

November 1, 2022

MEMORANDUM

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

FROM: J. Peter Stamps, Director
DGS, Division of Purchases and Supply

SUBJECT: Procurement Information Memoranda (PIM) #98-041



Enclosed is PIM #98-041, effective November 1, 2022, representing changes to the September 1998 edition of the *Agency Procurement and Surplus Property Manual (APSPM)*. The Summary of Changes below is in the order of the changes to the *APSPM*. Only changes/additions to the affected sections and/or subsections are included in this document. DPS has incorporated these changes into the web-based *APSPM*, which will be downloadable in Word or PDF on November 1, 2022. The location of text changes will be indicated by an arrow in the margin (→) with the corresponding PIM #98-041 number identified next to the changes and all arrows indicating previous changes are removed. Appendix C contains a log recording the PIM number and date of revision. This memorandum and the corresponding PIM #98-041 should be filed in the back of the Appendix C log.

APSPM Cite	Summary of Changes
3.2	Adds "or submitting the bid or proposal electronically through eVA" and "submit through eVA or" to the second sentence
3.3.a.(2)	Replaces "250,000" with "350,000" in this section
3.19.j	-Adds "As of July 1, 2021" and "and marked as public" to the first sentence -Deletes the second and third sentence -Adds "the posted, terms and, terms and, negotiated terms, the established catalog including detailed line item descriptions and the price list, renewal schedule, (see Annex 3-M)" to the fourth sentence
Annex 3-M	Adds a new annex
4.12.a	-Adds "under \$10,000" to the second bullet -Deletes the third bullet
4.12.d	-Deletes "stamped" from the fourth sentence -Deletes the last sentence
5.6.a.1	Adds "Detailed line item descriptions, general terms and conditions and" to the second sentence
5.6.a.6	Updates entire sentence
5.6.b.1	Adds the second sentence
5.6.b.2	Adds "detailed line item descriptions" to the first sentence
5.6.b.7	Updates entire sentence
Annex 5-E	Adds "Create the contract and mark as public" to the next to last box on the right
Annex 5-F	Adds "Create the contract and mark as public" to the next to last box on the right
6.3.d	Adds "Post the appropriate award notice and contract (3.19)" as the second sentence
6.5.b	Adds "Post the appropriate award notice and contract (3.19)" as the last sentence
6.6	Adds "Post the appropriate award notice and contract (3.19)" as the next to last sentence
Annex 6-A	Replaces the last sentence with "Create the contract and mark as public" in the next to last box on the right.
Annex 6-B Step Twelve	Updates entire sentence
7.4	Updates entire last sentence

8.1.b	<ul style="list-style-type: none"> -Deletes “documenting that there is only one source practicably available for that which is to be procured” from the second sentence -Deletes the third and fourth sentence
8.1.c	<ul style="list-style-type: none"> -Adds “and submitted in eVA” to the first sentence in the first paragraph -Deletes the last sentence and all of the bullets in the first paragraph -Deletes the last sentence in the last paragraph
8.5	<ul style="list-style-type: none"> -Deletes “PO or” from the first sentence -Replaces second, third and fourth sentence with “<i>The contract with a catalog, including detailed line item descriptions and the price list, must be marked as public and posted in eVA (3.19.j.)</i>.”
Annex 8-B	<ul style="list-style-type: none"> -Deletes the last sentence from number 2. -Adds “DGS/DPS” and deletes “<i>online using the eform available</i>” in the last sentence in number 3.
Annex 8-C	Updates entire annex
9.2	<ul style="list-style-type: none"> -Deletes “or agency purchase order” from the first sentence -Adds a new last sentence
14.6.c.i	Adds “ <i>Unsealed Bidding or Unsealed Requests for Proposal</i> ”
14.6.e.i & ii	Adds “ <i>functionality</i> ”
14.7.a	<ul style="list-style-type: none"> -Adds “<i>a catalog order should be placed that includes the contract name</i>” to the second sentence -Adds “<i>If a catalog does not exist, reference</i>” to the third sentence
Appendix A	<ul style="list-style-type: none"> -Deletes the second sentence -Adds “<i>terms and, terms and, negotiated terms, the established catalog including detailed line item descriptions and the price list, renewal schedule</i>” to the third sentence
Appendix B, Section I	Updates were made to the following General Terms and Conditions: P. Default
Appendix C	Adds Summary of changes.

To print a copy of the manual, save it to your hard drive or network and print from there. Printing directly from the website may result in lost formatting. If you should have questions about the changes, please contact your [Procurement Management Account Executive](#).

3.2 **Bid Invitations, Requests for Proposals and Responses.**

g. **Acceptable Bid/Proposal Signatures.** The bid or proposal and all addenda returned by the bidder or offeror by facsimile must be signed. The bid or proposal must be signed or submitted electronically through eVA (*Code of Virginia*, § 1-257 and § 59.1-485). The person signing the bid or proposal or submitting the bid or proposal electronically through eVA must be a person authorized by the bidder or offeror to submit through eVA or sign bids or proposals. The person signing must include his or her title, and if requested, must verify his or her authority to bind the company to the contract. Failure to sign the face of the bid/proposal in the space provided will result in rejection of the bid/proposal unless the unsigned bid/proposal is accompanied by other signed documents indicating the bidder's/offeror's intent to be bound [see *Vendors Manual*, 5.13c(1)(b)].

3.3 **Bonds**

a. **Bid Bonds.**

(2) Nothing in this section shall preclude the state from requiring bid bonds to accompany bids or proposals for construction contracts anticipated to be less than \$500,000 for non transportation-related projects or \$350,000 for transportation-related projects authorized under § 33.1-12 and partially or wholly funded by the Commonwealth.

3.19 **Publicly Posted Notices.**

j. As of July 1, 2021, all awarded contracts and modifications must be posted in eVA and marked as **public**. The posted contract shall include the specifications, descriptions or scope of work, general terms and conditions, special terms and conditions, negotiated terms, the established catalog including detailed line item descriptions and the price list, renewal schedule and all other requirements contained in the solicitation together with all written modifications and the vendor's response (see Annex 3-M). Contracts must be used for agreements between public bodies and non-governmental entities and should be used when establishing government to government agreements.

Annex 3-M
Publicly Posted Contracts

Publicly posted contracts for goods or services shall include the following elements:

- Solicitation (if applicable)
- Contractor's Response excluding proprietary information
- General Terms and Conditions
- Special Terms and Conditions
- Negotiated Elements (if applicable; changes to solicitation, terms, proposal, etc.)
- Notice of Award or Notice of Intent to Award
- Two-Party signed Contract (if applicable)
- Contract Summary (if applicable; required if more than one authorized user)
- Catalog including the detailed description of the goods or services and the pricing schedule
 - Goods example - Bread, White, Enriched, Regular Sliced, 20 oz, #1234
 - Services example - Nursing/Physician Assistant Services – Licensed Practical Nurse #49111
- Renewal Schedule
- Modifications (if applicable)

4.12 **Award Documents**.

a. **Agency Purchase Order (APO).**

- as a binding commitment for one time spot purchases of goods, services and printing under \$10,000.

The APO shall not be used to establish a line of credit with one vendor upon which a series of purchases can be made, unless a state or agency term contract has been awarded to the vendor (by use of the Notice of Award found in Annex 6-H) for the commodity being purchased (examples are bread, milk, fuel oil). The APO should not be used merely to encumber funds. Agencies and institutions must ensure that the Commonwealth's General Terms and Conditions are printed on, attached, or incorporated by reference to any agency purchase order.

d. **Notice of Intent to Award.** The Notice of Intent To Award form (see Annex 6-G and Annex 7-K) is a suggested format agencies may use to officially notify the public through a public posting of their intent to issue an award as required in 3.19.d. This notice is recommended for use whenever considerable bidder or offeror interest has been expressed about the potential award and/or an agency suspects an award decision may be challenged. The notice should not be posted until after completion of the evaluation. The notice shall be dated and publicly posted for the ten day period allowed for protest (*Code of Virginia*, § 2.2-4360).

5.6 **Informal Solicitations (Over \$10,000 up to and including \$100,000)**

a. **Unsealed Bidding**

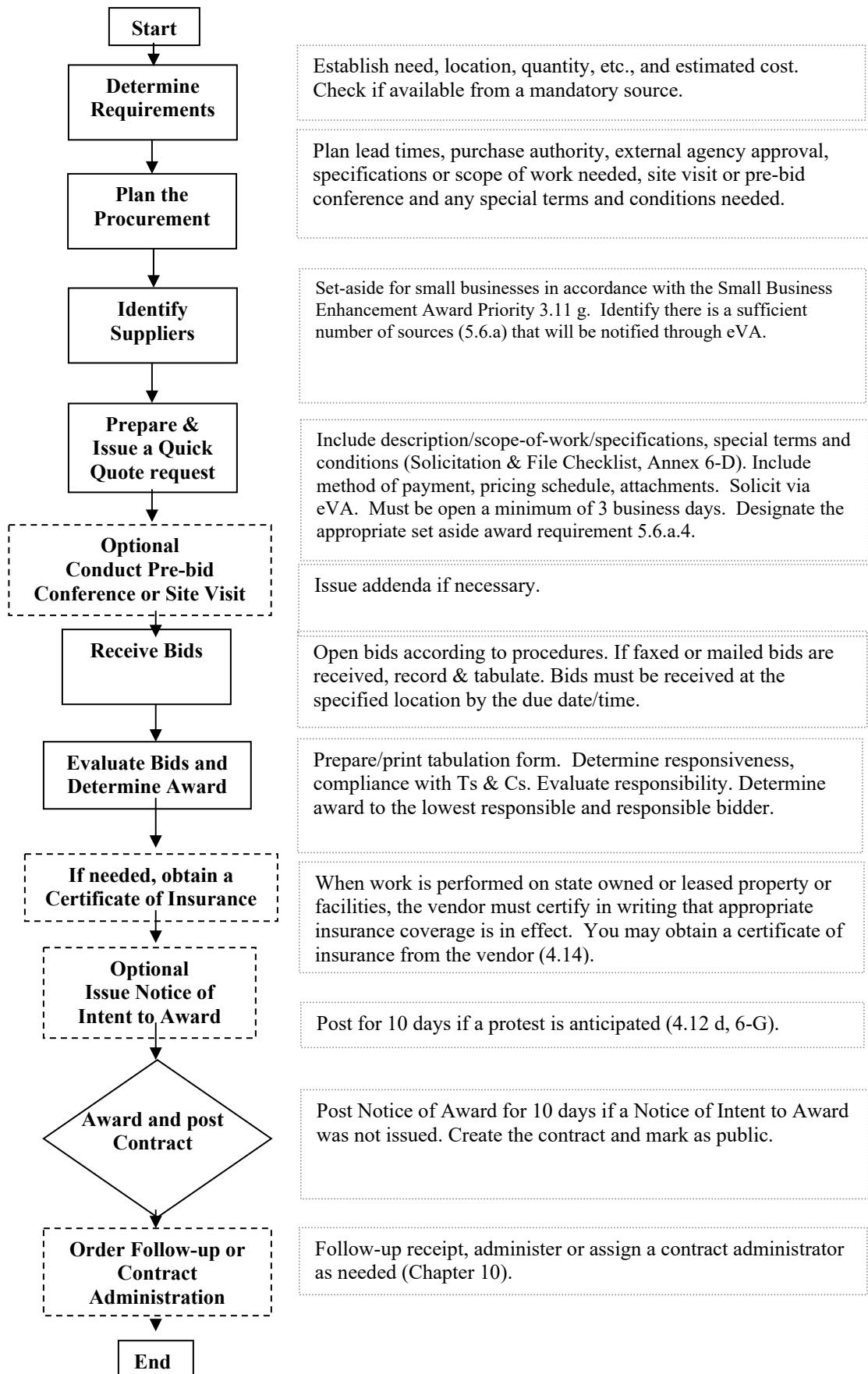
1. eVA shall be used to solicit bids for goods and nonprofessional services over \$10,000 up to and including \$100,000 (see 14.6.b). Detailed line item descriptions, general terms and conditions and all appropriate special terms and conditions must be stated in or attached to the solicitation, including an award term. The solicitation shall be open for the period of time stated in the solicitation but must be open for at least three (3) business days (24 business hours). A reasonable amount of time should be allowed for vendors to respond based on the nature of the procurement and any subsequent amendments.
6. A contract with a catalog, including detailed line item descriptions and the price list, must be created, marked as public and posted in eVA (3.19.j).

b. **Unsealed Request for Proposals**

1. Goods or nonprofessional services up to and including \$100,000 may be procured using the Unsealed Request for Proposal process (see flowchart, Annex 5-F). eVA shall be used to solicit proposals for goods and nonprofessional services over \$10,000 up to and including \$100,000 (see 14.6.b).
2. The solicitation for unsealed proposals should include a cover sheet, a general description of what is being sought, detailed line item descriptions, the evaluation criteria and weights to be used in evaluation, current version of the General Terms and Conditions, any Special Terms and Conditions including unique capabilities or qualifications that will be required, award term, and a requirement that under the Small Business Enhancement Award Priority they shall provide their appropriate DSBSD-certified small business (including micro) number.
7. A contract with a catalog, including detailed line item descriptions and the price list, must be created, marked as public and posted in eVA (3.19.j).

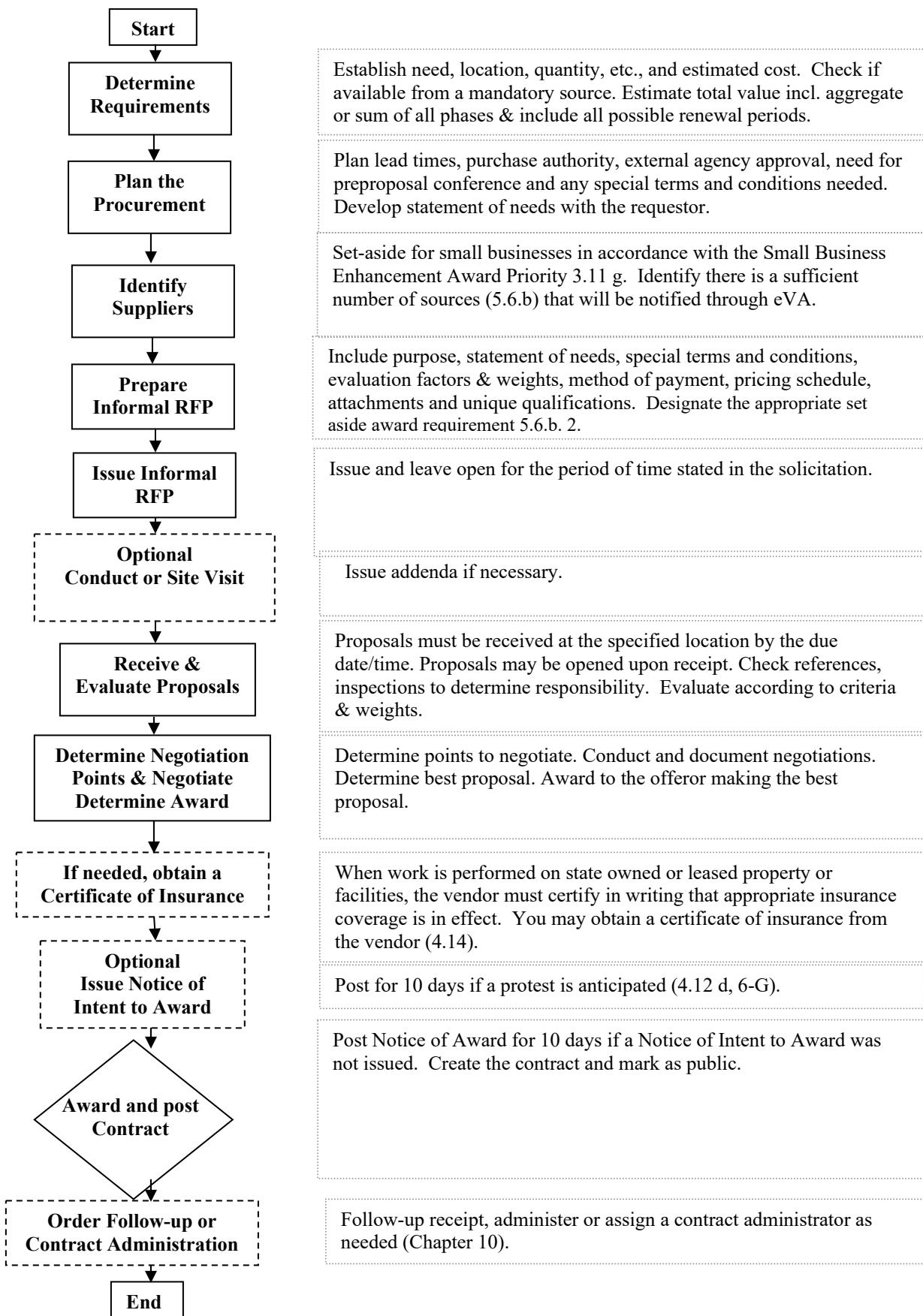
Annex 5-E

Informal Solicitation - Unsealed Bidding Process For Goods and Non-professional Services over \$10,000 up to and including \$100,000



Annex 5-F

Informal Solicitation - Unsealed Request for Proposal Process For Goods and Non-professional Services over \$10,000 up to and including \$100,000



6.3 **Sealed Bids - Receipt, Opening, Evaluation, and Award.**

d. **Award.** The contract is awarded to the lowest responsive and responsible bidder (see 3.21 and 3.22). Post the appropriate award notice and contract (see 3.19). For purposes of the procurement, a bidder or subcontractor shall be considered a Small Business or a Micro Business if and only if the bidder or subcontractor holds a certification as such by the Department of Small Business and Supplier Diversity (DSBSD) on the due date for receipt of bids. Prior to award, if a high-risk contract, submit contract for external agency review (see 3.1).

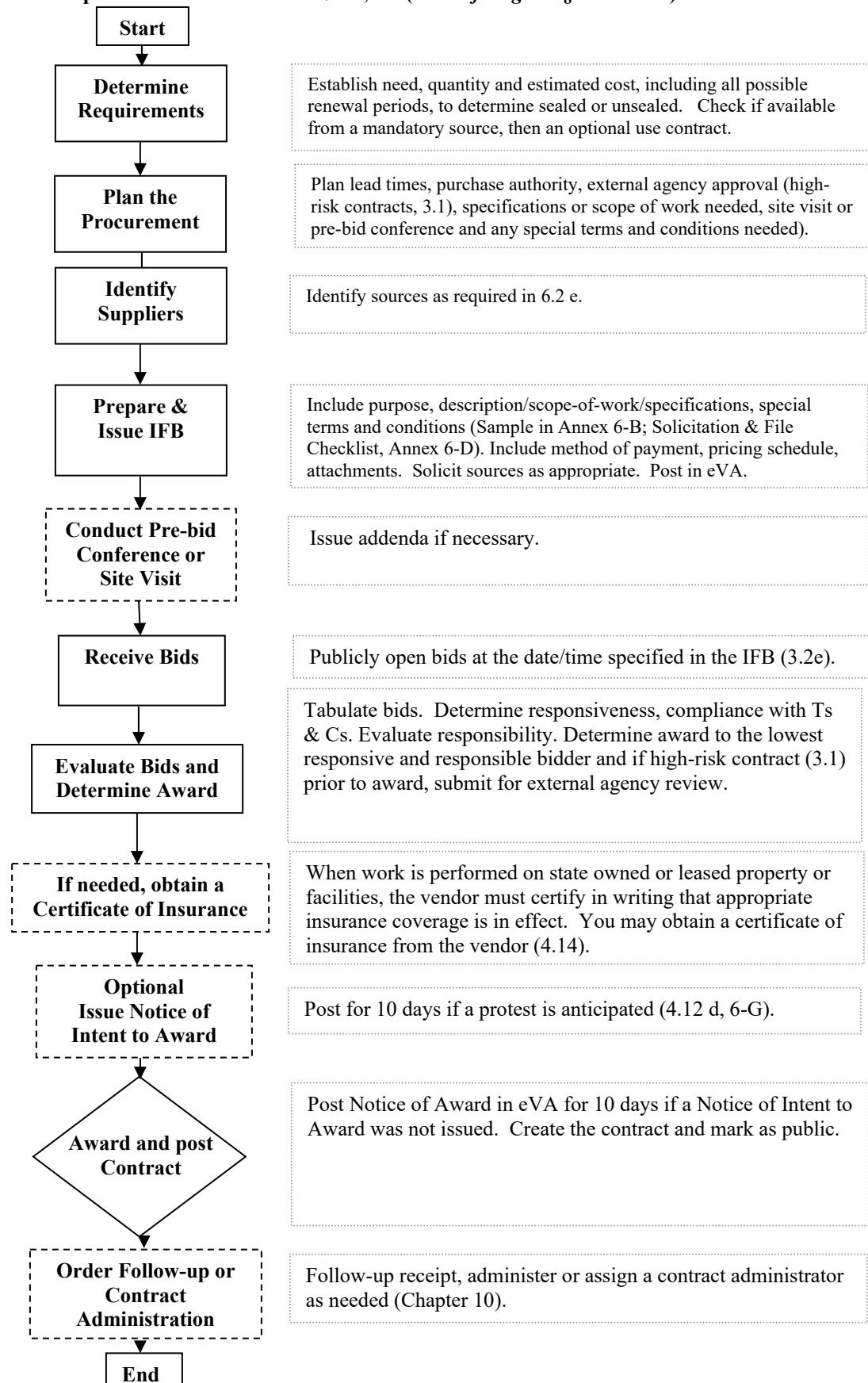
6.5 **Procedure for Two-Step Competitive Sealed Bidding.**

b. **Step Two.** Prepare an IFB to include a pricing schedule, reference the request for technical proposal title and number, and set a specific date and time for receipt of sealed bids. A public opening is held. Bids are evaluated, and the contract is awarded to the lowest responsive and responsible bidder. The award document shall incorporate by reference the terms and conditions of the solicitation, the contractor's technical proposal, and the bid price. Post the appropriate award notice and contract (see 3.19).

6.6 **Combined Two-Step Competitive Sealed Bidding.** The two steps can be combined by requiring the firms who respond to the solicitation to furnish their unpriced technical proposals in one sealed envelope and their bid prices in a second sealed envelope at the same time. The instructions issued must specify that the responses are to be submitted in two separate sealed envelopes - one marked "Technical Proposal" and the other "Bid Price." If the solicitation is a combined two-step IFB, the bidders should be instructed to identify both the technical proposal and pricing envelope with the bidder's name, company name and address, and bid reference number. If set-aside under 3.11(g), the solicitation shall include a tiered award clause as specified in Special Term and Condition 2.L. The technical proposals are opened and evaluated as described in 6.5.a, then only the price envelopes for those technical proposals selected as acceptable are opened. The award is made to the lowest responsive and responsible bidder. The award document will incorporate by reference the terms and conditions of the solicitation and include the contractor's technical proposal and the bid price. Post the appropriate award notice and contract (see 3.19). For late sealed bids the envelope shall be date and time stamped, marked "late" and retained unopened in the procurement file.

Annex 6-A

Competitive Sealed Bidding Process For Goods and Non-professional Services over \$100,000 (*Code of Virginia § 2.2-4302.1*)



Annex 6-B **SAMPLE FORMAT AND STEP-BY-STEP PROCEDURES**

STEP TWELVE:

CONTRACT: A contract with a catalog, including detailed line item descriptions and the price list, must be created, marked as public and posted on eVA (3.19.j).

7.4 Negotiation and Award.

- e. Prior to award, if a high-risk contract, submit contract for external agency review (see 3.1). If a protest is anticipated, post a Notice of Intent to Award for 10 days; otherwise, post a Notice of Award for 10 days immediately following the actual time of award (see 3.19, Annexes 7-K and 7-L). The award documents is a standard contract (ref. 4.12.c and Annex 7-D). The standard contract shall be bilaterally signed and shall incorporate, by reference, the terms and conditions of the RFP and the contractor's proposal, together with all written modifications thereof. The contract with a catalog, including detailed line item descriptions and the price list, must be marked as public and post in eVA (3.19.j).

8.1 Approval for Sole Source Procurements

- b. **From \$10,000.01 up to and including \$50,000.** All sole source procurements for non-technology goods and services up to and including \$50,000 must be approved in advance by the agency head or designee, which shall be the chief purchasing officer or a direct report to the agency head [see 1.2e (2)]. The written determination, using the Sole Source Procurement Approval Request form in Annex 8-C must be included in the procurement file. Agency employees having official responsibility with the procurement must complete a Public Procurement Ethics and Conflict of Interest Agreement (Annex 8-G). They should also be provided a copy of VPPA, Article 6. Ethics in Public Contracting.
- c. **Procurements Over \$50,000.** Unless otherwise authorized in this chapter, sole source procurements for non-technology goods and services over \$50,000 must be approved by DGS/DPS prior to commencement of the actual procurement using the Sole Source Procurement Approval Request form found in Annex 8-C which must be signed by the agency head or designee, who shall be a direct report to the agency head, and submitted in eVA. [see 1.2e(2)]. Sole source procurements that originally included a renewal provision, for which approval for multi- years was obtained, do not need to be forwarded for approval until expiration of the term for which approval was obtained. Agency employees having official responsibility with the procurement must complete a Public Procurement Ethics & Conflicts of Interest Agreement (Annex 8-G). They should also be provided a copy of Article 6 of the VPPA, Ethics is Public Procurement.

Once written approval has been given, agencies and institutions are delegated the authority to proceed with awarding the contract.

Sole source procurements for entertainment (speakers, lecturers, musicians and performing artists) over \$50,000 do not require DGS/DPS approval, but must be approved prior to commencement of the actual procurement by the agency head or designee, who shall be a direct report to the agency head. Use the Sole Source Procurement Approval Request form in Annex 8-C, documenting that there is only one source practicably available for the entertainment to be procured, and include the signed form in the procurement file.

- 8.5 **Award Document.** Agencies must issue an award document (contract) for sole source purchases in accordance with the provisions of Chapter 14. The contract with a catalog, including detailed line item descriptions and the price list, must be marked as public and posted in eVA (3.19.j).

Annex 8-B

SOLE SOURCE CHECKLIST

- ____ 1. Public Procurement Ethics and Conflict of Interest Agreement (Annex 8-G) by agency employees having official responsibility with the sole source procurement.
- ____ 2. Written determination approved by the agency head or designee as provided in 8.1, for procurements over \$10,000 and up to and including \$50,000.
- ____ 3. Approval for sole source, non-technology procurements over \$50,000 must be signed by the agency head or designee, as provided in 8.1 and sent to DGS/DPS for approval prior to commencement of the actual procurement. All requests for DGS/DPS approval must be submitted in eVA.
- ____ 4. Noncompetitive negotiation shall be conducted. The file shall include the results of the negotiations.
- ____ 5. Evidence that a determination of price reasonableness was conducted.
- ____ 6. Prior to award, if a high-risk contract, submit contract for external agency review (see 3.1). Post sole source notice of award and contract in eVA.
- ____ 7. PO or contract issued.

Annex 8-C

**Sole Source Procurement Approval Request
Non-Technology Goods and Services**

Date Submitted: _____ **Preparer:** _____

NIGP Commodity Code: _____ **NIGP Description:** _____

Total Amount of Sole Source: _____ **Agency Request #:** _____

Vendor Name: _____

Brief Procurement Description:

Explain why this is the only product/service that can meet the purchasing agency needs:

Explain why this is the only practicable available source from which to obtain this product/service:

Explain why the price is considered reasonable:

Describe the efforts that were made to conduct a noncompetitive negotiation to get the best possible price for the taxpayers:

Agency Head or Designee Signature

Date:

***Note: Agencies and institutions are delegated authority to make a contract award only after the appropriate approval has been obtained.**

9.2 **Award of Emergency Procurements.** The agency must prepare a confirming contract, as soon as practicable, after directing the contractor to proceed. Care should be taken to include in detail any agreements, including price, that were made orally with the contractor. The confirming contract with a catalog, including detailed line item descriptions and the price list, must be created, marked as public and posted in eVA (3.19.j)

14.5 **Receiving:** Agencies and institutions shall receive all purchase orders in eVA using the receiving functionality.

14.6 **Competitive Requirements.**

c. **Posting on eVA:**

- i. All Quick Quotes/Unsealed Bidding or Unsealed Requests for Proposal, Invitations to Bid, Requests for Proposal, Addenda, awarded contracts and modifications are publicly posted on eVA (14.6.b).

e. **Contract Management –**

- i. Agencies must use the eVA functionality when a contract management tool is required by the agency.
- ii. Agencies must use the eVA functionality to post information related to the performance of high-risk contracts (*Code of Virginia* § 2.2-4303.01).

14.7 **Documentation of Purchase Transactions.**

a. **Electronic Files:** Electronic files created in eVA and any attached from other sources are acceptable as documentation to support the why, who, what, when, where and how of purchase transactions and receiving reports. If the order is against a term contract, a catalog order should be placed that includes the contract number. If a catalog does not exist, then the contract number shall be included on the order in the contract number reference field. Paper documents need not be printed and maintained. Reports are available in eVA to provide sufficient detail to support the basis and history of each purchase. Any transaction that cannot be fully documented electronically should contain a cross-reference (what and where) to any other documents, such as large drawings or other files maintained as a hard copy.

APPENDIX A

GLOSSARY AND ACRONYMS

Contract: When used as a noun in this Manual, contract refers to an agreement enforceable by law, between two or more competent parties, to do or not to do something, not prohibited by law, for a consideration. A contract shall include the specifications, descriptions or scope of work, general terms and conditions, special terms and conditions, negotiated terms, the established catalog including detailed line item descriptions and the price list, renewal schedule and all other requirements contained in the solicitation together with all written modifications and the vendor's response. As a verb, contract has its usual legal sense, signifying the making of an agreement for consideration.

APPENDIX B

SECTION I

REQUIRED GENERAL TERMS AND CONDITIONS

GOODS AND NONPROFESSIONAL SERVICES

P. **DEFAULT:** In case of failure to deliver goods or services in accordance with the contract terms and conditions, the Commonwealth, after due oral or written notice, may terminate this contract and procure all goods and/or services contracted for, from other sources and hold the contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the Commonwealth may have.

APPENDIX C**PROCUREMENT INFORMATION MEMORANDUM (PIM)
RECORD OF CHANGES**

98-041	Adds electronic submission as an acceptable bid/proposal signature, updates posting contract requirements, adds new annex for publicly posted contracts in Chapter 3, updates when to use award documents, updates contract requirements for all methods of procurement, updates Annex 8-C, updates the definition of contract, updates policy and terms regarding Default.	10/24/22	
--------	---	----------	--