus Property Disposition
1622 - Authority to Contract With Local Building Official for Design Review and Inspections of Capital Projects
1623 - Administration of Capital Outlay Construction Under the Nongeneral Fund Decentralization Program
1625 - Certification of Small, Women, and Minority-Owned Business Enterprises
1627 - Procurement Reporting Exemption

University Policies

1002 – Code of Ethics
1500 - Authority for Signing Contracts

Department of Procurement Services Policies

Emergency Procurement Policy
Ethics in Public Contracting
SWaM Procurement Plan
Service Standards

Department of Procurement Services Procedures

Asset and Surplus Property Disposition Procedure
Equipment Trust Fund Purchasing Procedures
PCard Policy and Procedures
Vehicles/Rolling Stock/Motorized Equipment Procedure
Small Purchasing Procedure for the Purchase of Goods and Services $500 or Less
Print Procedure
Aramark Catering Procedure

Other Resources

National Institute of Governmental Purchasing (NIGP)
NIGP Code of Ethics