CSB

PROCUREMENT

PROCEDURES

MANUAL

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CSB Procurement Procedures Manual

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Section 5 - Contents

Overview

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Section 5

Overview

Sub-Section 5.100 - Purpose Of This Manual

Subject 5.105 - Applicability of this Manual

This manual provides procurement guidance or direction to all public community providers of mental health, mental retardation and substance abuse services that receive funds from the Virginia Department of Mental Health, Mental Retardation and Substance Abuse Services. This includes operating and administrative policy community services boards, local government departments with policy-advisory CSBs, and behavioral health authorities as defined in Sections 37.1-194.1 and 37.1-242 et seq. of the *Code of Virginia*. The term "CSB" or "Community Services Board" is used generically in this Manual to include all such public community providers.

Subject 5.110 - Procedures

This section was previously titled "Guidelines". Administrative policy CSBs that are city or county government departments, local government departments with policy advisory CSBs, or administrative policy boards that are required by their local governments to comply with the local government's procurement policies and procedures may continue to utilize this Manual as guidelines. These CSBs must comply with the VPPA and local ordinances and regulations.

Operating CSBs, administrative policy CSBs that are not local government departments or are not required to adhere to local government procurement

policies and procedures, and behavioral health authorities shall be in material compliance with the requirements as set forth in this Manual. This manual enunciates the procedures for making procurement decisions that are in compliance with:

- The Virginia Public Procurement Act (VPPA) and
- Generally accepted public procurement practices.

Procurement reviews of all CSBs that are not departments of local government will be conducted periodically to determine compliance with appropriate requirements.

NOTE: *Paragraphs in this Manual that contain procedures that are either required by or have references to the VPPA, are noted with the Code of Virginia Section Number in a block following the applicable paragraph. Other required procedures, as stated in this Manual, are required by the Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS).*

Subject 5.120 - Quick Reference

This manual provides a quick reference to questions that must be answered in making a procurement such as:

- Are these goods or services exempt from the requirement of competition?
- How can qualified vendors be located?
- Which competitive procurement method should be used?
- How are adequate specifications written?
- How is a procurement solicitation constructed?

- How should bids or proposals be evaluated?
- What about contract administration?

- What can the CSB do if a vendor does not perform?
- What are the consequences for a vendor who fails to perform?
- What remedies do vendors have in contractual disputes?
- What are the ethical questions that must be considered in procurement?

Sub-Section 5.200 - How will this manual be updated?

Subject 5.210 - Revisions

Users of this manual are encouraged to recommend revisions by:

- Contacting:

  Commonwealth of Virginia
  Department of Mental Health, Mental Retardation and Substance Abuse Services
  Office of Administrative Services/Contract Office
  P. O. Box 1797
  Richmond, Virginia 23218-1797

- Providing chapter, page and recommended change.

Subject 5.220 - Changes

Consecutively numbered update bulletins will be distributed with changes to the manual. The bulletins will:

- Give instructions for the insertion and removal of pages,
- State the purpose of the new or revised material and
- Specify any policies or procedures which have been superseded.

Sub-Section 5.300 - Organization

How is the manual organized?

Subject 5.310 - Table of Contents

Tables of contents are located:

- At the front of the Manual. This table lists the sections in numerical order.
- At the front of each section. Each Section Table of Contents lists the:
    - sub-Sections and subjects in numerical order and
    - reference page numbers within each section.

Subject 5.320 - Sections

Sections group major related activities and are numbered sequentially. To allow for future expansion, initial numbering will be by 5's, i.e., 5, 10, 15, etc.

Subject 5.330 - Sub-Sections and Subjects

Further divisions are as follows:

- Sub-Sections divide the section into meaningful topics and are numbered in the hundreds, i.e., .100, .200, etc.

- Subjects are further divisions of Sub-Sections and are numbered by ten, i.e., .110, 120, etc. or are designated by bullets (•).

Subject 5.340 - Pages

Pages are numbered sequentially within each section by section number and page number, i.e., 10-1, 10-2, etc.

Subject 5.350 - References

References to sections of the Code of Virginia will be noted in blocks at the end of each section where applicable.

Sub-Section 5.400 - What is the Virginia Public Procurement Act (VPPA)?

Subject 5.410 - History

The VPPA was enacted into law as part of the *Code of Virginia* by the General Assembly of Virginia and became effective on January 1, 1983. It was recodified with new section numbers effective October 1, 2001. This manual references the new Code section numbers.

Subject 5.420 - Purposes

The purposes of the VPPA are to:

- Bring together all procurement laws into one place in the Code of Virginia,
- Enunciate policies pertaining to the procurement, by public bodies from non-governmental sources,
- Allow public bodies to establish small purchase procedures for goods and services, including microcomputers and related peripheral equipment, amounting to less than $50,000 from non-governmental sources ($30,000 for professional services).

NOTE #1: Community Services Boards are considered to be public bodies unless they operate as departments of local government. In that instance, the local government of which are a part is the public body.

Code of Virginia, Sections 37.1-195 and 37.1-243

Note #2: Non-profit organizations are private providers and, with the exception of Sheltered Workshops (See Sub-Section 10.700), have no preferential treatment under the VPPA; i.e., they are not exempt from competition.

Subject 5.430 - Intent

The intent of the General Assembly, as expressed in the VPPA is that all public bodies:

- Obtain high quality goods and services at reasonable cost,
- Conduct all procurement procedures in a fair and impartial manner with avoidance of any impropriety or appearance of impropriety,
- Provide all qualified vendors access to public business and neither arbitrarily nor capriciously exclude any offeror,
- Seek competition to the maximum feasible degree,
- Enjoy broad flexibility in fashioning details of such competition,
- Provide clear rules, in advance of the competition, governing contract awards,
- Draw specifications that reflect the procurement needs of the purchasing body rather than being drawn to favor a particular vendor and
- Freely exchange information between purchaser and vendor concerning what is sought to be procured and what is offered.

Code of Virginia, Section 2.2-4300

Subject 5.440 - Implementation

The following CSBs must implement the provisions of this Manual by establishing procurement rules and regulations that adhere to the policies and procedures contained in this Manual and comply with the VPPA:

- Operating CSBs.

- Administrative Policy CSB that are not local government departments or are not required to adhere to local government procurement policies and procedures.

- Behavioral Health Authorities.

Code of Virginia, Sections 2.2-4302 and 2.2-4303

NOTE: An unofficial copy of the Virginia Public Procurement Act is included in Appendix N of this Manual.

The policies and procedures contained in this Manual should:

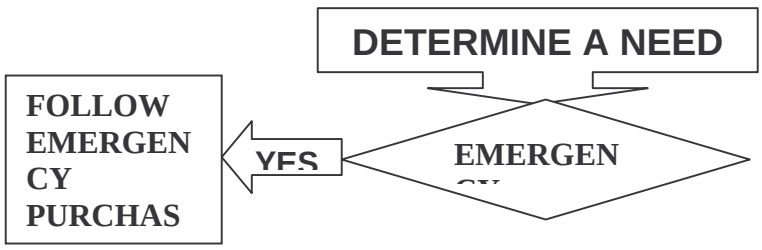
- Allow adequate flexibility to obtain goods and services which meet the needs of the CSB,

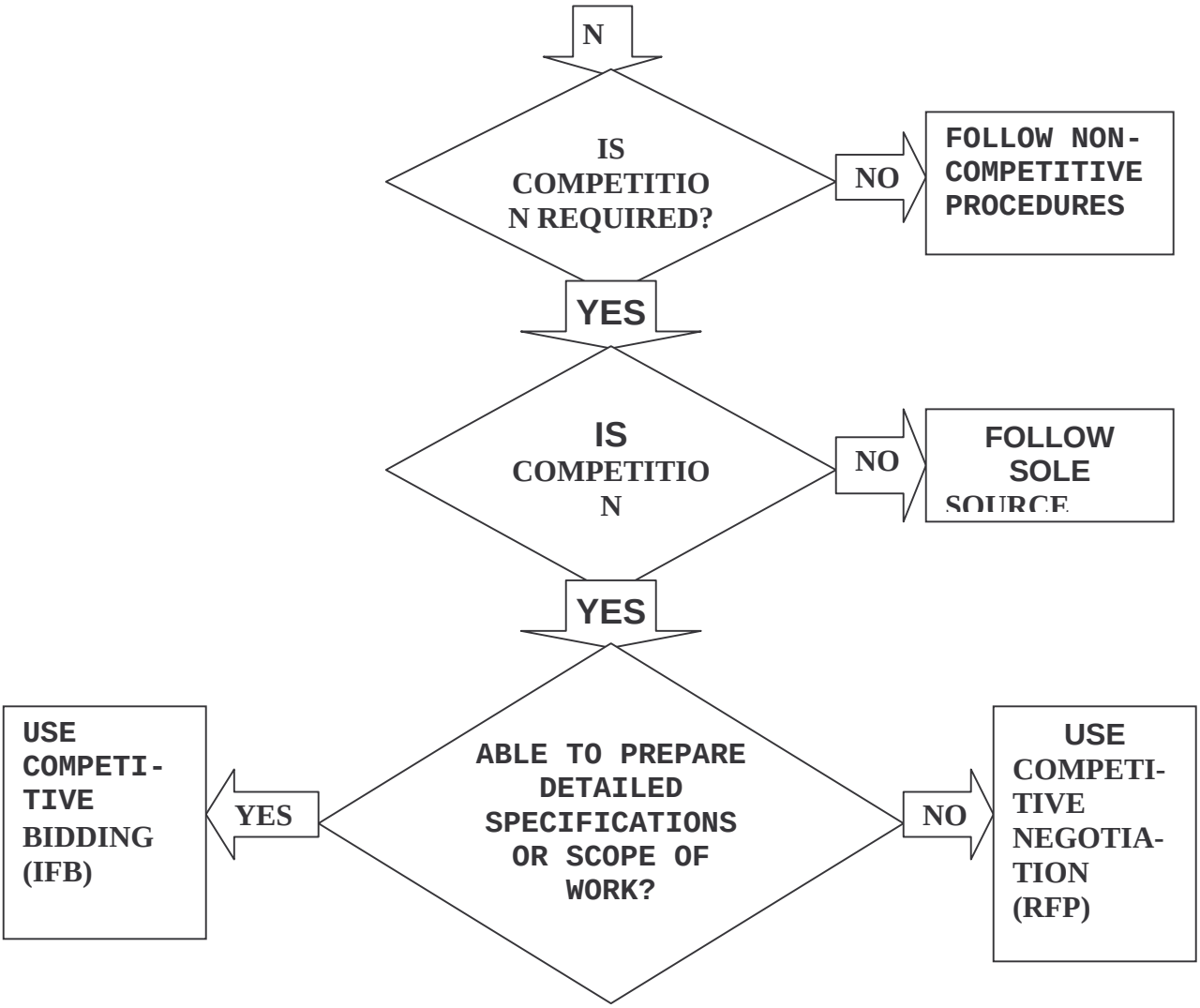
- Be consistent with the applicable procurement rules and regulations under which State Agencies in Virginia operate and,

- Prove to be acceptable to all auditing and regulatory bodies in Virginia.

Sub-Section 5.500 - What are the basic procurement procedures?

The basic decisions that must be made in the procurement process are as follows:





Sub-Section 5.600 - General Procurement Policies

What general procurement policies should apply to every procurement operation?

Subject 5.605 – Approvals

Internal budget and management approvals should obtained prior to requesting price quotations. These approvals can best be obtained through the use of a requisition. A completed requisition is the procurement office's authority to

purchase and commit funds. Prior to such commitment and approval, any request for pricing should be only for budgetary purposes. Vendors should be informed that their quotes are not binding and that, once approvals have been obtained, binding quotes will be requested.

Subject 5.610 - Bulletin Board

A Bulletin Board, located in a public area (or in a place where vendors normally visit), must be maintained for the public posting of procurement notices and solicitations. The following actions are posted on the bulletin board:

- Requests for Proposals (RFPs) - RFPs must also be advertised in a newspaper of general circulation.
- Invitations for Bids (IFB),
- Sole source determinations and
- Emergency determinations.

If the CSB maintains an internet web site, that web site should contain a page on which the above information is also posted.

Requirement (VPPA) The VPPA requires posting of the above-noted procurement actions when the anticipated dollar value is $50,000 or more.

Requirement (DMHMRSAS) Notices of all purchase actions (including award notices) expected to cost $15,000 or more must be posted. This is consistent with best procurement practices as established by the Virginia Department of General Services/Division of Purchases and Supply.

Code of Virginia, Sections 2.2-4307 and 2.2-4303

Subject 5.620 - Documentation

Each procurement transaction over $5,000 must be supported by documentation which explains:

- Why? What is the purpose and justification?

- Who? Who will this be delivered to, who will benefit, monitor and resolve problems?

- What? Specifically, what is to be purchased?

- When? When is it needed?

- Where? Where must service be performed or goods delivered?

- How? How will compliance be measured? What standards will be used?

Examples of Documentation: Notes for the record, oral quotation tabulation, justification for using competitive negotiation, emergency justification, documentation of delivery failure.

Subject 5.630 - Freedom of Information

Public procurement is conducted in an environment similar to a lighted goldfish bowl. Procurement records are subject to the Freedom of Information laws:

- Most records, including proceedings, records, contracts, and bid records are open to inspection by any citizen or interested person, firm or corporation.

- Records pertaining to bids or proposals are not required to be made public until after the award except that bidders or offerors must be afforded the opportunity to inspect the bid or proposal records after the evaluation process has been completed.

Code of Virginia, Section 2.2-4343

Subject 5.640 - Procurement Planning

Proper planning is essential in providing:

- What is needed (including the proper level of quality),

- In the right place,

- At the right time, and

- At the lowest possible cost.

Planning should begin as early as possible and involve the person who will handle the procurement process. The amount of time needed will depend upon the answers to questions such as:

- Which procurement method must be used?
- Do detailed specifications or a complex scope of work need to be developed?
- Is the item to be purchased readily available or must it be constructed?

Lead time for a procurement program includes:

- Administrative Lead Time - This is the time which elapses between the initiation of the requirement and the contract award and, depending upon the complexity of the procurement, can range from a few days to a couple of months. It includes:

  ◊ Internal review and approval (Administrative and Fiscal),

  ◊ Specification development,

  ◊ Advertising time (the time between the posting of the RFP or IFB and the opening date),

- Location of possible providers.
- The minimum time for a formal sealed bid or proposal is ten (10) days.
- In most instances, particularly if the solicitations are mailed, the time should be longer than ten (10) days.

◊ Conducting pre-bid or pre-proposal conferences, if necessary, and issuing any resulting addenda,

◊ Evaluation of bids or proposals and checking vendor references,

◊ Negotiating with offerors who respond to an RFP,

◊ Posting of the award, and

◊ Award of the contract, including any necessary approvals.

Delivery Lead Time - This is the time required by the chosen contractor to make shipment or perform the required work. This time varies widely depending upon many factors including the following:

◊ Complexity of the work.

◊ Whether the goods procured are routine shelf items or custom made.

◊ Seasonal variations (Cost and availability on some products and services may vary from season to season).

◊ Industry fluctuations (including plant closings, recessions and overstock or understock conditions).

◊ Delivery or start-up time.

Subject 5.650 - Cooperative Procurement

The CSBs are encouraged to cooperate with other governmental procurement entities (cities, counties, state agencies, other CSBs) to consolidate the needs of several governmental entities for particular items or services into one procurement solicitation. In this situation, one procurement entity issues the solicitation and makes the award and the other participating entities purchase directly from the successful contractor. Advantages of cooperative procurement are:

- Lower prices often result from larger total quantity.
- Decreased administrative costs for the procurement entity that does not have to issue a solicitation.
- If several cooperative procurements are made, the responsibility for issuing the solicitation and awarding the contract may be rotated among the participating entities in order to spread out the administrative effort.

The Office of Administrative Services/Procurement Office of the Virginia Department of Mental Health, Mental Retardation and Substance Abuse Services is available to assist CSBs with cooperative contracts.

Code of Virginia, Section 2.2-4304

Subject 5.660 - Price Reasonableness

When: A price reasonableness determination should be made for procurements which exceed the single quotation limit when:

- Only one quotation is received.
- Competition is not adequate to determine if prices received are fair and reasonable.
- Prices received appear to be excessive.
- When considering change orders or contract extensions.

A price reasonableness determination should also be made for procurements where competition is not required but where there is

doubt or lack of knowledge regarding whether or not a price is reasonable.

How: A price reasonableness determination can be made by taking one or more of the following actions:

- Compare prices previously paid for the same type of goods or service considering economic trends and quantities purchased.
- Contact other buyers (city, county, state, or other CSBs) of the same type of goods or service.
- Compare prices received with list or catalog prices less the amount of discount the CSB would expect to receive.

Remedy: If the prices quoted are found to be excessive:

If the procurement is...	**Then...**
Informal Bidding	Solicit additional quotes.
Sealed Bids (IFB)	Consider rebidding with revised specifications and/or additional bidders.
Competitive Negotiation (RFP)	Continue negotiations to secure lower pricing.
Professional Services	Consider resolicitation with revised scope of work and/or additional offerors.

Document: The results of the price determination efforts should be included in the procurement file.

Subject 5.670 - Procurement Procedures

Each CSB, if it is not subject to the procurement regulations of a local government, must have written procurement procedures that have been approved by the Board of Directors or appropriate local government authority and meet the requirements of this Manual.

In addition, each CSB should publish and distribute those procedures that affect vendors, providers or contractors in the form of a "Vendors' Guide to Procurement Procedures". This Guide will provide information regarding:

- The general rules and requirements and procedures governing procurements made by the CSB.
- How vendors (providers) may market and sell their goods and services to the CSB.
- Methods for resolving disputes regarding procurements.

A model "Vendor's Guide to Procurement Procedures" is included in Appendix B. This Guide may be revised, adapted to meet the needs of each CSB and published as a separate document. It should be made available to vendors and other providers of goods and services to the CSB.

Sub-Section 5.700 - Professional Development

The proper conduct of the procurement function requires a thorough knowledge of the laws pertaining to procurement as well as the proper methods and procedures for a multitude of actions. It is essential, in today's complex environment, that persons with procurement authority are properly trained. Training is available from:

- Virginia Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS).

- Department of General Services/Division of Purchases and Supply (DGS/DPS).

- Virginia Association of Governmental Purchasing (VAGP),

- National Institute of Governmental Purchasing, Inc. (NIGP) and its local chapters.

- National Association of Purchasing Management (NAPM) and its local chapters.

Several certification programs are available which recognize knowledge and proficiency achieved in the field of procurement. These include:

- Certified Public Purchasing Officer (CPPO) - NIGP
- Certified Professional Public Buyer (CPPB) - NIGP
- Certified Purchasing Manager (CPM) - NAPM
- Virginia Contracting Officer (VCO) – DGS/DPS

Sub-Section 5.800 - What is a Contract?

Subject 5.810 - Definition of a Contract

A contract is...	Explanation
An agreement (offer and acceptance).	Offer from a vendor. **EXAMPLE:** Bid or Proposal. Accepted by the buyer. **EXAMPLE:** Purchase Order or Contract.
Enforceable by law.	Either party to a contract may seek assistance through the judicial system to enforce provisions of the contract.
Between two or more com-	Agreement must be reached

A contract is...	Explanation
petent parties.	between parties who have the legal capacity to contract.
To do or not to do something.	A contract can provide for the sale or barter of goods or services. It can also be an agreement not to perform some action. **EXAMPLE:** Party "A" will not begin a separate support program if Party "B" expands theirs.
Not prohibited by law.	**EXAMPLES:** No illegal drugs. No provision of tobacco products to juveniles.
For consideration.	Exchange of something of value.

Subject 5.820 - Elements of a Contract

NOTE: *While most text books include all of the elements stated herein, they are often called by different names or grouped under different headings. This section is written to correspond with the contract elements as taught in the NIGP procurement classes while also including the terms found in other texts. There is not a uniformity of opinion among legal experts regarding what needs to be in a contract; therefore, the use of standard solicitations and contract documents that have been approved as to form by the attorney for the CSB is recommended.*

To be enforceable, a contract must contain the following elements:

- **Offer** - There must be a valid offer to contract. An offer can take many forms including response to a bid and an advertisement to sell. An offer is an expression of:

  > What the offeror promises to do and
  > What the offeror demands in return.

  EXAMPLE: In public procurement, the procurement office issues an solicitation (Invitation for Bids or Request for Proposals) to potential contractors to make an offer. The response from the bidder or offeror in the form of a bid or proposal becomes the offer and contains the description of what the offeror promises to do and what is demanded in return.

- **Acceptance** - An acceptance (consent) is a communication to the offeror, from the authorized official of the offeree (buyer), of the intention to accept the offer.

  NOTE: In public procurement, the acceptance is usually communicated by a purchase order or other contract acceptance document which specifically refers to the offeror's bid or proposal. Therefore, the offeror's bid or proposal and the buyer's purchase order constitute the contract.

  TWO PARTY CONTRACT DOCUMENT: A contract form, requiring both parties to sign the same document, may be used. This document should make specific reference to the offeror's bid or proposal. If there are any differences in the provisions of the two party contract document and the original proposal, the two party contract document will take precedence.

- **Consideration** - Generally, a contract must be supported by consideration; i.e., something must be exchanged for something else. Both parties must give up something. That "something" could be:

  > Money exchanged for goods or services,
  > Promise of future services exchanged for other services, or
  > Promise of future services exchanged for agreement not to take some action.

- **Legal Purpose** (Legality of the Object) - The objective of the contract must be legal. The contract must meet the requirements of contract law and not involve the commission of illegal activities.

  EXAMPLE: A contract to purchase drugs illegally would not be a binding contract.

  NONEXAMPLE: A licensed pharmacist purchasing legal drugs.

- **Competent Parties** (also called Capacity of the Parties - Both parties must be competent to make a valid contract; i.e., they must be competent. Parties who may have either limited or no capacity to contract include:

  > Persons who have not attained the age of majority (18 years in Virginia).
  > Persons adjudicated to be incompetent.
  > Persons under the influence of alcohol or drugs.
  > Persons who have been convicted of a felony (under certain circumstances).

  A contract, in which one party does not have legal capacity, may be either void or voidable. If voidable, the party without legal capacity may elect not to perform or may disaffirm (repudiate) the contract.

- **Mutuality of Obligation** - Both parties have an obligation to perform and the contract must be enforceable.

  EXAMPLE: The seller must deliver the goods or services at:
  > The right time.
  > The right place.
  > The right price.
  > The right quantity.
  > The right quality (meeting the specifications).

  The buyer must pay for the goods or services at the agreed upon price.

  NOTE: The "Default" clause (see clause Q in Appendix E of this manual) allows the buyer to purchase from other sources and charge the difference in price to the seller in the event that the seller defaults.

- **Definiteness** - The terms of a contract should be definite and have an exact meaning. The degree of definiteness could affect the validity of the contract.

  EXAMPLE: A contract for child care services may not be enforceable if it does not include specifics such as times of service, food service, educational requirements, etc.

Subject 5.825 - Form of a Contract

Written vs. Unwritten

Many unwritten contracts are legal; however, they are often difficult to enforce. Contracts for the purchase of goods in excess of $500 should always be in writing since, under the provisions of the Virginia Statute of Frauds, these contracts, if not in writing, are (with some exceptions) unenforceable.

Code of Virginia, Section 8.2-201

Subject 5.830 - Types of Contracts

Length of Time: Contracts may be classified as:

(1) One time procurement (spot purchase) to procure a particular item of goods or a specific service.

Example #1: Purchase of a piece of furniture.

Example #2: Purchase of the services of a painting contractor to provide labor and materials to paint a specific number of rooms at a set price.

(2) Term (period of time). Term contracts cover:

(a) Definite requirements.

Example: Perform a study over a period of several months for a set amount of money but with periodic payments made over the life of the contract.

(b) Requirements contracts include:
- Fixed price per-unit.
- Quantity that cannot be definitely determined in advance.
- Quantity may be adjusted to meet actual requirements.

Example: The services of a therapist based upon a fixed rate per hour with the number of hours to be determined by the needs of the clients.

Determination of Payment: Contracts are also classified on the basis of how the amount of payment is determined. These include:

- Fee or Price Based
- Cost Based

There are several variations of the above-stated classifications. These include:

- Variable Rate
- Blended Rate
- Time and Materials

These are further defined as follows:

Fixed or Fee Based

- Fixed Price - A contract which provides for a firm price for the duration of the contract. No price increases are allowed. As with other contracts, a fixed price contract may be renewed for an additional term(s) if the contract includes a renewal clause. Price changes are not usually made unless the purchaser adds to the scope of work or a condition arises which was unforeseen.

  Example: A contractor bids $100.00 to remove a wall and in the process finds concealed asbestos which could not have been anticipated.

Fee or Price Based (Continued)

- Fixed Price with Escalation/De-escalation - A contract which provides for a firm price but also allows increases or decreases in that price for inflation and/or other contingencies. Such contracts contain an escalation/de-escalation clause such as #47 on page 31 of Appendix E.

- Fixed Fee Plus (or Minus) Incentive - A contract for fixed price but containing a clause in the IFB or RFP permitting the successful contractor to:

  - Suggest cost-saving changes to the specifications or scope of work.
  - Share in the cost savings.

  Example: A particular contract may contain in incentive clause which allows a split (e.g. 50/50) of cost savings suggestions during the first year.

  - The contractor may suggest an alternate way of fully meeting the requirements of a contract which results in a reduction of $10,000.

  - If this change is accepted by the buyer, the cost of the contract would be reduced by $5,000.

- The contractor would add the remaining $5,000 to his/her profit for the first year.

- The buyer would realize the entire $10,000 savings during the second and succeeding years of the contract.

- By incorporating these changes into the specifications or scope of work, the changes would continue to produce savings in future solicitations.

Cost Based

- Cost-Plus-A-Fixed-Fee - A contract which includes:

  - Reimbursement for actual expenses PLUS
  - A firm contract fee.

- Cost-Plus Incentive Fee - A contract which includes:

  - Reimbursement for actual expenses PLUS
  - A contract fee which increases in direct proportion to the savings effected by the contractor.

- Cost-Plus-A-Percentage-Of-Cost (Illegal: See note) - A contract which includes:

  - Reimbursement for actual expenses PLUS
  - A contract fee in the form of a percentage of the cost.

  Therefore, the amount of this fee increases in direct proportion to the actual expenses (cost). A contractor has no incentive to control costs under this type of contract.

  NOTE: Except in case of emergency affecting public health, safety or welfare and for some insurance contracts, public bodies (CSBs) are not permitted to use this type of contract.

Variable Rate

Variable rate contracts - Contractor fee changes during the period of the contract based upon factors such as the:

- season of the year.
- volume of usage or quantity purchased.

Blended Rate

Blended rate contracts - Contractor's fee is a single rate (per hour, per job, etc.) for work performed by several classifications of personnel; however, this rate is the result of (or average of) the fees of all of the personnel involved.

Example: A contract for consumer services might include the services of a psychologist whose fee is $100.00 per hour and a occupational therapist whose fee is $70.00; however, there may be one contract rate of $78.00 per hour regardless of type of services that are required.

Rate Determination: The rate is usually determined through an analysis of the percent of each type of service that is expected to be needed over the contract period.

Benefit: Invoice certification and processing is easier.

Disadvantage: The percentage used may not prove to be valid and the rate actually paid may be too high.

Time and Materials

Time and materials contracts include:

- Reimbursement for cost of materials, equipment and/or supplies or materials may be charged at list less a percent discount.
- An hourly fee based upon the actual number of direct labor hours.

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Section 10

What procurements can be made without competition?

Sub-Section 10.100 - Small Purchases

Subject 10.110 - Requirements

The VPPA allows public bodies to establish purchase procedures not requiring competitive sealed bids or competitive negotiation for single or term contracts not expected to exceed $50,000. This includes:

- Goods (equipment, materials and supplies).
- Non-professional services.
- Microcomputers and related peripheral equipment and services.

EXCEPTION #1: Professional services must be procured by the Competitive Negotiations (formal RFP) procurement method if the anticipated requirement is $30,000 or more.

EXCEPTION #2: Non-Professional services and goods require a written solicitation to a minimum of four bidders or offerors if the procurement is expected to exceed $30,000. These procurements may utilize informal solicitation methods if the dollar amount of the procurement is not expected to exceed $50,000.

These procedures must be in writing and must provide for competition wherever practicable. (See Section 15.200 of this Manual.)

Code of Virginia, Sections 2.2-4303 G & H

Subject 10.120 - Rationale

The VPPA recognizes that time and effort is best spent on procurement projects that will result in large expenditures of funds and/or where there is potential for obtaining greater benefits for the purchaser.

Example It may be reasonable to accept a single quote of $500 for miscellaneous items from a local hardware store rather than taking time to obtain other quotes which might result in minimal savings.

Exception If the single quote appears unreasonable, one or two other quotes should be obtained.

Public bodies should establish, in writing, procurement policies for procurements of less than $50,000 and professional services of less than $30,000. These policies should establish levels of competition based upon the expected dollar amount of the procurement.

Recommended Procedures:

Expected Dollar **Amount of Procurement**	**Procurement Method**
Over $50,000 for goods and non-professional services	Utilize formal IFB or RFP (refer to Sections 15.300 and 15.400).
Over $30,000 for professional services	Utilize formal RFP method with specific professional services negotiation procedures (refer to Section 15.500).
Over $15,000 for goods, professional services and non-professional services	Utilize informal written quotations (refer to Sub-Section 15-220) to informal RFP (refer to Sub-Section 15-225).
Over $2,000 – If the procurement is not conducted by a certified purchasing agent.	Utilize telephone quotations (Sub-Section 15.210) or informal written quotations (see above).
Over $5,000 - If the procurement is conducted by certified purchasing agent.	
Less than $2,000 (or less than $5,000 if conducted by certified purchasing agent).	Single quote (no competition required); however, competition should be obtained if it appears that quote may not be fair and reasonable.

Computer

Procurements NOTE: The procedures used to purchase computer hardware/software are the same as the procedures for purchasing other supplies and equipment. Technical assistance regarding computer hardware, software and services may be obtained by calling the Community Information System and Data Management Section of DMHMRSAS at (804) 786-4148.

Code of Virginia, Section 2.2-4303 G

Order Splitting: **It is not acceptable procurement practice to split an order into two or more separate orders in order to avoid the degree of competition or type of procurement that would be required due to the dollar value of the total requirement.** Order splitting for this purpose restricts competition and, therefore, may result in higher costs to the CSB.

Subject 10.140 - Public Assistance to Individuals

CSBs may purchase goods or personal services for individual recipients of public assistance programs without competition. This exemption does not apply to the bulk procurement of goods and services.

Code of Virginia, Section 2.2-4345.14

INTERPRETATION: If it is anticipated that a specific service is (or will be) required by several clients over a period of time, it is considered "bulk" services and, if competition is (or could be) available, must be competed.

Sub-Section .200 - Emergency Purchases

Subject 10.210 - Definition

An emergency is an occurrence of a serious and urgent nature that demands immediate attention. It often endangers life or property.

Example of Emergency Situation:

- Air conditioning in a building housing clients whose health is adversely affected by overheating.

Example of Non-Emergency Situation:

- Air conditioning in an office building which can be maintained in a "reasonably comfortable" condition by opening windows and using fans.

(Continued on next page)

Subject 10.220 - Procedure

An emergency procurement should be handled as follows:

If...	Then...
The procurement needs to be expedited but is not of such a serious and urgent nature that it requires an immediate procurement action.	Expedite using the least time-consuming procedure permitted by the VPPA or CSB procurement policy. Example: For emergency procurement over $30,000, IFB's could be FAXed to six potential suppliers and posted on the Bulletin Board with bid opening in 10 days.
The emergency requires immediate action in order to correct a serious and urgent situation. prevent endangers life or property but its cost will be less than the single quote limit.	Obtain one quotation and, if the quotation appears to be fair and reasonable, award a contract.
The emergency endangers life or property and its cost is expected to exceed the single quote limit.	Obtain whatever competition is feasible. Example #1: If the emergency does not occur during normal business hours and only one vendor can be contacted, award a contract to that vendor. Example #2: If the emergency occurs during normal business hours and phone quotes can be obtained, award to the lowest bidder who can meet the time and performance requirements.

Subject 10.230 - Documentation and Posting

A written determination stating the nature of the emergency and why the particular vendor was chosen must be included in the procurement file. If the value of the emergency procurement exceeds $15,000, a copy of this determination must be posted on the procurement bulletin board for a period of ten (10) days after the procurement.

Code of Virginia, Section 2.2-4303 F

Sub-Section .300 - Sole Source and Proprietary Purchases

Subject 10.310 - Definition - Sole Source

A purchase of goods or service may be determined to be a sole source if there is only one source practicably available. (NOTE: Sole source should not be confused with a *proprietary* purchase. A *proprietary* purchase is one where only one brand is acceptable; but, several dealers or distributors may be able to submit quotations.)

Example of a sole source purchase

- A presentation on the contents of a specific book by it's author.

Example of a purchase that is not sole source

- A replacement part for an HVAC system. Several dealers can offer the same item. Therefore, it is proprietary, not sole source. Also, generic replacements may also be available.

  Suggested Statement on IFB or RFP: "The product offered on this bid (proposal) must be compatible with the following existing equipment: (List brand and model) . The cost of any adapting or connecting equipment necessary to integrate the equipment offered into our existing equipment must be included in your bid (proposal)."

Subject 10.320 - Procedure

The following determinations need to be made before declaring a product or service to be available from only one source:

If...	**Then...**
The required item is a component of a system and its estimated cost exceeds the single quote limit. Example: A compressor for an air conditioning system or a certain type of software.	Determine if other brands of components will guarantee compatibility with that system.
Other brands are not compatible.	Determine if the required brand is available from more than one source, i.e., dealers or distributors.
The required brand is available from dealers or distributors.	It is proprietary—not sole source. Procure competitively and state that quotes will be acceptable only on the specified make and model.
The required brand is available from several dealers; however, only one is located in Virginia. Page 10-8	Determine if any required service can be satisfactorily handled by the out-of-state suppliers. If so, consider it to be a proprietary procurement (not sole source) and request competitive quotations. *(Continued on next page)*
Only one brand or service provider is acceptable and only one source is practicably available.	Write a sole source determination. **Policy:** The VPPA requires sole source

If...	Then...
OR Only one provider of a specific service is located sufficiently close to the area in which the service is to be provided to be able to provide adequate service.	determinations to be "posted in a designated public area or published in a newspaper of general circulation". **Recommendation:** Sole source determinations for procurements of $15,000 or more should be posted on the procurement bulletin board.

Code of Virginia, Section 2.2-4303 E

Subject 10.330 - Definition - Proprietary

A proprietary specification or scope of work restricts the acceptable product or service to that of one or more manufacturers or vendors. Proprietary purchases are not considered non-competitive since competition can usually be obtained from various dealers or distributors. See Subject 15.140 for more information.

Sub-Section 10.400 - Purchase of Used Equipment

Subject 10.410 - Definition

Equipment which has been previously owned and used. It is usually offered "as is". Demonstration or factory rebuilt or remanufactured equipment is not considered used since it must meet a specified standard.

Example of Used Equipment:

- A drill press that is no longer needed by a local manufacturing plant.

Examples of Equipment that cannot be purchased as used equipment:

- Remanufactured water pump. (Since remanufactured equipment meets a specified standard, competitive quotes can be obtained.)

Note: The Virginia Department of General Services/Division of Purchases and Supply maintains a term contract for used vehicles.

Subject 10.420 - Policy

The VPPA does not provide procedures for the purchase of used equipment; therefore, all used equipment estimated to cost $50,000 or more, must be purchased competitively or declared to be a sole source. The following policy is consistent with Commonwealth of Virginia procurement policy and is required for CSB use:

If...	Then...
The equipment is reconditioned, remanufactured or is a demonstration item.	Procure competitively (if the cost exceeds the single quote limit).
The equipment is used and the cost is less than $50,000.	Negotiate the procurement. Place a written document in the procurement file stating: • The equipment has been inspected. • It meets the needs of the CSB. • The price is fair and reasonable.
The equipment is used and the cost is more than $50,000.	If, because of differences in age and condition, competition is not practicable, negotiate a sole source procurement. **Note #1:** A written determination must be placed in the contract file stating that there is only one source practicable available for procuring the used equipment which meets the required condition of maintenance and/or operational capability. **Note #2:** Refer to the posting requirement for sole source procurements in Section 10.300 of this Manual.

Sub-Section 10.500 - State or Local Contracts

Subject 10.510 - Guidelines

Term contracts issued by the Commonwealth of Virginia and various local governments often contain provisions allowing other public bodies within their geographical boundaries to place orders against these contracts. Use of these contracts often results in:

- Cost savings due to the greater purchasing power of the Commonwealth or local government.

- Time savings since the competitive requirement of the VPPA was satisfied prior to the award of the contract.

Subject 10.520 - Procedure

Most contracts require that the CSB simply write a purchase order to the contract vendor and reference the contract number. Other contracts may require that the CSB obtain permission from the issuing authority prior to use.

- Follow the instructions contained in the contract notices. Many contracts stipulate minimum order quantities,

(Continued on next page)

- Obtain copies of contract notices and a list of available contracts from the following offices:

Types of Contracts	Copies obtained from:
Consulting Laboratory Services Specialized Equipment	Commonwealth of Virginia Department of Mental Health, Mental Retardation and Substance Abuse

Types of Contracts	Copies obtained from:
	Services Office of Administrative Services P. O. Box 1797 Richmond, Virginia 23214 Phone: (804) 786-3915
Automobiles and light trucks, Office, Medical, Laboratory, Janitorial, Electrical Equipment & Supplies, Food, Clothing, Paper, Chemicals, Textiles, Lawn Mowers, Computer equipment.	Commonwealth of Virginia Department of General Services Division of Purchases and Supply P. O. Box 1199 Richmond, Virginia 23209 Phone: (804) 786-8873 (Contract Distribution)
Long Distance Telephone Service.	Commonwealth of Virginia Department of Information Technology Acquisition Services Division 110 South Seventh Street Richmond, Virginia 23219 Phone: (804) 371-5945
Trucks (3/4 ton and over), Earth moving equipment.	Commonwealth of Virginia Department of Transportation Administrative Services Division 1221 East Broad Street Richmond, Virginia 23219 Phone: (804) 786-2724

Subject 10.530 - Problems and Complaints

- The CSB should attempt to resolve any problems with state-initiated contracts and/or delivery failures with the contractor. The use of the Complaint to State Vendor form is encouraged. This form is available from the Virginia Department of General Services/Division of Purchases and Supply (DGS/DPS).

- Persistent or major problems and/or delivery failures should be reported for resolution to the agency which issued the contract.

Subject 10.540 - List of Available Contracts

A list of contracts that are available to CSBs is available on the following web sites:

- DMHMRSAS Contracts: www.dmhmrsas.state.va.us.
- DGS/DPS Contracts: www.dgs.state.va.us/dps.

Sub-Section 10.600 - Purchases from State Agencies

Subject 10.610 - Virginia Distribution Center (VDC)

Definition - The Virginia Distribution Center (formerly Central Warehouse) is operated by the Commonwealth of Virginia, Department of General Services, Division of Purchases and Supply. VDC stocks:

- Food - Canned, Dry, and Frozen
- Janitorial Supplies
- Paint
- Paper Products (non-office type)

NOTE: VDC sells most items in minimum quantities of one case; therefore, some CSBs may find it impractical to purchase that much of an item; however, in that case, the CSB may wish to participate with one or more other governmental facilities in placing one large order with VDC. Also, it may be possible for VDC to arrange for a State agency to receive a small VDC order for a CSB.

Rationale - CSBs may place orders for items stocked in the Virginia Distribution Center. Advantages of using VDC are:

- Lower prices due to the greater buying power of VDC and the fact that they purchase in bulk quantities.
- Consistent quality due to the emphasis by VDC on specification development and quality control.
- Decreased delivery time due to items being maintained in stock.
- The competitive requirement of the VPPA has been satisfied during the VDC's procurement process.

- Training, service, and dispensing equipment are available from VDC at no additional cost for many of the products stocked, such as:
    - Floor care products,
    - Dish washing compounds,
    - Odor Counteractants and
    - Antimicrobial, waterless hand rinse.

- Orders may either be picked up at VDC or the warehouse will deliver the order for a reasonable upcharge.

Procedure - Order may be placed directly with VDC.

- Follow the instructions contained in the VDC catalog which is on the VDC web page: www.dgs.state.va.us/dps.

- Place orders on the VDC web page or contact:

  Commonwealth of Virginia
  Department of General Services
  Division of Purchases and Supply
  Virginia Distribution Center
  P. O. Box 99
  2400 Riley Ridge Road
  Sandston, Virginia 23150
  Phone: (804) 328-3232
  FAX: (804) 328-3222
  E-Mail: VDC web@dgs.state.va.us

Problems and Complaints - Contact the VDC for resolution of any problems and/or delivery failures.

Subject 10.620 - Surplus Property

Purchases of property declared surplus by local, state or federal governments is often a cost effective way to obtain needed items at considerable savings over the price of new goods.

- State and Federal surplus property may be obtained through the:

  Commonwealth of Virginia
  Department of General Services
  Division of Purchases and Supply

Surplus Property
Darbytown Road
Richmond, Virginia 23231
Phone: (804) 236-3675 (Administration)

- State and Federal surplus property is stored and displayed at distribution centers in:

  - Richmond - Darbytown Road.
    Phone: (804) 236-3669 – State and Federal

  - Wytheville - 4 1/2 Street.
    Phone: (540) 228-6803 – State and Federal

  Contact the Surplus Property Section as a signature card must be on file prior to making a purchase.

Subject 10.630 - Virginia Department for the Blind and Visually Impaired

CSBs may purchase items produced by the Virginia Department for the Blind and Visually Impaired without competition. These items include:

- Writing instruments.
- Mattresses.
- Mops and Brooms.

Orders may be placed and a catalog obtained by contacting:

Commonwealth of Virginia

Department for the Blind and Visually Impaired
Industries for the Blind
397 Azalea Avenue
Richmond, Virginia 23227-3697
Phone: (804) 295-5168
Web Address: www.dbvi.state.va.us

Subject 10.640 - Virginia Department of Corrections

CSBs may purchase items produced by the Virginia Department of Corrections (Correctional Enterprises and CORPRINT) without competition. These items include:

- Furniture, office, lounge and dormitory.
- Signs
- Printing (CORPRINT)
- Institutional clothing

Orders may be placed and a catalog obtained by contacting:

Commonwealth of Virginia
Department of Corrections
Correctional Enterprises
8030 White Bark Terrace
Richmond, Virginia 26237
Phone: (804) 743-4100
Web Address: www.vadoc.state.va.us

Sub-Section 10.700 - Sheltered Workshops

Subject 10.710 – Definition

Sheltered workshops are work-oriented rehabilitative facilities with controlled working environments and individual goals that utilize work experience and related services for assisting handicapped persons to progress toward normal living and productive status.

Code of Virginia, Section 2.2-4301

Subject 10.720 - Procurements

Procurements of goods and services may be made without competition from non-profit sheltered workshops or other non-profit organizations which offer transitional or supported employment services for the handicapped without competition. Community Services Boards which are considering the purchase of goods or services from sheltered workshops should determine whether the goods and services:

- Are of acceptable quality,
- Can be supplied within the time required and
- Can be purchased within ten percent (10%) of fair market value.

> Note: Fair market value should be determined by the price paid by the CSB or other procurement offices for similar quantities within the past six months or by an informal price check of competing sources. The rule of ten percent is based upon the regulations set forth by the Virginia Department of General Services/Division of Purchases and Supply for Commonwealth of Virginia agencies.

Code of Virginia, Section 2.2-4344.1.b

Sub-Section 10.800 - Real Estate - Leased or Rental Property

Subject 10.810 - General Requirements

The Virginia Public Procurement Act does not require real estate (either lease or purchase) to be acquired by competitive procurement.

Clarification: Improvements to or construction on existing real estate must be competitively procured.

Policy #1: The acquisition of real estate must be accomplished with the maximum feasible competition.

Policy #2: The acquisition of real estate must be handled as a fixed asset (capital outlay) project.

Policy #3: CSBs should not acquire (through lease or purchase) real estate for the purpose of constructing improvements when such improvements fall within a 100 year flood plain.

Subject 10.820 - Lease (Rental) of Real Estate

CSBs seeking to lease real estate should identify the most economical, efficient and suitable space within the desired geographical area. The following factors should be considered:

Needs Determination Determine the space needs of the facility for the present and project these needs through the anticipated life of the lease.

Competition 2,500 Square Feet and Under:

- Survey the market to determine what is available and appropriate.
- Contact (if possible and practical) at least four sources for leasing property.

Over 2,500 Square Feet:

- Advertise for formal proposals. Place at least two advertisements in newspaper(s) having circulation in the desired area.

- Send requests for quotations to at lease four (4) real estate firms that actively market real estate in the desired geographical area.

- Requests for quotations should include the following information:

  - CSB name, mailing address and contact person.

  - Purpose for and type of space (office, clinic, warehouse, etc.)

  - Descriptions by Zip Code of acceptable locations.

  - Minimum square footage of space required and any special floor plan requirements.

  - Effective date of lease.

  - Initial period of lease in years or months.

  - Special requirements (heavy floor loads, parking, special partitions, special utility needs, etc.)

  - Services required (utilities, janitorial, maintenance, etc.).

  - Method for calculating escalation of rental fees (normally not applicable for leases of three years or less). The standard escalation of rental costs for leases in excess of three years is 50% of the preceding year's increase in the Consumer Price Index (CPI) for Housing.

Exception: Competition is not required for lease periods not exceeding one year.

Lead Time	Advertisements for leased space should be placed four to five months prior to the anticipated date of occupancy.
Energy Costs	Reasonable effort should be made to determine the energy efficiency or cost for each building under consideration if these costs are to be paid by the lessee (occupant). Copies of previous utility bills should be obtained from the owner to help determine energy costs and these costs should be a factor in determining the overall cost of the lease.
Length of Lease	Normally, leases are executed for periods up to five (5) years.
Lease Document	See Appendix K-3 for a suggested lease format.

Subject 10.830 - Purchase of Real Estate

The procedure to purchase real estate should include the elements of Needs Determination, Energy Costs and Competition as defined in Section .820 - Lease (Rental) of Real Estate. The following are suggested considerations and documentation which should be obtained when purchasing real estate:

- Survey plat of the parcel and a vicinity map indicating easements or rights of way.

- Appraised value. If the purchase price exceeds the appraised value, the justification for exceeding the appraised value (including a copy of the offer from the CSB and the owner's refusal) should be documented.

- Description of any hidden costs or obligations such as ancillary agreements to provide or maintain any roadways.

- Title Examination - A sixty (60) year title examination should be obtained.

Sub-Section 10.900 - Donations

Subject 10.910 - Acceptance

CSBs may accept property (real estate or personal property) that is donated to it by an individual corporation or organization; however, acceptance should be approved by the executive director or the board (whichever is designated in the CSB policy).

Subject 10.920 - After-Acquisition Cost

The after-acquisition cost of the property (maintenance and repair, insurance, site preparation, etc.) should be considered before accepting property.

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SECTION 15

HOW TO PURCHASE COMPETITIVELY

Sub-Section 15.100 - Getting Started

Subject 15.110 – Description of Need

Specifications or Scopes of Work describe the required goods or services needed and form the backbone of a good competitive procurement program. Failure to obtain the quality and type of product or service needed can, most often, be traced to poor or inadequate specifications. Specifications or statements of needs must be:

- Sufficiently complete and specific to ensure users needs are adequately met,

- Broad enough to ensure competition,

- "Reflect the procurement needs of the purchasing body rather than being drawn to favor a particular vendor." (VPPA)

Code of Virginia, Section 2.2-4300.C

Subject 15.120 - Generic Specifications

Generic specifications describe requirements without reference to a brand name or model number. Generic specifications, if properly written, encourage the most competition. There are two basic types of generic specifications: performance and design.

- Performance-type specifications describe what the product or service must do. Performance specifications are the preferred type of specifications because they state the requirement in terms of what must be accomplished rather than how a product or service must be designed.

  Life Cycle Costing (LCC) is a variation of a performance-type specification. A contract award, based upon LCC, takes into account all known cost factors associated with the procurement, installation, maintenance and disposal of the item purchased. In order to properly utilize LCC, it is necessary to have verifiable and accurate data on which to base the various cost factors or projected costs.

  EXAMPLE: In purchasing a refrigerator under LCC, the following factors must be projected or determined:
  - Unit purchase cost (C).
  - Project a life span in years (L).

- Project the average or yearly cost of electricity over the life span (E).
- Determine the yearly consumption of electricity (CE).
- Project annual maintenance costs (if any) for the specific brand and model offered (M).
- Project the salvage value (plus) or disposal cost (minus) at the end of the life span (S).

FORMULA: LCC = C + L(E x CE) + (L x M) + (or -) S.

- Design-type specifications describe how the product or service is to be designed. A good design-type specification:

  - Includes those requirements that are necessary to provide the level of quality and performance needed by the user,

  - Is brand neutral,

  - Does not include any requirements which are unnecessary and might restrict other acceptable brands from competition.

- Qualified Products Lists (QPL) are often used when the time necessary to evaluate competing brands is too lengthy to be conducted during the procurement process. QPLs can also be developed for services.

  The following procedure should be followed in establishing a QPL:

Step	Action
1	Obtain product information and/or samples for evaluation against a generic specification.
2	Publish a QPL listing only those brands and models that have been approved in Step 1. (This listing may be included in an

Step	Action
	IFB.)
3	Issue IFB. Include statement that bids will be considered only on the brands and models included in the QPL. Instructions should also be included on how new suppliers can have their products evaluated for future solicitations.
4	Award contract to the lowest responsive and responsible bidder quoting on one of the products listed on the QPL.
5	If the QPL is being used for a repetitive procurement such as a term contract, vendors whose products are not submitted in time to be tested for the current procurement action should be advised of the deadline to submitting products for consideration prior to the next procurement cycle.

- Assistance in writing specifications - While it is not easy to write good specifications, assistance (including copies of existing specifications for many products/services) is available from many sources including the following:

  - Civilian and military agencies of the Federal Government.

  - Virginia Department of General Services, Division of Purchases and Supply. Phone the Specifications Section at (804) 786-8996.

  - Virginia Department of Mental Health, Mental Retardation and Substance Abuse Services. Phone the OGS/Procurement Office at (804) 786-3915.

  - National Institute of Governmental Purchasing, Inc. Phone 1-800-FOR-NIGP.

  - Other state and local governments. Contact the Purchasing Departments.

  - Vendors. **NOTE:** Any specification obtained from a vendor should be reviewed by one or more of that vendor's competitors and a generic

specification written that includes the essential elements that can be met by all acceptable brands.

Subject 15.130 - Brand Name or Equal

When it is impractical to develop a generic specification, a brand name may be used; however, the terms and conditions of the solicitation should state that the use of a brand name will not restrict bidders to that particular brand. (See Appendix E, Section I, General Terms and Conditions – “Use of Brand Names”).

> Code of Virginia, Section 2.2-4315 states...
>
> "...unless otherwise provided in the Invitation to Bid, the name of a certain brand, make or manufacturer does not restrict bidders to the specific brand, make or manufacturer named, it conveys the general style, type, character, and quality of the article desired, and any article which the public body in its sole discretion determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted."

Subject 15.140 - Proprietary

A proprietary specification restricts the acceptable product to that of one manufacturer. (Proprietary is not the same as *sole source.* There may be several dealers or distributors for the proprietary brand.) A product is determined to be proprietary:

- When the desired product is to be a component of a system already in use, or

- When the use of any other similar piece of equipment would require considerable reorientation and training.

Care should be taken that a product is not declared to be proprietary when a less restrictive determination could be made.

Example A product that is to interface with other equipment may not need to be the same brand. It may be less restrictive to include, in the IFB, the following statement:

> "Any product offered in this bid must interface with __(brand and model)__ equipment now in use and the cost of any interface equipment must be included in the bidder's quoted price."

Subject 15.150 - Statement of Needs (Scope of Work/Services)

A Statement of Needs or Statement of Work is frequently used in a Request for Proposals for the procurement of a service. This statement should:

- Describe the requirement in general terms,

- Include specific tasks, sub-tasks and parameters which must be accomplished by the Contractor,

- Use the words "must" and "shall" only for those areas which are mandatory, and

- Use the words "should" and "may" or “it is desirable” to describe advisory or permissible actions.

Subject 15.160 - Which Competitive procurement method to use?

Introduction - Competitive Procurement methods are generally classified by:

- The degree of formality and
- The type of evaluation process.

Degree of Formality - The Virginia Public Procurement Act (VPPA) requires more formal procurement methods (sealed bidding or competitive negotiation) for purchases estimated at $50,000 or more. (See Section 15.500 of this Manual for procedures and limits regarding Professional Services.) Emergency and sole source procurements are also allowed for purchases of $50,000 or more provided the reasons for these actions are sufficiently documented in the procurement file, (See Section 10.200 and 10.300 of this Manual.)

NOTE: If the value of a procurement cannot be determined in advance, it is better to over-estimate the value rather than to underestimate; i.e., it is better to use sealed bidding and later find that the procurement amount is only $41,000 than to use informal written quotes and then discover the procurement amounts to $51,000. Also, if an annual contract valued at $41,000 is renewed for a second year, the total contract value is then $82,000 and would, therefore, require formal solicitation.

The VPPA allows public bodies to adopt written procedures providing for less formal procurement methods (telephone bids or informal written bids) for goods and services costing less than $50,000.

The following table outlines the minimum thresholds that CSBs should adopt. Please note that the amounts shown beside the asterisks (*) may be lower but not higher.

EXAMPLE: A CSB may require competition at a lower threshold than $2,000 and may require the use of informal IFBs at a lower threshold than $50,000.

If the procurement is not an emergency or sole source and is not expected to exceed...	**Then the following procurement may be used...**
$2,000	Single Quote (no competition) if that quote appears to be fair and reasonable.
$5,000	Single Quote (no competition) if the procurement is conducted by a certified purchasing agent (see Sub-Section 5.700 and Subject 10.130 of this Manual) and that quote appears to be fair and reasonable.
$15,000	Solicit quotes from at least 3 valid sources by telephone. (See Subject 15-210 of this Manual).
$50,000	Issue informal written IFBs to at least 4 valid sources (including one or more minority vendors) or utilize the informal competitive negotiation method.

Code of Virginia, Section 2.2-4301 - "Competitive sealed bidding (2)

Type of Evaluation Process ($50,000 or more) - Sealed bidding is the method preferred by the VPPA for the purchase of goods or services (except professional services) amounting to $50,000 or more in value. Formal solicitation of Professional Services is required where the estimated value is $30,000 or more (see Sub-Section 15.500 of this Manual). The use of other methods (emergency, sole source, competitive negotiation/RFP) require written justification to explain the reasons for not using sealed bidding.

The determination of the proper competitive procurement method, where the cost is expected to exceed $50,000, should be based upon the following circumstances:

If the procurement is expected to exceed $50,000 and...	**Then the proper procurement method would be...**
The product or service can be adequately described and competition can be obtained based upon the specification or scope of work.	Sealed or formal bidding (Invitation for Bids)
The product or service cannot be adequately described without being restrictive or other evaluation criteria are more important than cost.	Competitive negotiation (Request for Proposals)
Services are required to be provided by independent contractors who work in areas defined in the VPPA as "professionals" and the procurement is expected to **exceed $30,000**.	Competitive negotiation (Request for Proposals) Use special procedures for procuring Professional Services (See Sub-Section **15.500** of this Manual).

If the procurement is expected to exceed $50,000 and...	Then the proper procurement method would be...
Construction (see definition in Subject 15.720 of this Manual).	Sealed or formal bidding (Invitation for Bids) See special requirements for procuring construction (Sub-Section **15.700** of this Manual).

Subject 15.165 - Purchases using funds from Federal grants

Where the purchase of goods or services is paid for by a Federal grant and the acceptance of that grant is conditioned upon compliance with certain procedures that conflict with State or CSB regulations or laws, the CSB may follow the prescribed Federal procedures upon written approval of the Board of the CSB.

Code of Virginia, Section 2.2-4343.B

Subject 15.170 - Locating and Selecting Vendors

Sources of Vendor Names - The success of competitive procurement is usually dependent upon locating viable vendors. The following are good sources for obtaining vendor names to include on a bidder's list:

- Electronic Procurement (eVA). CSBs are encouraged to participate in the electronic procurement program for Virginia localities, referred to as eVA-Lite. eVA-LITE provides access to state contracts, electronic catalogs, vendor lists and surplus property. Solicitations may be published on the eVA web site. This services replaces and enhances the Virginia Business Opportunities (VBO). CSBs may register for and access this program at: evalite.dgs.state.va.us.

- Yellow pages are a good source for local vendors. Yellow pages from surrounding localities should also be obtained and used as reference. Black pages are published in many localities to provide information on minority-owned businesses.

- Reference publications such as Thomas Register and McRays Blue Book, provide names and addresses of vendors for various types of goods and services. Trade journals are also good sources for vendors.

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- Vendor lists - Individual CSBs may wish to maintain their own vendor list. This reduces the need for conducting an extensive vendor search each time a solicitation is issued; however, it is time consuming to maintain vendor lists in a current status and CSBs may wish to opt for the eVA-LITE program instead. If a CSB utilizes eVA-LITE, vendors wishing to sell goods or services to the CSB can be directed to the eVA web page. If the CSB maintains its own vendor list, vendors wishing to have their names placed on the Vendor's List for a Community Services Board should file a Vendor's Mailing List Application or submit pertinent information in a letter. This information should include:
  - ◊ Name.
  - ◊ Address.
  - ◊ Telephone and FAX numbers and e-mail addresses.
  - ◊ Federal Tax (FEI/FIN) or Social Security number.
  - ◊ The commodities for which they wish to be solicited.

  After the application is reviewed and approved, the vendor is placed on the active Vendor's List. The CSB has the right to make on-site inspections or other inquiries to verify a vendor's capability prior to being placed on the list as an approved source. If a vendor's application is disapproved, the vendor shall be notified in writing, and the notice shall state the reasons for the

action taken. The vendor may appeal such action within thirty (30) days of receipt of this letter.

Code of Virginia, Section 2.2-4357

A vendor may be removed from the Vendor's List for failure to respond to four (4) consecutive solicitations. A vendor so removed must be placed back on the list if a written request is submitted.

(Also, see Subject 20.130 for removal for default.)

- Other purchasing offices (state and local) can often provide vendor names and addresses.

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- Minority Vendor Lists are maintained by the Virginia Department of Minority Business Enterprise (DMBE). This Department can also assist in advertising specific procurements. DMBE can be reached at their web site: www.dmbe.state.va.us or phone 804-786-6585 or 800-223-0671.

- Trade shows provide opportunities to meet vendors, obtain names and addresses of potential suppliers and keep up to date on the latest developments in a particular field.

Obtaining vendors by advertising - In addition to mailing solicitations to vendors, advertisements may be placed in various publications inviting vendors to participate in a particular solicitation. This advertisement may be very brief but should indicate:

- A brief description of the goods/service to be procured and the identifying name and/or number of the RFP or IFB .

- The date, time and place that bids or proposals for receipt of bids or proposals.

- The date, time and place of a pre-bid or pre-proposal conference, if one is to be conducted.

Advertisements may be placed in the following publications:

- Local or regional newspapers - Advertising in a newspaper or newspapers of general circulation in the area in which the contract is to be performed is required for Requests for Proposals expected to exceed $50,000 ($30,000 for professional services). Newspaper advertising is optional for other solicitations such as Invitations for Bids. A model newspaper advertisement is shown in Appendix G-1 of this Manual.

Code of Virginia, Section 2.2-4301 "Competitive Negotiation" – 2

- Minority-owned newspapers - Consideration should be given to advertising in minority-owned newspapers in an attempt to attract minority bidders/offerors.

Subject 15.180 - Pre-Bid and Pre-Proposal Conferences

A pre-bid or pre-proposal conference may be scheduled for complex, large or critical requirements in order to clarify critical aspects of the solicitation, eliminate misunderstandings, and permit vendor input. The date, time and place for these conferences should be stated in the IFB or RFP and on other postings and advertisements concerning the procurement. Other important considerations are:

- Attendance at a pre-bid or pre-proposal conference is usually optional; however, if the CSB believes it is necessary for bidders to attend the conference in order to obtain information necessary for bidding, attendance may be made mandatory. If attendance is mandatory, no bids may be accepted from firms that did not attend the conference.

- Site visits may also be offered and may be scheduled at a different time or may be included as part of a pre-bid or pre-proposal conference. Attendance may be made optional or mandatory. Site visits may also be offered

- Changes to or alterations in the requirements or specifications as a result of the pre-bid or pre-proposal conference must be included in an addendum to the IFB or RFP.

- Scheduling a pre-bid or pre-proposal conference involves:

  ◊ Setting a date and time,

  Recommendation: Schedule conference at least one week after solicitation is distributed (to give time for participants to make plans to attend) and at least two weeks before bids or proposals are due (to give time to issue any addendum that may be needed).

  ◊ Reserving an accessible room,

  ◊ Determining who will speak for the CSB,

  ◊ Having extra copies of the solicitation available, and

  ◊ Having someone record (electronically or in writing) the points discussed during the conference.

The person conducting the pre-bid or pre-proposal conference should:

- Welcome participants and introduce key CSB people.

- Require all present to sign an attendance register.

- Explain the purpose of the conference and explain that no changes resulting from the conference are official unless issued in writing in the form of an addendum.

- Review the solicitation page by page with emphasis on special conditions, specifications and site conditions that must be addressed in solicitation responses.

- Control the conference, consider all vendor comments, encourage vendor participation, and be sure that all questions and answers are heard and understood by all.

- Review the transcript or recording to determine the need for revising the solicitation by issuing an addendum. A model addendum is included in Appendix F of this Manual.

- Refrain from:

  ◊ Expressing opinions on the validity of the requirements.

  ◊ Telling vendors how to do their job.

  ◊ Discussing the pros and cons of vendor questions in front of vendors.

  ◊ Taking a vote on matters being discussed.

  ◊ Arguing with vendors at the conference.

Subject 15.190 - Samples

Samples - Samples may be required to be submitted with bids or proposals for evaluation purposes. When samples are...

Received	They should be labeled, stored and properly controlled until no longer needed.
Not destroyed in testing and no longer needed.	The bidder/offeror should be notified that he/she/ may pick them up or give instructions for their return at his/her expense.

Received	They should be labeled, stored and properly controlled until no longer needed.
Not reclaimed by the bidder/offeror within 60 days of notification.	The samples may be: • Disposed of in accordance with the methods of disposing of surplus property (see Section 30 of this Manual) OR • The samples may be used in the internal operation of the CSB. • **Samples must not be given to CSB employees for their personal use.**

Subject 15-191 - Contractor Licenses

Certain contractors are required by the Commonwealth of Virginia to be properly registered and licensed, or to hold a permit, prior to performing specific types of services. Among the required licenses are the following:

- Contractor Licenses - A contractor performing, managing of offering to perform or manage work involving construction (including removal, repair or improvements on land or buildings) is required to be licensed by the Department of Professional and Occupational Regulation, Virginia Board for Contractors if the value of the contract exceeds $1,000. The bidder or offeror must be

licensed even if he/she is going to subcontract the construction portion of the contract to another contractor. The following classes of license are required:

- ◊ Class A - If the amount of the specified contract exceeds $70,000 for a single contract or $500,000 over a twelve month period.

- ◊ Class B - If the amount of the specified contract is between $7,500 ($1,000 for electrical, plumbing and HVAC work) and $70,000 for one job or between $150,000 and $500,000 within a 12 month period.

- ◊ Class C - If the amount of the specified contract is between $1,000 and $7,500 or if the total value of work undertaken in a 12 month period does not exceed $150,000. Class C contractors shall not include electrical, plumbing and heating, ventilation and air conditioning (HVAC) contractors.

Where licensing is required:

- ◊ The solicitation (IFB or RFP) must state that the appropriate contractor license number shall be furnished with the bid or proposal.
- ◊ If a contractor who is already licensed fails to submit the license number with the bid/proposal, the bid/proposal may still be considered if the contractor promptly submits the number upon the request of the purchasing office.

- ◊ An unlicensed vendor submitting a bid or offer where such license is required is nonresponsive and is in violation of state law.

- ◊ The contractor must be licensed at the time he/she submits a bid or proposal or his/her bid or proposal cannot be considered.

- ◊ Any buyer who knowingly receives or considers a response from an unlicensed vendor when a license is required is in violation of the Code of Virginia.

If there is any question as to whether a licensed contractor is required for a specific procurement, call the State Board for Contractors for information at 804-367-8511 or 804-367-2785 for policy interpretation.

Code of Virginia, Section 54.1-1100

- Other Licenses - Other types of contractor licenses include:

Type of Service	Regulatory Agency
Pesticide Application	Department of Agriculture and Consumer Services
Asbestos Service and Fire and Security System Installation	Department of Professional & Occupational Regulation
Treatment, Storage, Handling, Transportation or Disposal of Hazardous Waste or Hazardous Radioactive Material	Department of Environmental Quality
Private Security Services	Department of Criminal Justice Services

Subject 15.195 - Multiyear Contracts

Term contracts may be written for a multiyear period, usually not to exceed five years. Advantages that can result from multiyear contracts are:

- Decreased administrative work (issuing solicitations, awards, etc.).
- Potentially better pricing because of longer contract and more total volume.
- Continuity of vendor relationship and reduction of contract start-up time.

Multiyear contracts may be achieved by:

- Setting the initial contract term at 2, 3, 4, or 5 years and/or

- Including an escalation clause which allows extension of the contract for one or more years beyond the initial term. (See Price Escalation/Deescalation Clause in Section II of Appendix E.)

Contracts which do not contain renewal clauses cannot not be extended beyond their expiration dates except when justified in writing by extenuating circumstances. Such extension should normally not exceed six months. (See Subject 15.197.)

Subject 15.197 – Modification of Contracts

A contract may contain provisions for modification (see Appendix E: "Changes to Contract" clause in Section I and "Price Escalation/Deescalation" clause in Section II); however, "no fixed price contract may be increased by more than twenty-five percent of the amount of the contract or $50,000, whichever is greater," without the advance written approval of the CSB's Board.

Definition: A fixed price contract is one that provides for a firm unit or total price with no provisions for escalation/de-escalation.

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"In no event may the amount of any contract, without adequate consideration, be increased for any purpose, including, but not limited to, relief of an offeror from the consequences of an error in its bid or offer." The term of a contract may be extended (usually for a period not to exceed six months); however, "to allow for completion of any work undertaken but not completed during the original term of the contract".

Code of Virginia, Section 2.2-4309

Sub-Section 15.200 - Small Purchase Procedures

Subject 15.210 - Telephone Quotations

Quotations may be obtained via telephone *or FAX* for procurements not exceeding $15,000. When telephone quotations are obtained:

- At least three (3) potential bidders should be contacted.

- Each bidder should be provided with the same verbal description of the desired product/service. Therefore, no one bidder is given an advantage by being provided with more information than his/her competitors.

- A record of all bids should be made and included in the procurement file. This record should include:

  - The name and address of the bidder contacted.

  - The name of the individual giving the quote.

  - The FOB point.

  - The delivery date.

  - Payment terms.

  - Make and model quoted.

  - The amount of the bid

    NOTE: A telephone bid tabulation form, such as the one in Appendix H-1 of the Manual, is a good format in which to record this information.

- If the CSB decides that an alternate quotation (not an equal to that specified) is acceptable, each of the other bidders must be contacted and given an opportunity to requote on the new description.

- Award to the lowest responsive and responsible bidder. (See Subject 15.911 and 912.)

Subject 15.220 - Informal Written Quotations

Informal written quotations should be solicited from at least four (4) potential bidders for procurements estimated at between $15,000 and $50,000 in value. When Informal Written Quotations are obtained:

- The general format for sealed Invitations for Bids may be used with the modifications noted herein.
- Informal quotations are not required to be opened at a formal public bid opening.
- Informal bids may be received by telefax or e-mail.
- A due date and hour is established for receipt of the bids.
- The bid solicitation should contain a full description of the goods or services required as well as the General Terms and Conditions.
- Clarifications may be made by telephone, upon request, to any bidder; however, if such clarification provides substantive information to one bidder that would also be useful to other bidders:
    - ◊ A written addendum to the bid solicitation should be issued to all bidders.
    - ◊ This may necessitate an extension of the bid opening date and hour.

Subject 15.225 - Informal RFP (Unsealed Proposals)

An informal Request for Proposals (RFP) may be used for purchases of goods or services where:

- The estimated cost of the procurement is less than $50,000 (or less than $30,000 for professional services) and,

- It is not practical to utilize the Unsealed Bids method (Refer to Subject 15.410 for the four criteria for using an RFP).

The procedures for utilizing an Informal RFP are:

Step	Action
1	Send out a solicitation which includes: • A cover sheet. • A general description of the desired goods or services. • The evaluation criteria. • The General Terms and Conditions (either in full or by reference). • Any Special Terms and Conditions that may be needed.
2	Advertise the RFP by: • Soliciting the proper number of sources (at least 4 are recommended), • Publicly posting and • Advertising in the Virginia Business Opportunities/eVA is also strongly recommended.
3	Offers are due at a designated location, date and hour but may be opened and evaluated upon receipt.
4	The evaluation may be conducted by the buyer and/or the initiator.
5	Negotiations are conducted with the offerors selected and an award made.

Subject 15.227 – Electronic Mall

The Virginia Department of General Services/Division of Purchases and Supply (DGS/DPS) has established an Electronic Mall (e-Mall) to facilitate the ordering of goods and services by public bodies. CSBs can use eVA Lite for purchases against State contracts in any dollar amount (unless dollar limits are specified in the contract) or for small purchases up to $15,000. The e-Mall is located on the eVA

web site and includes, but is not limited to, state contracts, electronic catalogs and surplus property. This program is called eVA Lite. Information can be obtained from the DGS/DPS web site at the following address: evalite.dgs.state.va.us.

Subject 15.230 - Vendor's Contract Form

Many vendors will insist that purchasers sign the vendor's standard contract form. These forms often contain terms that are not in the purchaser's best interest and, sometimes, result in the purchaser giving up some of its rights.

- CSBs should not sign these forms unless there is no other vendor from whom the necessary goods or services can be reasonably obtained.

- If signing the vendor's (contractor's) form is necessary, the CSB should insist that an "Addendum to Vendor's Contract Form" (see Appendix K-4) is also executed.

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Sub-Section 15.300 - Formal Bidding (Invitations for Bids)

Subject 15.310 - Construction of the IFB

Competitive Sealed Bidding utilizing the Invitation for Bids (IFB) procedure, is the formal procurement method that is preferred under the Virginia Public Procurement Act. A model Invitation for Bids (IFB) is included in Appendix C of this Manual. The following components must be included in an IFB:

- Opening Date and Hour - The number of days between the posting of the IFB (see "Public Posting" below) and the opening date and hour must be at least ten (10) days. In most instances, this time should be longer:

  ◊ If the IFB is mailed to potential vendors, additional time may be required.

  ◊ Sometimes bids are accepted until the due date and hour but not opened until the same time on the next business day. This procedure is primarily used for construction bids and, if used, must be so noted on the IFB.

- Pre-Bid Conference - If a pre-bid conference is to be held, indicate the date, time and place and whether or not attendance will be mandatory. (See Subject 15.180 of this Manual.)

- Complete Description of the Required Goods or Services - The description (specifications) should be as complete as possible so as to adequately describe the goods or services required but also as broad as possible so as not to unnecessarily prevent competitive brands from being considered. (See Subjects 15.120 through 15.140.)

Clarification of specifications or other requirements may be provided to bidders upon request; however, if the clarification is such that other bidders would also benefit from such clarification, an addendum must be issued to provide this information in written form to all bidders.

- Terms and Conditions - Include the standard General Terms and Conditions and those Special Terms and Conditions as may be applicable in the IFB. (Refer to Appendices C and E of this Manual.) Terms and Conditions should be carefully chosen as they form the legal framework of the contract. Use indemnification and/or liquidated damage clauses only when certain circumstances are present:

  ◊ Indemnification clauses are used to protect either the contractor of the purchaser against any liability that might result from the execution of the contract. CSBs should not indemnify (protect) contractors from legal actions without advice from their legal counsel and clauses indemnifying the CSB should be used only when legal counsel feels it is necessary for that particular contract.

  ◊ Liquidated damage clauses require the contractor to make certain payments to the purchaser in the event that the project is not completed on time. Unless actual damages, such as loss of revenue or rental payments for other facilities can be quantified, a liquidated damage clause should not be used. Penalties (payments not based upon actual or anticipated expenses) cannot be required of a contractor. (See Appendix E, Section II, Statement 37)

- Public Posting - The VPPA requires a copy of the IFB to be posted in a designated public area (such as the procurement office bulletin board) or a notice published in a newspaper of general circulation or both for a period of at least ten (10) days. (See Appendix G. of this Manual for a sample newspaper advertisement.)

Code of Virginia, Section 2.2-4302 "Competitive Sealed Bidding"

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Subject 15.320 - Evaluation

The bids received must be evaluated in accordance with the scope of work, specifications, and terms and conditions of the IFB.

- References, if requested in the IFB, should be contacted and a record made of their responses to the questions asked. The same questions should be asked of each reference.

- Contract award must be made to the lowest responsive and responsible bidder.

- Negotiations are not permitted in a sealed bid environment unless the lowest responsible bid exceeds available funds. If the CSB believes negotiations may be necessary on an IFB, the IFB's Special Terms and Conditions should include the "Negotiations with Lowest Bidder" clause (see Appendix E, Section II of this Manual).

Code of Virginia, Section 11-53

- A low bidder meeting the minimum specifications cannot be rejected in order to accept a higher bid offering more than the minimum specifications.

- Notations should be included in the file indicating the specific specification or other bid requirement(s) that was(were) not met by each bidder who submitted a quotation which was lower than the bid which was accepted. (See Appendix H of this Manual for sample evaluation forms.

Subject 15.330 - Changes in Bids

- Withdrawal or Amendments - The generally-accepted rules regarding bidders withdrawing or amending a bid are:

  - Bids may be withdrawn or amended at any time prior to the due date and hour.

  - Bids may not be amended after the due date and hour.

  - A bidder may be permitted to withdraw a bid containing an obvious error after the due date and hour; however, that bidder cannot be permitted to participate in the resulting contract by supplying material under a subcontract or through financial interest in the resulting contract.

Code of Virginia, Section 2.2-4330

- Mistakes in Bids - The CSB employee responsible for handling a bid program should, as soon as possible, contact a bidder who submits a bid which appears to contain errors in order to verify the correctness or incorrectness of the bid. Bid error should be suspected when the difference between the lowest bid and the next lowest bid is 25% or more.

  DOCUMENT: A record of this contact and the bidder's response should documented in the procurement file.

  Mistakes discovered after the due date and hour should be handled as stated in the chart on the following page.

Type of Mistake	Permissible Action
Does not affect price, quality, quantity, or delivery	Considered an informality. May waive or correct error. Example #1: Not returning the correct number of copies of the bid. Example #2: Not signing the bid, provided a signed cover letter or other signed document is provided which indicates the bidder's intent to be bound. Example #3: Not returning a bid addendum, provided the bid clearly indicated that the terms of the addendum are included in the bid.
The intended correct bid price or term is evident.	Bid may be corrected. Example: A bidder quotes $135 per pound when it is evident that the bidder intended to quote $135 per cwt. Or $1.35 per pound.
The bid contains an obvious error; however, the correct quotation information (price, etc.) is not evident.	The bidder may be allowed to withdraw the bid but not to correct it.
The bidder claims that there is an error in the bid; however, the error is not evident.	The CSB may refuse to allow the bid to be withdrawn.

Subject 15.340 - Procurement of Printing - Printing is normally procured through:

- Formal Bidding (IFB).

- Small Purchase procedure.

- CORPRINT (Virginia Department of Corrections) - No competition is required for purchases from the Department of Corrections.

- Sheltered Workshop (See Section 10.700 for procedures pertaining to procurements from sheltered workshops).

- Cooperative Procurement - Consideration should be given to cooperative procurements or, at least, standardization of forms with other Community Services Boards. The unit cost (price per 1,000 copies) of printing often decreases with an increase in quantity.

Factors to be considered in the procurement of printing are:

- Artwork and Graphic Design - Printing may involve either photographing artwork or text furnished by the customer or the printer can set the type. Typesetting is more expensive than using camera ready text. The CSB should specify that all artwork, negatives, dies, overlays or similar material used to print a job remain the property of the CSB. (See the clause on "Ownership of Printing Materials" under "Printing" in Appendix E, Section II of this Manual.) This permits a reprinting without having to use the same printer or of paying to recreate the artwork.

- Proofs and Alterations - A proof should be requested when typesetting is required.

  ◊ Galley proofs (large sheets) should be specified since the cost of making corrections on galley proofs is less than the cost of correcting page proofs.

  ◊ Page proofs, blue line, or velox must be requested in the solicitation if they are required. These are more expensive than galley proofs.

  ◊ Changes (as opposed to corrections of the printer's mistakes) made to proofs are expensive and difficult to make and often cause production delays.

- Cost Factors - Factors that add to the cost of a printing job are:

  ◊ Multi-colors.

  ◊ Non-standard paper and sizes.

  ◊ Heavier weight or rag content of paper.

- Overruns and Underruns - A CSB is not required to accept overruns; however, an overrun up to 10% is standard. The price for overruns should not exceed the unit cost (usually the cost per thousand) or the cost for additional copies run at the same time (RAST), if quoted in the solicitation. (This cost should be equal to or less than the unit cost.) Underruns may be accepted; however, the price should be calculated at the quoted base price per unit.

- Copyright - Vendors should be prohibited, by terms of the solicitation, from copyrighting any work contracted for by the Community Services Board and produced for the CSB without the written consent of the CSB. (See the "Ownership of Printing Materials" clause under "Printing" in Section II of Appendix E of this Manual.) Also, the solicitation should state that any negatives, dies, software, etc. produced by the vendor in providing goods/services to the CSB shall be the property of that CSB. (This allows other vendors to quote on future requirements without having to charge for set-up or artwork.)

Subject 15.350 - Posting

Posting of awards is recommended when the amount of the procurement is $15,000 or more. Posting involves:

- Placing a copy of the purchase order, contract, or tabulation sheet (with the awarded vendor's price circled or otherwise noted) on the procurement bulletin board OR

- Placing a notice of intent to award (see sample in Appendix J of this Manual) on the procurement bulletin board.

Bidders may protest an award within ten (10) calendar days after the posting of an award notice (see Section 50 - Appeals); therefore, if a protest is anticipated and there is sufficient time available, a notice of intent to award may be preferable. If no notice of protest is filed within ten (10) calendar days after the posting of a notice of intent to award, the award (purchase order or contract) may then be posted and an award issued without threat of protest.

Subject 15.360 - Award of Contract

A bid may be accepted by the issuance of some type of award form including a purchase order, contract form or a letter. The award form (see Appendix J of this Manual for examples) should reference the bid submitted by the successful bidder (plus any addenda thereto) and be signed by an official of the CSB who is authorized to bind the CSB.

Other Documentation - The file must be fully documented to indicate the why, who, what, when, where, and how of the transaction. For example:

Why - Any justifications such as proprietary, or emergency purchase.
Who - Who requested and approved the purchase?
What - Description of what was purchased.
When - Documentation of time frames.
Where - Location of required item or service.
How - What procedures were used for the purchase? Include documentation of bidders' list, individual quotes, reasons for rejection of low bid, etc.

- If only one bid is received, a memo to the procurement file should indicate:

  ◊ The reasons for the lack of competition,

  ◊ The basis for the determination that the prices quoted were fair and reasonable, and

  ◊ A determination that the specifications were reviewed to ensure that they did not unduly restrict competition.

- Any other determination or action that has any substantive impact upon the procurement should be documented in the procurement file.

Subject 15.370 – Two-Step Sealed Bidding

When Used: Two-step competitive sealed bidding is used when it is impractical to initially prepare a definitive purchase description to support an award based on prices. In such instances, an IFB is issued requesting the submission of unpriced technical proposals, to be followed by an IFB for a price, limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation. There is no negotiation in the two-step competitive bid process; however, the CSB at its option may request information from bidders to clarify material contained in their technical proposals

Procedures:

Step One – Prepare an IFB requesting a technical proposal. The solicitation should describe the CSB's requirement in general terms and ask for a technical proposal describing how the bidder intends to meet the CSB's requirements and what goods, equipment and service, as applicable, will be furnished. The IFB should specify any mandatory technical data and information that is required to be submitted with the technical proposal and/or any optional information that the CSB desires to be submitted. The cover sheet should explain the two-step procedure and emphasize that the technical proposal is not to include the bid price.

Procedures (Continued)

The cover sheet should indicate if a pre-bid conference will be conducted and if attendance is mandatory or optional. The proposals are publicly opened and the names of the firms submitting proposals are announced. The CSB then evaluates and selects those proposals which will meets its needs, based on the mandatory criteria specified in the solicitation. The evaluators may request written or oral discussions from bidders to clarify or amplify the material in the proposal. The contents of the technical proposal are not subject to negotiation and must be evaluated as submitted. They are not ranked but are determined to be either acceptable or not acceptable for meeting the CSB's needs. Only those responsive bidders whose technical proposals were determined to be acceptable will be invited to submit a bid price.

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 bid opening is held. Bids are evaluated, and the contract is awarded to the lowest responsive and responsible bidder. The award document must incorporate by reference the terms and conditions of the solicitation, the contractor's technical proposal, and the bid price.

Combined Two-Step Sealed Bidding

Steps One and Two can be combined by requiring firms that respond to the solicitation to furnish their un-priced technical proposals in one sealed envelope and their bid prices in a separate sealed envelope. One envelope should be marked "Technical Proposal" and the other "Bid Price" and each envelope identified with the bidder's name and the bid reference number. The technical proposals are opened and evaluated as described in Step One and 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 bid price. Envelopes containing the bid price for those proposals deter-mined to be not acceptable must be returned to the bidder unopened.

Sub-Section 15.400 - Competitive Negotiation (Request for Proposals)

Subject 15.405 – Written Determination

The use of a Request for Proposals (RFP) requires that a written determination be placed in the procurement file explaining why it is not practicable or fiscally advantageous to utilize the Invitation for Bids (IFB) procedure. (This is required because the Code of Virginia designates the IFB procedure as the preferred method of procurement.) The reasons for using an RFP and the basis for the written determination are normally one or more of the following:

- Specifications or a scope of work cannot be written to adequately describe the requirements; or,
- When the requirements cannot be described in such a manner as to permit open competition; or
- When advances in technology may create a dynamic environment in which several alternatives might be possible; or,
- When concept and quality factors far exceed price factors in determining the most desirable product or service.

Code of Virginia, Section 2.2-4303.C

Subject 15.410 - Construction and Distribution of the RFP

A model Request for Proposals (RFP) is included in Appendix D of this Manual.

The RFP method may be used to procure goods or non-professional services and involves the following procedures:

Prepare the RFP. The following sections should be included in the RFP:

Purpose and Background	This section provides a brief statement of what is being requested and some pertinent background information or historical facts or events that led to the present requirement. This section may be separated into two separate sections: Purpose and Background, if necessary.
Statement of Needs or Scope of Work	The Statement of Needs (or Scope of Work) should include a description of the product and/or services that the successful vendor will be required to provide. These requirements should be stated in terms that are as broad as possible so as not to unnecessarily restrict an offeror in developing a creative proposal. It is important to remember that the final contract will result from negotiation sessions; therefore, it is better to allow offerors the freedom to propose various alternatives and options for meeting the needs of the CSB. The words “must” and “shall” should only be used for those requirements that are absolutely mandatory. The words “should” and “may” or “it is desirable” can be used to describe permissible actions or features that would be “nice to have” but may not be essential.
Qualifications of the Provider	This section should include any specific requirements that the offeror must possess, such as special licenses or experience, in order to be considered.
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Proposal Preparation and Submission Requirements	General Requirements: Note, in the RFP, the number of copies of the proposal (in addition to the original) that should be returned. The number required depends upon the number of persons serving on the Evaluation Panel (one copy for each person). Also, note any other requirements and indicate if there may be an opportunity for oral presentations during which offerors may clarify or elaborate on their proposals. Specific Proposal Requirements: Request information that the offeror should include in the proposal to assist the evaluation team in evaluating the proposal. Note that specific information should be requested in this section that will support each evaluation criteria. For example, if one of the evaluation criteria is experience in providing a particular service, the offeror should be asked to explain, under the "Specific Proposal Requirements" section, the type and amount of experience that the offeror has in providing this service.
Evaluation and Award Criteria	Evaluation and Award Criteria. The evaluation and award criteria must be developed and each criteria should be assigned a weight (usually a percentage). The criteria (without the weights) must be included in the RFP. The weights may be held in confidence until the opening of the RFP and then be posted for review by any interested party OR the weights may be included in the RFP. Factors that may be included in the evaluation and award criteria include: ◊ Experience in providing the goods or service. ◊ Quality of equipment or service offered. ◊ Suitability of the equipment or service offered for the purpose intended.

Evaluation and Award Criteria (Continued)	Page 15-36 ◊ Scope and suitability of training offered to CSB personnel. ◊ Maintenance support. ◊ Price. (Price must be considered but is not the only criteria.) <u>Award</u>: An explanation of the process for evaluation and award should be included here. Use the appropriate Award statements (7-F for goods and non-professional services or 7-G for professional services) that are provided in Section II of Appendix E.
Reporting and Delivery Requirements	Included in this section are any documents, progress reports, etc. that the successful offeror will be required to furnish during the term of the resulting contract.
Pre-Proposal Conference	If a pre-proposal conference is to be held, indicate the date, time and place and whether or not attendance is mandatory. (See Section 15.180 of this Manual)
General Terms and Conditions	Include the General Terms and Conditions from Section I of Appendix E. These General Terms and Conditions may be modified to reflect the requirements of an individual CSB; however, the CSB's attorney should review any changes to standard terms and conditions.
Special Terms and Conditions	Include any of the Special Terms and Conditions from Section II of Appendix E as well as any other terms and conditions that may be applicable to the RFP. Page 15-37

Method of Payment	Information regarding the submission of invoices and frequency of payment should be included in this section.
Pricing Schedule	A pricing schedule may be included in the RFP if it is desirable that offerors quote pricing in a specific and unified method, i.e., lump sum, hourly rate, unit price, etc.
Attachments	List any attachments that may be necessary such as required time lines, historical usage data and/or a contractor information sheet.

Advertise and Distribute the RFP - The VPPA requires RFPs to be:

- Posted in a public area (procurement bulletin board) for at least ten days prior to the date and time set for receipt of proposals.
- Advertised in a "newspaper or newspapers of general circulation in the area in which the contract is to be performed".
- In addition, the RFP should be mailed to at least six (6) vendors. Advertising through eVA is strongly recommended.

Code of Virginia, Section 2.2-4301
"Competitive Negotiations"

Select the Evaluation Panel - This panel should be kept small (three to five persons) and should include the person handling the procurement process.

Subject 15.420 - Open the Proposals

The proposals may be opened publicly (if indicated on the RFP cover sheet) at the date and time specified. A public opening is not required by law. If a public opening is held, read only the names of the Offerors. The contents of the proposals are subject to negotiations and, therefore, should not be revealed until the award or intent to award is posted. Late proposals cannot be considered and must be returned unopened.

Subject 15.430 - Withdrawal of Proposal

Offerors may withdraw or amend their proposals at any time prior to the due date and hour for the proposal. Since proposals are subject to negotiations, they may be amended during negotiations or withdrawn at any time prior to award of the contract.

Subject 15.440 - Evaluation Process

The Evaluation Process includes the following:

- Buyer Review of the Proposals - The person handling the procurement should review the proposals to determine if all proposals are complete and in compliance with the mandatory requirements of the RFP. Any offerors who have failed to include any required items of information may be given a short time to provide the missing information or furnish evidence of intention to comply with the mandatory requirement(s). Failure to furnish the information within the time allowed may adversely affect the scoring of that proposal. Unlike bids, proposals are normally not rejected as nonresponsive.

- Provide Instructions to the Evaluation Panel - The person handling the procurement should provide written instructions to the evaluation panel. These instructions should include the following:

  ◊ The panel members should determine and prepare a written list of areas of noncompliance and areas needing clarification for each proposal in relationship to the requirements set forth in the RFP.

  ◊ Each member of the panel should independently review each proposal and prepare a handwritten listing of the strengths and weaknesses of each proposal.

  ◊ The panel members must not contact any of the Offerors. They must also not reveal any information or tentative conclusions on the relative merits of the proposals.

- Evaluate Proposals -The chairperson of the Evaluation Committee should:

  ◊ Determine that all preliminary studies have been completed by each member.

  ◊ Review the committee's list of apparent noncompliance and questionable areas with the entire committee and have the committee determine the need for clarification by the Offeror.

  ◊ Schedule a question and answer clarification conference (oral presentation) with one or more of the Offerors if such a conference is deemed advisable. If oral presentations are anticipated, the provision for such conference should be included in the “Proposal Preparation and Submission Requirements” section of the RFP. This conference:

    ⇒ May be conducted either in person or via the telephone.

    ⇒ Is limited to a clarification or verification of the Offeror's written proposal.

⇒ Will not include negotiations.

⇒ May require the Offeror to document an answer if a written clarification is deemed, by the Chairperson, to be advisable.

◊ Perform (or have another Evaluation Committee member perform) reference checks or inspections, if required by the evaluation criteria, as follows:

⇒ Each reference should be asked the same questions and a brief summary of the answers recorded for the file.

⇒ If equipment is required by the RFP, a demonstration test or on-site inspection is permissible provided that such requirements are set forth in the RFP.

- Complete Evaluation by Assigning Points - Each proposal not eliminated due to incompleteness or failure to comply with mandatory requirements, must be assigned points in accordance with the evaluation criteria in the RFP and the weights previously assigned:

◊ Non-subjective criteria (such as price) should be assigned points by assigning the maximum number of points to the best (lowest price) proposal and prorating the points assigned the other proposals. This prorating may be accomplished by using a formula, such as the following example which is used to evaluate the cost factor of each proposal, (Assume that the cost factor has been assigned 25 points):

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Formula	Example
LOWEST PRICE OFFERED	$25.89
(Divided by)	
OFFEROR'S PRICE	$29.05
(Equals)	
PERCENT FACTOR	.891
(Multiply this percent factor by)	
THE MAXIMUM AVAILABLE POINTS	25
(This equals the)	
POINTS ASSIGNED TO THIS FACTOR	22.3

◊ Each subjective criteria (experience, quality, suitability, etc.) should be rated for each offeror by assigning points (not necessarily the maximum) to the best proposal for each criteria. The other proposals for each criteria should be assigned less points, the number of points depending upon their compliance with the requirements of the particular criteria. Scoring of criteria:

⇒ Is based upon fact, as presented in the proposal, even though it may be a subjective evaluation of the fact.

⇒ Should not penalize an Offeror due to lack of experience with the CSB itself, but should be judged, among other considerations, on the relevancy of experience and expertise wherever it occurred.

⇒ Should not give an Offeror an unfair advantage of points simply because of a previous contractual relationship with the CSB; however, the relevancy of such experience in terms of the RFP's statement of needs may be judged.

⇒ Shall not be manipulated to favor a preferred Offeror, but shall be assigned in an impartial manner.

◊ The cost factor should not predominate. The weights should be assigned so that other factors (or the combination of other factors) should be able to override cost. The purpose of this phase of the process is to establish ranking for negotiation. Contract award is not determined at this point.

- Complete Evaluation Consensus Form - A consensus form should be prepared which includes the points assigned by each evaluator and an average of all points assigned to each Offeror. The file should include any written comments which support the evaluation consensus. (See Appendix H for a model consensus form.)

- Select the Offerors with whom negotiations are to be conducted - The evaluation committee should:

  ◊ Rank the Offeror's based upon their average total score. Two or more Offerors who have been deemed to be fully qualified and best suited among those submitting proposals (the Offerors with the highest scores) must be chosen for negotiations. Should the evaluation committee determine in writing that only one Offeror is fully qualified, or that one Offeror is clearly more highly qualified and suitable (has considerably more points than any of the others), a contract may be negotiated and awarded to that Offeror.

  ◊ Discuss each Offeror's proposal in detail to determine the areas that need to be negotiated, including areas in which the CSB will attempt to obtain concessions from the Offeror(s).

Subject 15.450 - Negotiations

Negotiations should be conducted on the points selected by the Evaluation Committee. (See Appendix I for "Guidelines for Negotiations".) Care should be taken to assure that information contained in other proposals or obtained from other offerors is not divulged. Negotiations must not be conducted as an auction. Multiple negotiation sessions with a particular offeror may be required. The Evaluation Committee:

- Should obtain written confirmation of any changes to the proposal from each Offeror with whom negotiations have been conducted or develop a Memorandum of Understanding as a supplement or addendum to bridge the differences between the CSB's RFP, the Offeror's proposal, and the subsequent final agreement at the end of negotiations.

- May request best and final offers from each Offeror.

- Must determine which Offeror has made the best proposal.

- Must develop a written determination of the basis for the award decision.

Subject 15.460 - Post a Notice of Intent to Award

A notice of intent to award (see Appendix J of this Manual) should be posted on the Procurement Bulletin Board for a period of ten (10) days. During this ten day period:

- Unsuccessful offerors should be notified of the award decision.

- Any unsuccessful offeror has an opportunity to protest the award decision.

- Award records must be made available to any offeror desiring to review them.

At the end of this ten day posting period, a contract can be awarded without the threat of protest of the award. (Refer to Section 25 - Appeals.)

If a Notice of Intent to Award is not posted, a copy of the contract award must be posted and the unsuccessful offerors notified. Unsuccessful offerors have ten (10) days following this posting to enter a protest of the award.

Subject 15.470 - Award the Contract

The preferred instrument of award for a competitively negotiated contract is the Standard Contract Form (see Appendix K of this Manual).

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Sub-Section 15.500 - Procurement of Professional Services

Subject 15.510 - Legal Requirements

The Virginia Public Procurement Act requires the use of the competitive negotiation procurement method to procure professional services expected to amount to $30,000 or more. Small purchase procedures (see Section 15.200 of this Manual) may be used to procure professional services amounting to less than $30,000 if such small purchase procedures have been adopted by the CSB board.

Code of Virginia, Section 2.2-4301 “Competitive Negotiation”, Section 3.a

Subject 15.520 - Definition of Professional Services

Professional services are defined, by the Code of Virginia, as "work performed by an independent contractor within the scope of the practice of accounting, actuarial services, architecture, land surveying, landscape architecture, law, dentistry, medicine, optometry, pharmacy or professional engineering".

Code of Virginia, Section 2.2-4301

Subject 15.530 - Procurement Procedures

Although the competitive negotiation procurement method is used to procure professional services, there are some major differences in the procedures used as

compared to those used to procure nonprofessional services. These differences are:

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- Prepare the RFP and the Evaluation and Award Criteria as in Section 15.500 of this Manual (Competitive Negotiations - Request for Proposals). Note, however, that the solicitation for professional services shall not request that offerors furnish estimates of man-hours or cost for services. Include the Scope of Needs, General Terms and Conditions and Special Terms and Conditions.

Code of Virginia, Section 2.2-4301 "Competitive Negotiation", Section 3.a.

- Evaluate Proposals - The Evaluation Committee must evaluate the proposals and assign points in the same manner as prescribed for RFPs for non-professional services. The CSB may 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.

  During this process:

  ◊ Repetitive informal interviews shall be permissible.

  ◊ 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. Such discussions may also include non-binding estimates of total project costs, including but not limited to, where appropriate, design, construction and life cycle costs. Non-binding methods to be utilized in arriving at a price for services may also be discussed.

  ◊ At the conclusion of these discussions, the original evaluations should be reviewed and rescored, if necessary, based upon information learned

during the individual discussions. The proposals must then be ranked according to the total number of points assigned.

- Negotiations - Negotiations are conducted as follows, beginning with the offeror ranked first (the one that has been assigned the highest total evaluation points):

If...	**Then...**
A contract, which is satisfactory and advantageous to the CSB can be negotiated at a price considered fair and reasonable...	The award is made to that offeror.
Agreement cannot be reached with the first-ranked offeror...	Negotiations with that offeror are formally terminated and negotiations are then conducted with the offeror ranked second, and so on until such a contract can be negotiated at a fair and reasonable price.
Negotiations are formally terminated with a particular offeror...	The negotiations cannot be reopened.
The Evaluation Committee determines in writing (and in its sole discretion) that only one offeror is fully qualified and suitable than the others under consideration...	A contract may be negotiated and awarded to that offeror.

At any time during the negotiations, the CSB may terminate all negotiations and readvertise the requirement. The reason for such termination is to be made a part of the procurement file.

- Award the Contract - The award document should be a signed contract which:

  ◊ Incorporates, by reference, all the requirements, terms and conditions of the RFP,

  ◊ Includes the contractor's proposal as negotiated, and the Memorandum of Understanding if used, and

  ◊ Includes documentation of all points that have been made a part of the contract through documentation.

Sub-Section 15.600 - Procurement of Consultant Services

The services of a non-professional consultant (services not defined in section 15.600 of this Manual as "Professional Services") are normally procured through the competitive negotiation (Request for Proposals) method. The pricing schedule of the RFP may provide for quotation and payment based upon one of the following:

- A lump sum or fixed price for the total project.
- Hourly rate plus cost reimbursement, with a ceiling on the total contract.
- Daily or hourly compensation for work "when requested" during the period of the contract at agreed-upon rates with a ceiling on the total, including any other costs which have been determined to be allowable.

NOTE: Whenever contracting for services from an individual, be sure that the contractor cannot be considered, by the Internal Revenue Service (IRS), to be an employee. If the individual meets several of the following criteria, he/she may be considered by the IRS to be an employee and the CSB may be held responsible for collecting certain taxes.

1. Must comply with employer's instructions about the work.
2. Receives training from or at the direction of the employer.
3. Provides services that are integrated into the business
4. Provides services that must be rendered personally.
5. Cannot hire, supervise, and pay his or her own assistants.
6. Has a continuing relationship with the employer.
7. Must follow set hours of work.
8. Works full time for an employer.
9. Does his or her work on the employer's premises.
10. Must do the work in a sequence set by the employer.
11. Must submit regular reports to the employer.

12. Is paid regularly on the basis of time worked.
13. Receives payments for business and/or traveling expenses.
14. Relies on the employer to furnish tools and materials.
15. Lack a major investment in facilities used to perform the services.
16. Cannot make a profit or suffer a loss from his or her services.
17. Works for one employer at a time.
18. Does not offer his or her services to the general public.
19. Can be fired at will by the employer.
20. May quit work at any time without incurring liability.

Sub-Section 15.700 - Procurement of Construction

Subject 15.710 - Definition – Construction is defined in the *Code of Virginia* as:

"Building, altering, repairing, improving or demolishing any structure, building or highway, and any draining, dredging, excavation, grading or similar work upon real property."

Code of Virginia, Section 2.2-4301 "Competitive Sealed Bidding" – 5

Subject 15.720 - Method - Construction may be procured only by competitive sealed bidding, except that competitive negotiation may be used provided the contract is:

- For alteration, repair, renovation or demolition of buildings and not expected to exceed $500,000 or,

- For construction of highways and any draining, dredging, excavation, grading or similar work upon real property.

- Design-Build or Construction Management Contracts. (See Sub-Section 15.730.)

- Note: If the competitive negotiation method is used, the CSB must determine 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" (VPPA).

Code of Virginia, Sections 2.2-4303.D and 2.2-4305

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Subject 15.730 - Design-Build or Construction Management Contracts - Community Services Boards may enter into contracts for construction on a fixed price or not-to-exceed price design-build or construction management basis provided the CSB has complied with the provisions of Section 2.2-4308 of the *Code of Virginia* and obtained the approval of a Design-Build/Construction management Review Board as required in Section 2.2-2406 of the *Code of Virginia.* CSBs that enter into design-build or construction management contracts must have employed or have "under contract a licensed architect or engineer who shall advise the public body regarding the use of design-build or construction management for that project and who shall assist the public body with the preparation of the Request for Proposal and the evaluation of such proposals." The CSB's Board must adopt written procedures governing the selection, evaluation and award of design-build and construction management contracts. Except as otherwise approved by the Review Board, procedures for design-build construction projects shall include a two-step competitive negotiation process. Construction management projects shall include selection procedures and required construction management contract terms consistent with the Review Board's regulations. In addition, the CSB's Board must document in writing that:

- A design-build or construction management contract is more advantageous than a construction contract obtained through the IFB procurement method;
- There is a benefit to the CSB by using a design-build or construction management contract; and
- Competitive sealed bidding (IFB) is not practical or fiscally advantageous.

Code of Virginia, Section2.2-4308

Subject 15.740 - Retainage - An amount, not to exceed five percent (5%) of the total payment, may be retained to assure faithful performance.

Code of Virginia, Section 2.2-4332

Subject 15.750 - Bonds - Bid bonds (except in emergencies) and Performance and Payment bonds are required to be submitted with all bids or proposals for construction contracts in excess of $100,000. Upon award of a contract in excess of $100,000, the prime contractor is required to submit a Performance and Payment Bond.

Code of Virginia, Sections 2.2-4336 and 2.2-4337

Subject 15.760 - Mistakes in Bid - The VPPA provides for two different procedures for resolving mistakes in construction bids that differ from the procedures regarding non-construction procurements. The use of the second procedure (requiring submission of work papers with the bid) is highly recommended. The solicitation (or the CSB Vendor Manual) must indicate which of the following requirements may be used:

- Bidders may be allowed to give written notice of claim to withdraw their bid within two business days after the bid opening **OR**,

- Bidders may submit their original work papers with or prior to the bid opening and must present written claim of a mistake within two hours after the bid opening. The error or omission must be supported by an inspection of the original work papers. If this procedure is utilized, bids are opened the next business day after the date set for receipt of the bids.

Code of Virginia, Section 2.2-4330

Subject 15.770 - Construction Planning and Review - Plans for construction of buildings by CSBs should be reviewed for code compliance by the DMHMRSAS Section of Architecture and Engineering Services. Other technical assistance, relative to construction, may also be obtained from this section by calling (804) 786-3926.

Sub-Section 15.800 - Conference Procurement and Planning

A successful conference begins with proper planning. A major part of this planning includes the selection of a site for the conference. The following decisions determine the method of procurement for conferences:

If...	Then...
The conference includes only the use of meeting rooms and lodging rooms...	The transaction is considered to be short term rental of real property and, therefore, the competitive requirements of the VPPA do not apply.
The procurement includes: (1) the provision of other services such as catered meals and rental of audio visual or other equipment and (2) the value of these other services exceeds the $5,000 threshold for competition.	Written quotations should be solicited for the entire package, including the rooms.

If...	Then...
The value of other services: (1) exceeds the $5,000 threshold for competition and (2) the entire package (including rooms) exceeds $50,000.	The Formal Bidding (Section 15.300 of this Manual) or Competitions Negotiation (Section 15.400 of this Manual) methods of procurement should be used.
There is a compelling reason for selecting a particular hotel/motel for a conference or meeting...	The method for procuring a sole source requirement (Section 10.300 of this Manual) must be followed.

Sub-Section 15.900 - Receipt of Bids/Offers and Contract Award Process

Subject 15.910 – Receipt of Bids/Offers

Place for receiving bids or proposals.	CSB Responsibility - Provide a central location where bids or proposals are received, logged in, date and time stamped, and held unopened in a secure place which is unavailable to the public until the date and time established for opening. Vendor Responsibility - Have the bid or proposal at the specified location by the date and time noted on the face of the IFB or RFP.
Due date and time for receipt of bids and proposals.	CSB Responsibility - A clock, publicly displayed, or an electronic date and time stamp machine should be used to establish receipt times. Late Bids or Proposals, regardless of the postmark date should not be accepted.

Place for receiving bids or proposals.

CSB Responsibility - Provide a central location where bids or proposals are received, logged in, date and time stamped, and held unopened in a secure place which is unavailable to the public until the date and time established for opening.

Vendor Responsibility - Have the bid or proposal at the specified location by the date and time noted on the face of the IFB or RFP.

- Late sealed bids or proposals are to be marked "Late" and returned to the vendor with a cover letter.
- Late informal quotations may be marked "Late" and placed in the bid file but not considered.

Vendor's Signature on Bid or Proposal

Sealed bids or proposals are considered legal documents and are not valid unless signed by an individual who has the authority to commit the bidder or offeror.

Facsimile Bids or Proposals

Facsimile (FAX) bids or proposals:

- Cannot be accepted in lieu of a sealed bid or proposal because they are not delivered in a sealed envelope (their prices are revealed prior to the opening date and time) and they do not contain an original signature.
- Are acceptable for small (unsealed or informal) procurements.

Public Opening

Sealed Bids are publicly opened and the following information read:

- Bidders' names

- Unit or lot prices
- Discount terms (if applicable)
- Brand names and model numbers (if requested by the attendees)

NOTE: Questions on the content of other bidders' bids are not answered until after the evaluation is complete and an award decision has been made.

Unsealed bids are not usually opened publicly.

Proposals (responses to RFPs) are not required to be opened publicly. If a public opening is conducted, only the names of firms submitting proposals are disclosed.

Subject 15.911 – Determination of Responsiveness

Before proceeding with the evaluation of an apparent low bidder, the CSB must first determine if the bid is responsive. To be considered responsive, a bid must comply in all material respects with the requirements of the Invitation for Bids (IFB). Areas of non-compliance include deficiencies such as failure to sign the bid, failure to return the required bid documents, substitution of vendors terms or deletion of the CSB's terms and failure to offer a product or service that meets the requirements of the IFB.

If a proposal (submitted in response to a Request for Proposals) appears to be nonresponsive, the vendor may be contacted and given a reasonable amount of time to supply the missing information or to correct the deficiencies in the proposal. If the offeror fails to adequately respond to this request, the scoring of that proposal should be adversely affected or the proposal may be rejected. It is possible for a proposal to be corrected in this manner since a proposal is subject to negotiation.

Subject 15.912 – Determination of Responsibility

Before proceeding with the evaluation of the apparent low bidder or consideration of an offeror, the CSB must first determine if the bidder or offeror is responsible. If a bidder or offeror is determined to be nonresponsible, no further consideration should be given to that bidder's or offeror's quotation. To be considered responsible, a bidder should:

- Be a regular dealer, supplier, or when required in the solicitation, an authorized dealer of the goods or services offered;
- Have the ability to comply with the required delivery or performance schedule, taking into consideration other business commitments;
- Have a satisfactory record of performance;
- Have a satisfactory record of integrity; and

- Have the necessary facilities, organization, experience, technical skill, and financial resources to fulfill the terms of the purchase order or contract.

A deficiency in any one of the above areas will determine the bidder or offeror to be nonresponsible. Once this determination is made by the CSB, it is the bidder's or offeror's responsibility to rebut the determination. This rebuttal must be made within ten business days after receipt of the notice of nonresponsibility. Bidders or offerors may seek a reversal of this decision through the appeals process.

Code of Virginia, Section 2.2-4359

Subject 15.920 - Preferences

Local or Virginia Vendor Preference - Preferences are allowed:

- In the event to a tie bid, an award must be made to the Virginia bidder or to bidders quoting on Virginia-produced goods, services or construction providing everything else is equal.

Code of Virginia, Section 2.2-4313.A

NOTE: Tie bids between two or more Virginia vendors or between two or more out-of-state vendors can be decided by a drawing or a toss of a coin.

- If an out-of-state vendor from a state that has an in-state preference submits a bid that is lower than a bid submitted by a Virginia vendor, the amount of the percent of preference allowed by that out-of-state vendor's home state may be subtracted from the Virginia vendor's bid prior to determining the award.

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EXAMPLE: If out-of-state Bidder "A" (from a state having an in-state preference of 4%) bid $1.00 each and a Virginia bidder bid $1.03 on an equal product, the award could be made to the Virginia bidder because his/her price of $1.03 is within 4% of Bidder A's price.

Code of Virginia, Section 2.2-4324.B

Recycled Content – If a tie bid exists and it is not possible to resolve the tie using the Local or Virginia Vendor Preference rules as stated above, “preference shall be given to the bidder whose goods contain the greatest amount of recycled content”.

Code of Virginia, Section 2.2-4324.C

Minority, Small Business or Women-Owned Businesses - The Virginia Public Procurement Act requires all public bodies to establish programs to "facilitate the participation of small businesses and businesses owned by women and minorities in procurement transactions". Since the VPPA does not provide for the use of preference percentages or "set asides", the requirements of this section are normally attained by:

- Outreach activities, such as meeting with disadvantaged bidders (individually or during trade shows) to encourage their participation in the procurement process.

- Including small, minority, and women-owned businesses in the list of companies solicited for bids or proposals.

- Making special efforts to make awards to small, minority, and women-owned business when making purchases that fall below the dollar amount for which competition is required.

Code of Virginia, Section 2.2-4310B

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Subject 15.930 – Prompt Payment Discount

Prompt payment or cash discounts are normally not considered when determining the lowest responsive bidder. If a successful bidder offers a prompt payment discount, it should be included in the purchase order and the discount taken if payment is made within the time prescribed for obtaining the discount. If a program can process invoices and make payments within 10 to 20 days, the CSB may wish to include the “Discounts” statement from Section II of Appendix E in the IFB. If this

statement is included, the amount of the bidder's cash discount (i.e., 2%-20 days) will be deducted prior to determining the lowest price. NOTE: This information should not be confused with the requirement to make prompt payment of all valid invoices (see Subject 20.300)

Subject 15.940 - Taxes

Governmental units (including CSBs) are normally exempt from paying federal excise or state sales taxes.

EXCEPTION: Materials that are installed and become a part of real property may be subject to Virginia sales taxes.

EXAMPLE #1: Equipment that is hard wired or plumbed in since it becomes part of the building.

EXAMPLE #2: Carpet that is glued down. (It cannot usually be taken up and used elsewhere and, thus, becomes a part of the building.)

NON-EXAMPLE: Carpet that is tacked down can be taken up and installed in another area; therefore, it does not become a part of the building and is not subject to Virginia sales taxes.

Subject 15.950 - Purchase Order or Contract Document

An acceptance of a written offer (bid or proposal) should be made in writing using either a purchase order or a contract form. (Samples of each form are included in Appendix K of this Guide.) Small purchase awards may be made orally for contracts amounting to $2,000 or less; however, under the provisions of the Uniform Commercial Code, a contract for the purchase of goods amounting to $500 or more is not enforceable. (Code of Virginia, Section 8.2-201).

Normally, the decision of whether to use a purchase order or a contract form is based upon the following:

If the procurement action...	**Then, the form generally used as a contract document is...**
Involves a one time purchase.	A purchase order form.
Results in a term contract (contract to be completed over a period of several weeks or months).	A contract form.
Contains complex issues that have been negotiated and need to be incorporated into an agreement or contract.	A contract form.

A contract document (purchase order or contract form):

- Is the contractor's authority to ship or perform. A contractor is not obligated to ships goods or perform contract functions until he/she has received a written acceptance or award (purchase order or contract form). Such written award must be signed by someone who has the authority to commit the CSB. (This authority should either be written in the purchasing officer's job description or issued in writing by the Executive Director or the Board.)

- Obligates the CSB to pay for that which has been contracted. Conversely, a CSB is not obligated to pay for anything for which no written acceptance has been issued.

> **Note:** ***Occasionally, firms will ship unsolicited goods for which no purchase order has been issued hoping that, once the goods have been shipped, the receiver will approve the invoice. Often the prices charged do not constitute bargains; therefore, it is a good policy to notify all shippers of unsolicited goods that no payment will be made and that the goods should***

be picked up within a stated time period and, if not picked up, they will be disposed of. This notification should be confirmed in writing if an adequate address is available.

- Can only be modified by the person authorized by the CSB to conduct the procurement. Program managers should, therefore, be cautioned not to commit to substantive changes in a contract (especially if those changes require more funds) without formal approval through the person who has been authorized to handle the procurement. CSBs should be cautious in making changes that would substantially alter a contract beyond its original intent. Note that fixed-price contracts cannot be increased by more than 25% or $50,000 without Board approval unless such increases are provided for in the contract. (See Sub-Section 20.200)

  A contract may be modified by:

Type of modification...	**Form used...**	**Sample form located in...**
Make changes in Purchase Orders (correct errors, add or delete small quantities for goods).	Purchase Order Change Form.	Appendix L-2 of this Manual.
Make changes in term contracts.	Modification to Contract Form.	Appendix L-1 of this Manual.

Subject 15.955 - Cancellation of Solicitation or Rejection of Bids/Proposals

- Solicitation: A solicitation (RFP or IFB) may be canceled; however, written documentation explaining the reasons for cancellation must be included in the contract file. A solicitation cannot be canceled “solely to avoid awarding a contract to a particular responsive and responsible bidder or offeror”.

- Bid or Proposal: The reason(s) for rejecting a bid or proposal must be included in the contract file.

Subject 15.960 - Termination of Contract

Contracts may be terminated:

- For default.
- By mutual agreement.
- For the convenience of the CSB (if the contract terms allow for termination for convenience).

> ***NOTE: The person handling the procurement should not give away the rights of the CSB by agreeing to cancel a contract and relieve the contractor from any further responsibility. (See Section 20.130 on Default.)***

Subject 15.970 - Assignment of Contract Manager

A Contract Manager must be assigned for each contract to be responsible for overseeing the completion of the project by the contractor. The Contract Manager may be the Procurement Officer or this responsibility may be assigned to someone who has program implementation responsibilities. The Contract Manager is responsible for:

- Day to day coordination of the delivery of the goods/service;
- Administration of contract performance evaluations and participation in performance evaluation meetings of key staff, as appropriate.

- Report persistent or serious service delivery failures or other compliance failures by the Contractor to the Procurement Office.

- Assurance that proper action has been taken to modify the contract through the Procurement Office before the Contractor proceeds with any changes. Makes written recommendations to the Procurement Office regarding any changes needed in the scope of work, duties of the parties, contractual terms or other elements of the contract.

- Submitting written recommendations with justifications to the Procurement Office regarding any changes needed in the contract.

- Monitoring budget and funding activities associated with the project and promptly report any issues or inconsistencies.

- Keeping the Procurement Office informed regarding the status of performance of the contract.

- Notifying the Procurement office of the completion of work.

- Assuring that the Contractor complies with all requirements of the contract.

See Section 20 - Contract Administration.

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Contract Administration

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Section 20

Contract Administration

Sub-Section 20.100 – Responsibility for Contract Administration

Subject 20.110 – Importance of Contract Administration

The procurement process does not end when the purchase order or contract is issued. Contract administration is an important part of the process because, if the desired product or service is not received or does not function as required, the

process has failed. The integrity of the procurement system requires that goods and services be provided, received, invoiced and paid in the manner prescribed in the contract. Program managers must be cautioned to keep the person who has performed the procurement function informed of any problems or potential problems regarding any contract or purchase order so action may be taken to correct problems before they become critical.

Subject 20.120 – Designation of a Contract Administrator

Most purchases are administered by the Contract/Purchase Officer who made the procurement. He/she is the one who receives complaints, answers questions, follows up on or expedites performance and thus is the Contract Administrator, as well as the Contract/Purchase Officer. For large, complex and/or critical procurements, however, it may be necessary for the Contract/Purchase Officer to appoint a responsible person in the work area that is to receive the goods or services to serve as Contract Administrator. This appointment must be in writing and must include the specific duties that the Contract Administrator is to perform as well as any limitations on his/her authority. For example, it should be made clear that the Contract Administrator cannot negotiate any changes in the contract. (See Appendix M-5 for a sample “Assignment of Contract Administrator” letter.)

Sub-Section 20.200 - Conformance to Contract Requirements

A vendor is in default whenever he/she fails to perform in accordance with the provision of the contract; however, the following are a few specific areas of concern (especially in the purchase of goods) that require special attention.

Subject 20.210 - New, Used or Altered Materials

Purchases of used or altered equipment and/or supplies may be negotiated (see Section 10.400 of this Manual); however, unless the CSB specifically requests used or altered items, it should insist that all supplies and equipment furnished by a vendor should be new and in first class condition (see the General Terms and Conditions in the model IFB in Appendix C).

Subject 20.220 - Packaging

Unless otherwise specified in the solicitation, the CSB should insist on new standard commercial packing and shipping containers with the commodity description legibly marked or labeled on the outside (see the General Terms and Conditions in the model IFB in Appendix C).

Subject 20.230 - Substitutions

Substitution is defined as delivery of an item that does not conform to the specifications of the purchase order or contract. Substitutions must be approved by the person who handled the procurement for the CSB. Any substitution may be refused and no substitution should be accepted which is not of equal or greater value than that specified.

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Subject 20.240 - Overshipments and Undershipments

CSBs are not obligated to accept overshipments or undershipments. Overshipments that substantially increase the original order quantity should not be accepted since, if the amount of the overshipment had been added to the original quantity, it is often likely that the increased quantity would have resulted in lower pricing.

Subject 20.250 - Loss or Damage in Transit

All deliveries should be promptly inspected at the receiving location for shipping damage.

- Damage that is evident at the time of receipt should be noted on the receiving report or the shipment may be refused.

- Concealed damage should be reported to the carrier and vendor within seven days of receipt and prior to removal of the shipment from the point of delivery. It is difficult to fix responsibility for deliveries once the goods have been moved to another location or when the inspection has not been made in a timely manner.

Sub-Section 20.300 – Handling Default

A vendor is in default when he/she:

- Fails to provide the contracted product or service.
- Does not meet the time schedule specified in the contract.
- Does not provide or perform in the manner specified.

Prior to taking action on the default the CSB employee in charge of the procurement should consider: (1) the specific reasons for the failure; and (2) the period of time needed to obtain the goods or services from other sources compared to the time delivery or performance could be accomplished by the delinquent contractor.

NOTE: A vendor should not considered to be in default or charged with excess costs if failure to perform arises out of any act of war, order of legal

authority, strikes, act of God, or other unavoidable causes not attributed to the fault or negligence of the vendor. The burden of proof rests with the vendor.

Refer to Appendix M of this Manual for sample Cure and Default letters.

The use of the "Default" clause (Appendix E, Section I) allows the CSB to purchase the contracted for goods or services from another source and charge the defaulted contractor with the difference in cost.

(Continued on next page)

The normal procedure for handling a default is:

Step	Action
1	Notify the vendor, verbally (make written note for the file) or in writing (Cure Letter) that: • He/she is in default of the contract and • If the breach is not corrected within a stated number of days, the contract will be terminated and the vendor held liable for any excess costs incurred by procuring the goods or services from another source (See sample default letter in Appendix M of this Manual).
2	If the default is not corrected within the time specified in the letter the contract is: • Terminated by reason of default and • Awarded to another source at a fair and reasonable

Step	Action
	price (usually the next lowest responsive and responsible bidder).
3	The defaulted vendor is notified in writing that: • He/she is required to pay the difference between his/her price and the new contract price and • His/her firm will be removed from the bidders' list and not allowed to quote on other contracts for that CSB until the difference is paid.
4	If no additional cost results from the default action, the defaulted vendor may be removed from the bidders' list for a specified period of time (Usually 60 days).

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Sub-Section 20.400 - Modification of Contract

Contract change provisions may be written into a contract at its inception (See Appendix E - Section I, Clause O-1 and O-2). If however, a fixed-price contract does not contain a changes clause, its cost can be increased no more than twenty-five percent (25%) or $50,000, whichever is greater, without the advance written approval of the CSB's governing body. This restriction does not restrict the total value of a requirements contract (where a unit cost is agreed upon and the value of the contract depends upon the number of units purchased).

Code of Virginia, Section 2.2-4309

Sub-Section 20.500 - Prompt Payment

Subject 20-510 - Requirement

Prompt payment of bills is required by the Code of Virginia. Prompt payment is considered to be payment by:

- the date which was agreed to under the terms of the contract; or

- if no date was established, it is due:
  - ◊ not more than forty-five (45) days after goods or services are received,

    OR
  - ◊ not more than forth-five (45) days after the invoice is rendered, whichever is later.

> Code of Virginia, Section 2.2-4352 states...
>
> Public bodies must "promptly pay for the completed delivered goods or services by the required payment date. The required payment date shall be either (i) the date on which payment is due under the terms of the contract for the provision of such goods or services; or (ii) if such date is not established by contract, not more than forty-five days after goods or services are required or not more than forty-five days after the invoice is rendered, whichever is later".

Subject 20-520 - Finance Charge

If prompt payment is not made, the contractor may assess a finance charge against the unpaid portion that does not exceed one percent per month in interest, unless otherwise provided under the terms of the contract.

EXAMPLE: A contract may contain a provision for progress payments.

Subject 20-530 - Payment of Subcontractors

The prompt payment regulation also obligates a contractor to take one of two actions within seven days after receipt of payment from the CSB regarding payment for any work done by subcontractors:

- Pay the subcontractor for the proportionate share of the total payment received from the CSB; or
- Notify the CSB and the subcontractor, in writing, of the contractor's intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.

Code of Virginia, Sections 2.2-4354

Sub-Section 20.600 - Debarment

An individual or firm may be debarred (removed from the Vendor's List) for up to one (1) year for any of the reasons noted below:

I. Breach (default) of contract.

II. Stating an unwillingness or inability to honor a binding bid. (A mere request to withdraw a bid, which does not otherwise state an unwillingness or inability to perform, is not a cause for debarment.)

III. Falsifying or misrepresenting manufacturer's specifications in order to appear responsive to a solicitation.

IV. Conferring or offering to confer upon any employee of the CSB who exercises any "official responsibility" for a "procurement transaction", any gift, gratuity, favor, or advantage, present or future that is not available to all employees of the CSB.

V. Failing to disclose a condition constituting a conflict of interest by any officer, director, owner or partner of the vendor in a contract or purchase order awarded by the CSB.

VI. Any cause indicating that the individual or firm is not a responsible vendor.

VII. A determination by the Executive Director of the CSB that a vendor has used abusive or obscene language or a threatening manner toward CSB personnel during the performance of their duties or as a result of the performance of their duties.

VIII. Sale, under nonemergency conditions, of building materials, supplies or equipment for any building or structure contracted by or for the CSB by a person or independent contractor employed to provide architectural, engineering or design services, but not construction for such building or structure or from any partnership, association or corporation in which the architect or engineer who has provided or is providing the services has a personal interest.

Code of Virginia, Section 2.2-4374

I. Consent of the firm or individual being debarred.

II. Failure to pay reprocurement cost pursuant to a contract termination for default.

An individual or firm may be debarred for up to three (3) years for any of the following reasons:

I. Conviction of any criminal offense involving public contracting.

II. Court judgment finding a violation of either federal or state antitrust laws.

III. Conviction of any offenses indicating a lack of moral or business integrity.

Debarment does not relieve the contractor of responsibility for existing obligations.

NOTE: The above are State guidelines and may be adopted or modified by individual CSBs.

Sub-Section 20.700 - Equipment Maintenance

Warranty - Most new equipment is covered, for a time, by a warranty, Care should be taken to assure that full advantage is taken of warranty provisions prior to contracting for maintenance or repair service.

Insurance - Where equipment is covered by insurance (boilers, machinery, etc.) the insurance carrier should be advised prior to contracting for repair.

Full Service Maintenance - Full service maintenance normally:

- Requires the contractor to provide scheduled maintenance, necessary repair parts, and other service visits as needed at a firm fixed price for a period of time (usually one year).

- Results in higher costs since vendors must include, in their prices for full service maintenance, all contingencies that might occur.

- Should be used only for equipment that requires an unusual amount of service or when "as needed" maintenance and repair is not practical.

As Needed Maintenance - "As needed" maintenance and repair is normally provided on a time and materials cost basis. Solicitations for "as needed" maintenance should require quotations for materials and parts to be either at contractor's invoiced cost or on a percentage discount from manufacturer's published list or catalog prices. ***Cost plus percentage of cost (markup) is prohibited (except in emergency) under the VPPA.***

Code of Virginia, Section 2.2-4331-B

Solicitations for Maintenance Contracts - Solicitations for maintenance contract should include:

- The identity of the equipment to be covered (make, model, style, and quantity of each type of equipment).

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- Provisions to add and/or delete equipment during the contract period on a prorated basis.
- The loan of like equipment during extended periods of downtime (if the equipment is critical to the operations of the CSB).
- Requirements that the contractor provide the necessary insurance coverage (see Terms and Conditions in model IFB in Appendix C).

Solicitations for Scheduled Repair/Overhaul - Scheduled repairs and overhauls should be handled on a competitive basis if they are expected to exceed the single quotation limit and, in an emergency, if there is time to obtain quotes.

Competition can be obtained by issuing a two phase IFB (both phases contained and quoted in the same IFB):

Phase	Action

Phase	Action
1	Request a lump sum price for disassembly, inspection, and preparation of an estimate. The estimate must include the number of hours and the parts required to complete phase two.
2	Request (1) an hourly labor rate and (2) a percentage of discount from manufacturer's list price for parts. The CSB should include in the IFB (for evaluation purposes): • A hypothetical number of man-hours. • A total amount of the list price for parts for The IFB should also contain a cancellation clause in the event that the Phase 2 pricing amounts to more than the CSB wishes to pay.

Section 25 - Contents

Appeals

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SECTION 25

APPEALS

Sub-Section 25.100 - Appealable Conditions

Subject 25.110 - Public Notice

An IFB or RFP must contain information in the terms and conditions stating how public notice of an award or decision to award will be made and where such notice will be posted. A bidder or offeror has ten days from the date of this public notice to enter a protest.

Code of Virginia, Section 2.2-4360

Subject 25.120 - Remedies and Effect of Appeals

The Virginia Public Procurement Act provides remedies that are available to a vendor in which he/she may appeal various procurement-related decisions made by a public body such as a CSB. This appeal may be in the form of an action brought by the vendor in the appropriate circuit court (Section 2.2-4364 of the Code of Virginia) or through an administrative appeals procedure if such a procedure has been established by the CSB (Section 2.2-4365 of the Code of Virginia). An administrative appeals procedure involves the hearing of appeals before a disinterested person or panel.

Code of Virginia, Sections 2.2-4364 and 2.2-4365

The following actions may be appealed:

CSB ACTION AFFECTING VENDOR (BIDDER, OFFEROR OR CONTRACTOR)	VENDOR MAY...	IF THE APPEAL IS UPHELD, THE VENDOR'S RELIEF WILL BE...	CODE OF VIRGINIA REFER-ENCE
Ineligibility (Vendor refused permission to participate in a public contract).	A. Within 10 days: • Challenge evaluation. B. Within 10 days of CSB's re-evaluation, and response, Vendor may: • Invoke administrative procedures or, • Institute legal action.	Restoration of eligibility if CSB's action determined to be arbitrary or capricious or not in accordance with law.	2.2-4357
Denial of Withdrawal of Bid	Within 10 days:	Withdrawal of bid if CSB's action	2.2-4358

CSB ACTION AFFECTING VENDOR (BIDDER, OFFEROR OR CONTRACTOR)	VENDOR MAY...	IF THE APPEAL IS UPHELD, THE VENDOR'S RELIEF WILL BE...	CODE OF VIRGINIA REFER-ENCE
	• Invoke administrative procedures or, • Institute legal action.	determined to be arbitrary or capricious or not in accordance with law.	
Determination of Nonresponsibility - Vendor must be notified in writing stating the basis for the determination.	Within 10 days: • Invoke administrative procedures or, • Institute legal action.	May include voiding contract and/or compensating the appealing bidder for cost of performance (but not for lost profits) up to time of the decision if CSB action determined to be arbitrary and capricious.	2.2-4359
Appeal of Award or Decision to Award	A. Within 10 days of public notice of award: • Submit written protest stating reasons for protest. • The CSB must respond in writing within 10 days of the vendor's written protest. B. Within 10 days of	Enjoin award of contract or, if contract has been awarded, declare contract void and require compensation of performing contractor for cost of performance up to time of such declaration.	2.2-4360

CSB ACTION AFFECTING VENDOR (BIDDER, OFFEROR OR CONTRACTOR)	VENDOR MAY...	IF THE APPEAL IS UPHELD, THE VENDOR'S RELIEF WILL BE...	CODE OF VIRGINIA REFER-ENCE
	the CSB's response, vendor may: • Invoke administrative procedures or, • Institute legal action.		

Sub-Section 25.200 - Administrative Review

An administrative procedure may be established, by the CSB, to give vendors a method of appeal other than through the courts. (See Section 2.2-4365 of the Code of Virginia.) This procedure involves appointing a disinterested person or panel to hear and decide on appeals of:

- A decision to award,
- Refusal to allow withdrawal of bids,
- Disqualifications and determinations of nonresponsibility,
- Decisions on disputes arising during the performance of a contract.

Vendors may seek judicial review of administrative hearings, provided action is taken within thirty days of the receipt of a written decision by the person or panel that issued the administrative review decision. Experience has shown, however, that most vendors accept the decision of the review person or panel.

Code of Virginia, Section 2.2-4365

Subject 25.210 - Panel Composition

If a panel is utilized, it should be appointed by the Executive Director or the Board for a specific period of time (one or more years) or to hear a specific

appeal. The members of this panel should be persons who have some understanding of the procurement process but do not have any personal interest in the procurement activities of the CSB.

Subject 25.220 - Arrangements

The person or panel hearing appeals may schedule regular monthly or bi-monthly time to meet (provided any appeals are pending) or may schedule hearings on an as needed basis.

Subject 25.230 - Rules of Procedure in the Hearing

If a panel is utilized, it should (by a simple majority) adopt procedures for hearing appeals. The following rules also apply:

- Panel members must not discuss any issue on appeal with anyone other that panel members or the panel's legal counsel prior to hearing an appeal.
- Hearings before an appeals panel are not conducted as trials; however, both sides may be represented by legal counsel.
- Hearings should be informal and each party should be given time to state their positions.
- The proceedings should be recorded (electronically or in writing) and a record of the proceedings held for at least sixty days after the hearing.
- Witnesses may be permitted to testify; however, no oath is given nor can a witness be forced to testify.
- The panel may ask questions at any time but should not question parties in closed session.
- The chairperson of the panel should control the hearing.
- Hearings are open to the public; however, the panel should adjourn the hearing, after both sides have presented their positions, and reach a decision in private.

Sub-Section 25.300 - Effect of an Appeal upon an Award or Decision to Award

Pending final determination by an appeals panel or court, an appeal has no effect upon a contract that has been awarded and accepted in good faith. There must be no further action to award a contract upon which an appeal has been filed if that contract has not been awarded, however, unless a determination is made in writing that proceeding with delay is necessary to protect the public interest or unless that bid or offer would expire.

Sub-Section 25.400 - Contractual Disputes

Subject 25.410 – Claims Procedures

A procedure for consideration of contractual claims must be included in the CSB's contracts. As an alternative, this procedure may be included in the *Vendors' Guide to CSB Procurement Regulations,* and referenced in the contract. These procedures shall establish a time limit for a final decision in writing by the CSB. If the CSB has established administrative procedures for hearing claims, these procedures shall be made available to the contractor.

Code of Virginia, Section 2.2-4363.B

Subject 25.420 – Claims

A contractor who wishes to file a claim, whether for money or other relief, against a CSB, must give written notice of intent to file such claim "at the time of the occurrence or beginning of the work upon which the claim is based". The actual claim must be filed in writing no later than sixty (60) days after final payment. "Pendency of claims shall not delay payment of amounts agreed due in the final payment." (VPPA)

Code of Virginia, Section 2.2-4363

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

Subject 25.430 – Claims Relief

Under certain circumstances, beyond the control of the contractor such as acts of God, sabotage, and fire or explosion not caused by negligence, the CSB may grant relief from performance of the contract or performance within the time required by the contract.

Sub-Section 25.500 – Alternative Dispute Resolution

CSBs may enter into agreements to submit disputes arising from procurement contracts to arbitration and utilize mediation and other alternative dispute resolution procedures. These procedures should, however, be nonbonding.

Code of Virginia, Section 2.2-4366

Section 30 - Contents

DISPOSAL OF SURPLUS PROPERTY

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SECTION 30

DISPOSAL OF SURPLUS PROPERTY

Sub-Section 30.100 - Disposal Methods

CSB property, which is no longer needed, may be disposed of in accordance with the methods indicated below:

Subject 30.110 - Trade-in

Property may be traded in on other similar equipment; i.e., office equipment traded on other office equipment and scientific equipment traded on other scientific equipment.

If the estimated value of the new equipment being purchased (without the trade-in) exceeds the amount for which competitive quotations must be solicited:

- The procurement must be competed.
- Both the item to be purchased and the item to be traded in are listed separately on the solicitation.
- The low bidder is determined by subtracting the priced offered on the trade in from the price of the new equipment.

Subject 30.120 - Sales to other governmental agencies

Sales of surplus property may be made to other governmental agencies (other CSBs, counties, public authorities, etc.) at a fair market price.

Subject 30.130 - Public Auctions

A public auction may be held to dispose of surplus property. Auction notices should be placed in area papers and the services of an auctioneer obtained.

Subject 30.140 - Sales by Sealed Bid

Property may be sold on sealed bid (Invitation for Bids). This procedure is handled similar to the purchase of goods except, of course, that the award is made to the highest bidder.

Subject 30.150 - Negotiated Sale

If competitive methods (public auctions or sealed bid) have been attempted with no success and no other public agency desires the property, it may be sold at a negotiated price.

Subject 30.160 - Set Price

If other methods are not practicable, surplus property may be priced at a fair market value and offered for sale to the public on a first come, first served basis. The time and place of these sales should be advertised so that the public is aware of the sale.

Subject 30.170 - Donations

Property that has not been sold after attempting one or more of the previously-mentioned methods, may be donated to a worthy organization. Also, it may be practical to donate property of rare or historical value to a worthy organization.

Subject 30.180 - Destruction or Abandonment

Property which is unusable and determined to have no commercial value, or that the cost of sale would exceed the expected returns, may be destroyed or abandoned. Documentation should be made of this property and signed by the person who destroyed the property as well as by the Executive Director.

Sub-Section 30.200 - Documentation

As with other procurement related actions, actions taken to dispose of surplus property must be fully documented to indicate the why, who, what, when, where and how of the transaction.

Sub-Section 30.300 - Approval

Federally funded acquisitions often carry stipulations regarding disposal. These stipulations are noted in the original grant agreement and should be reviewed prior to disposing of equipment that was originally purchased with federal funds. Guidance regarding this subject is also provided in the DMHMRSAS manual on Financial Management Standards and Accounting Procedures for Community Services Boards.

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RISK MANAGEMENT

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SECTION 35

RISK MANAGEMENT

Sub-Section 35.100 - Insurance Coverage

Subject 35.110 - Third Party Liability Insurance

Third Party Liability coverage, as outlined below, must be obtained by CSBs unless an appropriate self-insurance program meeting State requirements is in place. While this coverage may be procured competitively, it is also available from the Commonwealth of Virginia, Department of the Treasury, Division of Risk Management (TRS/DRM). Insurance coverage obtained under the TRS/DRM program is not required to be competitively procured. CSBs may obtain coverage under the TRS/DRM plan by contacting:

Commonwealth of Virginia
Department of the Treasury
Division of Risk Management (DRM)
Attention: Program Manager
James Monroe Building, 6th Floor
P. O. Box 1140 (Zip Code 23208-1121)
101 North Fourteenth Street (Zip Code 23219)
Richmond, Virginia
Phone: (804) 225-4616
FAX: (804) 371-8400
Web Site: www.trs.state.va.us

Insurance limits under the DRM program are $1,000,000 per occurrence and include the following types of coverage:

- General Liability - Includes coverage for buildings or premises owned and/or occupied by the CSB plus its day-to-day CSB operations.

Page 35-1

- Public Officials or Directors' and Officers' Liability - Provides protection against suits for business decisions by officers and members of the Board of Directors of the CSB.

- Medical Malpractice Liability - Provides coverage for clinical psychologists and nursing staff. Does not provide coverage for contract or employed physicians; *however, this coverage may be added at additional cost.*

- Professional Liability - Provides coverage for all other professional service providers, e.g., various therapists, guidance counselors, trainers and student interns.

- Special Events Coverage - Provides coverage for special events such as Special Olympics programs and fund raising events.

Subject 35.120 - Vehicle Coverage - Automobile coverage must be obtained for all owned vehicles. Collision coverage may be considered optional for older vehicles. While this coverage may be obtained competitively, it is also now provided through the Division of Risk Management. Insurance for leased vehicles should, if possible, remain with the lessor; however, if this is not possible, it may be included with the owned coverage. Automobile coverage is made up of liability and physical damage coverage:

- Liability - Liability coverage protects the CSB from a claim against injury resulting from operation of a motor vehicle. Limits should be a minimum of $1,000,000 combined single limit for bodily injury or property damage. Minimum medical payments coverage should be $5,000 per person.

- Physical Damage - Physical Damage protects the CSB from paying for damages to owned or leased automobiles. It is made up of two parts:

  ◊ Comprehensive

  ◊ Collision/upset

The cost of the insurance is based upon the value of the insured vehicle.

The damage claim is based on the actual cash value of the vehicle at the time of loss, regardless of how much it cost new or the cost of a replacement vehicle.

CSBs should consider the use of deductibles to reduce the cost of insurance and, at the same time, provide adequate protection for their operating budget.

- Coverage by DRM - The Commonwealth of Virginia's Division of Risk Management provides coverage for vehicle liability. CSBs should review and consider this coverage in lieu of commercial coverage.

Subject 35.130 - Property Coverage - Property coverage provides protection against loss from physical damage to CSB buildings and equipment.

- Buildings includes offices or clinics, group homes, storage facilities, etc.

- Personal Property includes office, apartment, clinic, etc. furnishings and computer equipment.

Property should be valued at replacement cost so, in the event of claim, the payment is made on the basis of new items for old.

High deductibles should be considered to reduce the cost of insurance and, at the same time, provide adequate protection for the operating budget.

Subject 35.140 - Time Element - Time element coverage provides for loss of use of offices and clinic, group homes, storage facilities, etc. Coverage can be provided to protect against extra expense in the event the CSB has to occupy or move to another facility as a result of a property loss. Time element coverage also provides for income lost from rental of facilities. Deductibles usually do not apply to this coverage.

Subject 35.150 - Valuable Papers and Records - This coverage pays for the cost of restoration and reconstruction of important documents. Deductibles do not apply to this coverage.

Subject 35.160 - Power Equipment and Machinery - This coverage protects against physical damage to and loss of use of equipment which generates, transmits or uses virtually any sort of power. Deductibles are required in this coverage.

Subject 35.170 - Blanket Dishonesty Bond - This coverage protects the CSB against embezzlement by its employees. This may be written with or without deductibles. Attached to the bond may be a variety of coverage including:

- Coverage for faithful performance of duty.
- Robbery.
- Forgery.
- Use of illegal money orders and counterfeit currency.

Subject 35.180 - Workers' Compensation - This coverage is for claims by employees who suffer injury or illness arising out of and in the course of employment. It covers:

- Medical expenses, including rehabilitation expenses.
- Weekly indemnity payments to the injured employee.
- Indemnity benefits to a deceased employee's family.

Sub-Section 35.200 - Health Insurance

Subject 35.210 - The Local Choice Health Benefits Program

The Commonwealth of Virginia, Department of Human Resource Management (HRM) offers a health benefits program which is available to CSBs. This program offers a choice of employee health insurance benefits including:

- Point of Service through Key Advantage plans.

- Comprehensive benefits plant (including a Medicare Complementary Plan for CSB retirees.

- Health Maintenance Organization plans.

Advantages to the CSB in participating in the DPT plan:

- The program has been competitively solicited and complies with the requirements of the Virginia Public Procurement Act.

- Choice of several plans (see above).

- The benefits offered are competitive, recognized and well-accepted.

- Lower cost because of being part of a program with thousands of participants.

- No broker or consultant fees or commissions.

- Special training for local administrators.

- Shared catastrophic claims cost.

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To apply for coverage or obtain information about The Local Choice:

Contact - The Local Choice Health Benefits Program
Department of Human Resource Management
101 North 14th Street, 13th Floor
Richmond, Virginia 23219
E-Mail: wnorman@dhrm.state.va.us

Subject 35.220 - Competitive Procurement of Health Insurance

If a CSB does not participate in the DPT plan (Section .210), their employee health insurance must be obtained by competitive methods. The methods proscribed in Section 35.310 should be utilized.

Model Request for Proposals - An RFP, modeled after the solicitation used by the Commonwealth of Virginia, Department of Personnel and Training is available from DMHMRSAS Office of Administration/Procurement Office, Phone (804) 786-3915.

Sub-Section 35.300 - Procurement of Insurance

Subject 35.310 - Method of Procurement - The Virginia Public Procurement Act (VPPA) requires insurance coverage to be procured competitively. The three proscribed methods are:

- Competitive Sealed Bidding (IFB) - An IFB is used if the buyer knows the specific type and amount of insurance needed. The model IFB (Appendix C-2 of this Manual) may be used to solicit quotations from insurance providers. The specific types of coverages required, including amounts and deductibles, should be indicated in section 4.0 of the IFB. Contract award is based on the quoted cost of premiums. A lump sum award (lowest total cost for all coverages) or a separate award for each type of coverage may be made.

- Request for Proposals (RFP) - Insurance may be procured through the competitive negotiation (RFP) process provided a written determination is made in advance that competitive sealed bidding is either not practicable or not fiscally advantageous. An RFP could be used in the event that the CSB does not know exactly what types of coverages are needed and they wish to consider various proposals and compare coverage and cost. The model RFP in Appendix D-2 of this Manual may be used to solicit proposals from insurance providers.

- Selection of an Agent - Rather than soliciting bids or proposals for insurance policies through the IFB or RFP methods (see above), a CSB may select a licensed agent or broker to provide a program of insurance coverage. A model RFP that may be used to select an agent may be found in Appendix D-3. The agent or broker must be selected through an RFP as a non-professional service and a written documentation must be included in the procurement file stating that competitive negotiation of insurance coverage direct from a provider is either not practicable or not fiscally advantageous. Agents can provide a multitude of services, such as risk reduction and helping to find the proper balance between risk and coverage; therefore, it is often fiscally advantageous to select an agent through an RFP who will put together an insurance program and provide the desired services.

Code of Virginia, Section 2.2-4303 A and C

- Purchase Through an Association - Insurance may be purchased through an association of which the CSB is a member provided:

  ◊ The association "was formed and is maintained for the purpose of promoting the interest and welfare of and developing close relationships with similar public bodies" and,

  ◊ The association "procured the insurance by use of competitive principles" and,

  ◊ The public body (CSB) has made a written determination in advance after reasonable notice to the public that a competitive procurement is "not fiscally advantageous to the public".

Code of Virginia, Section 2.2-4345-A-14

SECTION 40 - INDEX

ETHICS

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SECTION 40

ETHICS

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Sub-Section 40.100 - Purpose and Definitions

It is important that persons conducting public procurement avoid, not only improprieties, but the appearance of impropriety. The integrity and credibility of the procurement program requires them to be impartial, fair and free of any relationships that may cause them to be partial to any vendor or product. The information provided in this section outlines the prohibitions contained in the Virginia Public Procurement Act. Avoiding the "appearance of impropriety" often means going beyond what the law imposes.

EXAMPLE: It may not be a violation of the law to accept a meal from a vendor; however, consideration should be given to how this would appear to a competitor who might observe the event.

Many of the words used in this section of the VPPA are defined, in that Act, in a broad manner. The following definitions are of interest:

- Immediate family means "a spouse, children, parents, brothers and sisters, and any other person living in the same household as the employee".

- Official responsibility means "administrative or operating authority, whether intermediate or final, to initiate, approve, disapprove or otherwise affect a procurement transaction, or any claim resulting therefrom".

- Procurement transaction means "all functions that pertain to the obtaining of any goods, services or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration:.

- Public employee means "any person employed by a public body, including elected officials or appointed members of governing bodies".

Code of Virginia, Section 2.2-4368

Sub-Section 40.200 - Ethical Requirements

Subject 40.210 - Conflicts of Interest

A public employee is prohibited from participating in a procurement transaction if he/she (or, in some cases his/her partner or family) has an interest in the potential contractor's business. (Refer to the VPPA for the specific prohibitions involving conflict of interest.)

Possible Circumstance: If a conflict of interest is unavoidable.

Example: A relative of the CSB employee conducting the procurement transaction owns or has interest in a business that will be competing for a contract with the CSB.

Recommendation: The CSB employee conducting the procurement transaction should turn the program over to another CSB employee and remove him/herself from any decision making related to that procurement.

Documentation: The potential conflict of interest and the steps taken to resolve the conflict should be documented for the contract file.

Code of Virginia, Section 2.2-4369

Subject 40.220 - Gifts

Code of Virginia - "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 section."

Violation of this section may result in the removal of the vendor from the CSB Vendor's List.

Code of Virginia, Section 2.2-4371

While the Code of Virginia does not prohibit gifts of nominal or minimal value, persons who are involved in public procurement are strongly encouraged to adopt a no gifts policy.

The offer of food, drinks, or give-away items to CSB employees participating in vendor-sponsored seminars or trade shows does not constitute a violation of this law.

Subject 40.230 - Disclosure of Subsequent Employment

A public employee "having official responsibility for procurement transactions", who accepts employment with a bidder, offeror, or contractor with whom he/she has dealt in an official capacity, must provide written notice to the public employer of his/her intention to accept the employment.

Code of Virginia, Section 2.2-4370

Subject 40.240 - Kickbacks

Kickbacks involve the giving of something of value by a vendor to a CSB employee in an attempt to influence the award of a contract. Kickbacks are serious violations of the Code of Virginia.

Code of Virginia, Section 2.2-4372

Subject 40.250 - Purchase of Building Materials, etc. from Architect or Engineer

The Code of Virginia prohibits the procurement of building materials to be used in the construction of a building from the architect, engineer, or designer who designed the building unless that individual or firm has been awarded a design-build contract. Thus, a firm cannot design a structure for a CSB and afterwards, supply building materials to construct it.

Exception: A single design-build contract may be awarded in which the successful bidder or offeror will both design and build a structure. A design-build contract is primarily used for construction of small buildings or other small projects.

Code of Virginia, Section 2.2-4374

Subject 40.260 - Certification of Compliance

Employees of CSBs may be required to certify in writing that they have not violated any portion of the Ethics section of the Code.

Code of Virginia, Section 2.2-4375

Subject 40-270 - Misrepresentations

Section 11-79.2 prohibits public employees having official responsibility for procurement transactions from knowingly falsifying, concealing or misrepresenting material facts concerning a procurement.

Code of Virginia, Section 2.2-4376

Sub-Section 40.300 - Penalty for Violation

"Willful violation of any provision of (the Ethics section of the Code) shall constitute a Class 1 misdemeanor. Upon conviction, any public employee, in addition to any other fine or penalty provided by law, shall forfeit his employment."

Code of Virginia, Section 2.2-4377

Sub-Section 40.400 - Code of Ethics

The Universal Public Purchasing Certification Council (UPPCC), which is the certifying council for the National Institute of Governmental Purchasing and the National Association of State Purchasing Officials, has established a Code of Ethics for public procurement professionals. Applicants for certification as a Certified Public Purchasing Officer (CPPO) or a Certified Public Professional Buyer (CPPB) must subscribe to this Code. It is highly recommended as a Code of Ethics for all persons who have "official responsibility" (See Sub-Section 40.100) for any procurement transaction.

UPPCC CODE OF ETHICS

I will seek or accept a position of employment only when fully in accord with the professional principles applicable thereto, and when confident of possessing the qualifications to serve under those principles to the advantage of my employer.

I believe in the dignity and worth of the services rendered by my employment and the societal responsibilities assumed as a trusted public servant.

I shall be governed by the highest ideals of honor and integrity in all public and personal relationships in order to merit the respect and inspire the confidence of my employer and the public served.

I believe that personal aggrandizement or personal profit obtained through misuse of public or personal relationships is dishonest and intolerable.

I will identify and eliminate participation of any individual in operational situations where a conflict of interest may be involved.

I believe that individuals that possess UPPCC certification should at no time or under any circumstances, accept directly or indirectly, gifts, gratuities or other things of value from suppliers which might influence or appear to influence purchasing decisions.

I will keep my governmental organization informed, through appropriate channels, on problems and progress of applicable operations by emphasizing the importance of the facts.

I will handle all personnel matters on a merit basis. Politics, religion, ethnicity, gender and age carry no weight in personnel administration in the agency being directed or served.

I shall not seek or dispense personal favors that are in conflict with my profession. I will handle each administrative problem objectively and empathetically without discrimination.

I subscribe to and support the professional aims and objectives of the Universal Public Purchasing Certification Council.

PROCEDURES MANUAL

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Appendix A - Definitions

Administrative Lead Time

That period of time from initiation of the requirement by the user to issuance of an award (contract or purchase order).

Agreement

A duly executed and legally binding contract. A consensus of two or more minds in respect of anything done or to be done.

Appeal

Action taken by a bidder, offeror (actual or prospective) or by a contractor to seek a hearing before a disinterested person or panel or in an appropriate circuit court challenging a decision in accordance with Sections 11-70 or 11-71 of the Virginia Public Procurement Act.

Bartering

The act of exchanging one good or service for another, without the exchange of money.

Best and Final Offer

The last offer provided by an offeror in response to a Request for Proposals. If a best and final offer is requested, offerors are given the opportunity to submit a best and final offer after negotiations have been held. After the best and final offers are submitted, no further negotiations shall be conducted with any of the offerors and the decision to award is based on the rescoring of the best and final offers.

Bid

A competitively prices 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 prices offer in response to an invitation for bids.

Boiler Plate

A slang word for terms and conditions.

Blanket Purchase Agreement (BPA)

An arrangement under which a purchaser contracts with a vendor to provide the purchaser's requirement for an item(s) or a service, on an as-required and over-the-counter basis. Properly prepared, such an arrangement sets a limit of 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 those persons authorized to accept goods. A BPA may also contain other terms and conditions, such as the discount or specific price list that applies to purchases made under the agreement and what items or services are included (or excluded) under the agreement.

Broker

A person or agent acting as an independent manufacturer's or distributor's representative dealing in products or goods normally sold through the brokerage process in which there is a previously established relationship with the supplier before the bid is submitted.

Charge Card

In the context of this manual, a charge card is a Small Purchase Charge Card (SPCC), used for small purchases ($5,000 or less) of frequent, over-the-counter, Maintenance, Repair, and Operating (MRO) items used in the daily operations of the CSB and for placing orders up to $5,000 against term contracts. It is NOT a credit card.

Collusion

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

Collusive Bidding

An unethical and illegal practice in which suppliers act in collusion to “fix” their bids in a collectively advantageous manner.

Competitive Bidding

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

Competitive Negotiation

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

Competitive Sealed Bid

A bid submitted in a sealed envelope to prevent disclosure of its contents before the deadline for the receipt of all bids. Competitive bidding is the preferred method of procurement for goods and non-professional services amounting to $30,000 or more. Competitive sealed bidding shall not be used to contract for professional services.

Confirming Purchase Order

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

Consideration

Something of value given for a promise to make the promise binding. One of the essentials 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. (See Section 11-37 of the Code of Virginia.)

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, firm, or organization under contract to that agency.

Consumer Price Index (CPI)

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

Contract

Contract (noun) - A legally binding promise, enforceable by law. An agreement between parties, with binding legal and moral force, usually exchanging goods or services for money or other consideration. All types of agreements, regardless of what they may be called, for the procurement or disposal of supplies, services, or construction.

Contract (verb) - The making of an agreement for consideration.

Contract Administration

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

Contract Management

The management of the organization's contracts and contract-related activities which may include accounting, administration, auditing, grants management, law,

negotiation, logistics, price-structure compensation, delegation of purchasing authority, program management, termination and other business activities.

Contract, Cost-Plus-A-Fixed-Fee

A cost-reimbursement type contract that provides for the payment of a fixed fee to the contractor. 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 contractor's actual cost of accomplishing the work. Except in the 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. (See Section 11-43 of the Code of Virginia.)

Contract, Design-Build

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

Contract, Fixed Price

A contract which provides for a firm unit or total price to be established at the time of order placement or contract award. The contractor bears the full risk for profit or loss.

Contract, Fixed Price, Incentive

A fixed price is agreed upon with a target cost/profit, a ceiling price, and a profit formula. Below target, the contractor and state share savings. Above ceiling, the contractor must assume all costs.

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

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 or 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 contractor wherein the service rendered does not consist primarily of the acquisition of equipment or materials, or the rental of equipment, materials or supplies. The "rule-of-thumb" is that if the cost of the service provided exceeds the cost of goods that are incidental to the contract, it is a service contract.

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

Contractor

An individual or firm that has entered in an agreement to provide goods or services to the CSB.

Cooperative Procurement

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

CORPRINT

Virginia Department of Corrections, Correctional Enterprises, Printing Facilities.

Cure Notice

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

Debarment

Action taken to exclude individuals or firms for cause from contracting with the CSB for particular types of supplies and/or services for specified periods of time. (See Section 11-46.1 of the Code of Virginia.)

Default

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

Design Specification

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

Designated Public Area

An area that is available to the public during normal business hours and is the area designated by the CSB for the posting of procurement solicitations and notices.

Emergency

An occurrence of a serious and urgent nature that endangers life and/or property and demands immediate action.

Ethics

Pertaining to or relative to moral action, conduct, motive or character; professionally right or befitting; conforming to professional standards of conduct. The Virginia Public Procurement Act covers "Ethics in Public Contracting" in Sections 11-72 through 80

Evaluation of Bids

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

Expedite

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

Fair Market Value

Lowest purchase price paid by public bodies for like items or services purchased in a similar quantity within the last six months. If this information is not available, telephone requests for non-binding quotes may be utilized.

Follow-Up

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

Force Majeure

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

General Terms and Conditions

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

Goods

Material, equipment, supplies, printing, and automated data processing hardware and software. (Section 11-37 of the Code of Virginia.)

Grant (Grant-in-Aid)

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

Hazardous Material

A substance or material which has been determined by the U. S. Secretary of Transportation to be capable of posing an unreasonable risk to health, safety, and property when transported in commerce.

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 or services being procured. (See Section 11-37 of the Code of Virginia.)

Inspection

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

Invitation for Bids (IFB)

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

Late Bid or Proposal

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

Latent Defect

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

Life Cycle Costing

A cost-analysis tool which incorporates not only the purchase price of a piece of equipment, but all operating and related costs over the life of the item, including maintenance, down time, energy costs, etc., as well as salvage value.

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 CSB, and not be calculated simply to impose a penalty on the contractor.

Minority-owned/controlled Business

Defined as a business enterprise that is owned or controlled by one of the following ethnic groups: Blacks, Hispanics, Asian Americans, American Indians, Eskimos, and Aleuts.

Multiple Award

The award of contracts to more than one bidder. When an Invitation for Bids, in its terms and conditions so provides, awards may be made to more than one bidder. (See Section 11-37 of the Code of Virginia.) This is appropriate in situations where the award of a single contract would be impractical and awards are limited to the least number of suppliers necessary for a workable contract.

Negotiation

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

Non-Competitive Negotiation

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

Nonprofessional Services

Any services not specifically identified as professional services in the definition of professional services. (See Section 11-37 of the Code of Virginia.)

Notice of Award

A written notification to a vendor stating that the vendor has received an award of a contract.

Notice of Intent to Award

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. The decision may be changed prior to the actual award of a contract of purchase order.

Offeror

A vendor who makes an offer in response to a Request for Proposal.

Order/Ship Time

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

Payment Bond, for Labor and Material

A bond required of a contractor to assure fulfillment of the contractor'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 public body 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 to be necessary for the item involved to perform and last as required.

Potential Bidder or Offeror

A vendor who, at the time a public body 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 such contract, and who at such time is eligible and qualified in all respects to perform that contract, and who would have been eligible and qualified to submit a bid or proposal had the contract been procured through competitive bidding or competitive negotiation. (See Section 11-37 of the Code of Virginia.)

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.

> Qualified Products List (QPL): A list of products that have been tested and approved based on written prequalification procedures.
>
> 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 or purchase request, 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, dentistry, law, medicine, optometry, pharmacy, or professional engineering. (See Section 11-37 of the Code of Virginia.)

Proposal

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

Proprietary Specification

One that restricts the acceptable products or services to that 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 are available from several distributors through competitive bidding.

Protest

A complaint about a governmental 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 Body

Includes any agency, institution or political subdivision (including Community Services Boards) created by law to perform some governmental duty. (See Section 11-37 of the Code of Virginia.)

Public Posting

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

Purchase Order

A document which 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.

Qualified Contractors List (QCO)

A list of contractors whose capability to provide a service has been evaluated and approved based on written prequalification procedures.

Qualified Products List (QPL)

A list of products that have been tested and approved based on written prequalification procedures.

Regular Dealer

A person or firm 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 Information (RFI)

An informal document issued when a public body is not aware of the products or services available in the market which may satisfy its requirements. An RFI requests information which can be used either to determine that a competitive solicitation (IFB or RFP) is practical or that competition is not available. In the event that competition is not available, the results of an RFI can be used in writing a justification of sole source.

Request for Proposals (RFP)

All documents, whether attached or incorporated by reference, utilized for soliciting proposals; the RFP procedure permits negotiation with offerors (to include prices) as distinguished from competitive bidding when using an Invitation for Bids.

Responsible Bidder or Offeror

A person or firm who has the capability in all respects to perform fully the contract requirements and the moral and business integrity and reliability which will assure good faith performance and who has been prequalified if required. (See Section 11-37 of the Code of Virginia.)

Responsive Bidder

A person or firm who has submitted a bid which conforms in all material respects (signature, submitting required information, etc.) to the Invitation for Bids. (See Section 11-37 of the Code of Virginia.)

Restocking Charge

Charges incurred by a purchasing agency for any material goods that are returned to a vendor or seller and are associated with the normal cost and expense that must be incurred by the vendor for accepting the return of any item to inventory.

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

Any work performed by an independent contractor wherein the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials and supplies. (See Section 11-37 of the Code of Virginia.) As a "rule of thumb", if the amount of equipment, materials or supplies amounts to less than 50% of the total value of the contract, the equipment, materials or supplies are considered incident to the performance of the contract and the contract is considered to be for services rather than goods.

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. (See Section 11-37 of the Code of Virginia.)

Single Response

A single response to a competitive solicitation. Prior to establishing a contract or issuing a purchase order based upon a single response, a determination should be made, in writing, that the price(s) quoted are reasonable and in line with the market.

Small Business

Corporation, partnership, sole proprietorship, or other legal entity formed for the purpose of making a profit, which is independently owned and operated, has either fewer than 100 employees or less than $1,000,000 in annual gross receipts.

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 a procurement office 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.

Specification

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

Spot Purchase

A one-time purchase made in the open market. If it is under $30,000 or less, it will be made in accordance with the applicable small purchase procedures. If it is over $30,000, it will be made by competitive sealed bidding or by an exception thereto (RFP, sole source, etc.) authorized by law.

Surplus Property

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

Suspension

Action taken to temporarily disqualify a vendor for cause from doing business with the CSB.

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 to time. Term contracts characteristically are established through competitive sealed bidding and usually are 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 public body, at its discretion, of the performance of work in whole or in part and makes settlement of the contractor's claims in accordance with appropriate policy and procedures. In order to exercise Termination for Convenience, this right must be reserved in the policy of the CSB of the terms and conditions of the solicitation.

Termination for Default

The cessation or cancellation by the purchasing office, in whole or in part, of a contract because of the contractor's failure to perform in accordance with the contract’s terms and conditions.

Unsealed Bid

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

Used Equipment

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

Value Analysis

A systematic and objective evaluation of the value of a good or service, focusing on an analysis of function relative to the cost of manufacturing or providing the item or service. Value analysis provides insight into the inherent worth of the final good or service, possibly altering specification and quality requirements that could reduce costs without impairing functional suitability.

Vendor

One who sells goods or services.

Virginia Public Procurement Act

Chapter 7 of Title 11, *Code of Virginia*, which enunciates the public policies pertaining to governmental procurement from non-governmental sources.

Will

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

Women-owned/controlled Business

Business enterprise that is at least 51 percent owned by a woman or women who also control and operate it. In this context, “control” means exercising the power to make policy decisions, and “operate” means being actively involved in the day-to-day management.

APPENDIX B

(NOTE: The purpose of this Vendors' Guide to CSB Procurement Regulations is to instruct current potential vendors and other providers on how they may market their goods and services to the CSB and provide them with the rules and regulations pertaining thereto. It is suggested that this Guide be revised to include those procurement regulations and procedures that are peculiar to your CSB and made available to current and potential vendors and other providers.)

VENDORS' GUIDE TO CSB PROCUREMENT REGULATIONS

Community Services Board

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CHAPTER 1

Authority and Responsibility

1.1 Introduction

The purpose of this manual is to provide vendors (suppliers and providers) with information on:

- The general rules and regulations governing procurements made by the _____ Community Services Board.
- How to sell goods and services to this Community Services Board.
- Methods of resolving disputes regarding procurements.

1.2 Authority

The _____ Community Services Board (CSB) is a political subdivision of the Commonwealth of Virginia under the provisions of Sections 198 and 199 of Title 37.1 of the Code of Virginia.

Procurements by this CSB are conducted in accordance with the provisions of:

- The Virginia Public Procurement Act as contained in Sections 11-41 through 11-80 of the Code of Virginia (except those sections or portions of sections that apply only to State agencies).

- The purchasing procedures contained in this Vendor's Manual.

1.3 Responsibility

The responsibility for purchasing goods and services for this CSB is vested in the position of the Executive Director. This responsibility is delegated as follows:

NOTE: The following are examples. Actual delegation should be determined by the Executive Director and/or the Board.

- *Purchases of goods and services not exceeding $100 may be made by program directors or their designees.*

- *Purchases of goods and services of $100 but not exceeding $15,000 must be approved in writing by the Purchasing Specialist or the Executive Director.*

- *Purchases of goods and services amounting to $15,000 or more must be approved in writing by the Executive Director or the Chairperson of the Board.*

CHAPTER 2

Procurement Methods

2.1 Policy

Procurements of goods or services from non-governmental vendors or providers will be made on a competitive basis utilizing Invitations for Bids or Requests for Proposals unless otherwise authorized by law. In the

solicitation and award of contracts, the CSB will not discriminate because of race, religion, color, sex, or national origin of the bidder or offeror. (Code of Virginia, Section 11-44)

2.2 Exceptions to Competitive Procurements

Competition is not required, by the Virginia Public Procurement Act, for the following procurements:

Small Purchases	Small purchases are low dollar purchases where obtaining competition is considered impractical. This CSB has defined small purchase as goods and services not exceeding $_____ in value. *NOTE: This amount should be approved by the Board and may be lower but it is recommended that it not exceed $2,000.*
Emergency Purchases	Emergency purchases are defined as those procurements that are necessary to correct situations which are deemed, by the CSB, to endanger life or property.
Sole Source	Sole source procurements are those in which the goods or service is not practicably available from any other source.
Used Equipment	Used equipment is identified as equipment that has been previously owned and used. It is offered "as is" and amounts to less than $30,000. Demonstration or factory rebuilt or remanufactured equipment is not considered used since it must meet a specified standard.
Term Contracts	Goods or services available under State or Local Government or CSB contracts. Since these contracts were established through a competitive process, they can be used without the necessity for further competition. The CSB may also participate in cooperative procurements with other CSBs or governmental entities.
Other governmental entities	Goods or services procured from other state agencies and political subdivisions. These purchases may include: • Surplus property. • Products and services produced by the Virginia Department of Corrections and the Virginia Department for the Visually Handicapped.

- Products sold through the Commonwealth of Virginia's Central Warehouse.

- Products and services sold by other state and counties.

Sheltered Workshops

Goods or services may be purchased from sheltered or supported employment workshops.

Real Estate

The purchase or rental of real property is not covered under the Virginia Public Procurement Act. The CSB will make every effort to procure real property in a competitive manner; however, there may often be only one piece of property available that meets the CSB's requirements in the areas of location, space and accessibility.

Other Acquisitions

Competitive methods are not required for the procurement of:

- Equipment and supplies amounting to less than $30,000 for testing or evaluation.

- Services of the following providers where the total amount of expenditures per year is less than $30,000:

  - Academic/research consultants.
  - Honoraria and entertainment.
  - Royalties and film rentals when only available from the producer or protected distributors.
  - Membership dues.
  - Writers.
  - Artists and photographers.

- Equipment, supplies or services that are offered on a no cost basis to the CSB. The CSB has the right, however, to either accept or reject such donations.

2.3 Preferences

Preferences are allowed by the Virginia Public Procurement Act only in procurements involving:

- Tie bids in which the one of the tied bids is from a Virginia vendor or is for Virginia-produced goods while the other bid(s) is from out-of-state. The

award will be made to the Virginia vendor or to the Virginia-produced product. Otherwise, the tie will be broken by drawing or a flip of the coin.

- The low bidder is from a state with an in-state preference. In this case, the amount of that state's preference may be subtracted from the next highest Virginia vendor's price. If the Virginia vendor's price is then lower than the out-of-state vendor's price, the award may be made to the Virginia vendor.

  EXAMPLE: If out-of-state Bidder "A" (from a state having an in-state preference of 4%) bid $1.00 each and a Virginia bidder bid $1.03 on an equal product, the award could be made to the Virginia bidder because his/her price of $1.03 is within 4% of Bidder A's price.

2.4 Specifications or Scopes of Work

The Virginia Public Procurement Act requires specifications, scopes of work or statements of need to be expressed in a manner that is:

- Sufficiently complete and specific to ensure users needs are adequately met,
- Broad enough to ensure competition and
- "Reflect the procurement needs of the purchasing body rather than being drawn to favor a particular vendor." (Section 11-35-G of the Code of Virginia)

The following types of specifications may be used to describe the needs of this CSB:

Generic Specification

Generic specifications describe requirements without reference to a brand name or model number. Generic specifications include:

- Performance-type specifications which describe what the product or service must do rather than how the product or service must be designed.
- Life Cycle Costing (LCC) is a variation of a performance-type specification. A contract award, based upon LCC, takes into account all known cost factors associated with the procurement, installation, maintenance and ultimate disposal of the item purchased.
- Design-type specifications describe how the product or service is to

be designed and usually:

- Includes those requirements that are necessary to provide the level of quality and performance needed by the user.

- Is brand neutral.

- Does not include any requirements which are unnecessary and might restrict other acceptable brands from competition.

- Qualified Products Lists (QPL) are used when the time necessary to evaluate competing brands is too lengthy to be conducted during the procurement process. The award of a solicitation which includes a QPL will be made only to a bidder or offeror quoting on a product listed on the QPL. Bidders or offerors wishing to offer another product on future solicitations must apply to the CSB to have that product evaluated.

- Qualified Contractors List (QCL) are used when it is necessary to pre-qualify contractors to perform a particular service prior to issuing a solicitation. The award of a solicitation which includes a QCL will be made only to a bidder or offeror listed on the QCL. Bidders or offerors wishing to participate in future solicitations must apply to be CSB to be evaluated.

Brand Name or Equal

Unless otherwise stated in the solicitation, "the name of a certain brand make or manufacturer does not restrict bidders to the specific brand, make or manufacturer named". Rather, the use of a brand name "conveys the general style, type, character, and quality of the article desired, and any article which the public body in its sole discretion determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted". (Section 11-49 of the Code of Virginia)

Proprietary

A proprietary specification restricts the acceptable product to that of one manufacturer or a particular brand or model. Competition may be available from several distributors of the specified product; however, only one brand may be acceptable due to reasons such as:

- The required product is to be a component of a system already in use, or

- The use of another brand would require considerable reorientation and training.

EXAMPLE: A sheltered workshop may have eight sewing machines of the same brand and model. The purchase of an additional sewing machine of a different brand with different features and controls may not be practical for this environment where extensive training is necessary in order for a worker to become proficient on a particular machine.

2.5 Competitive Procurement Procedures

Procurements that are not exempt from competition (see section 2.2) will be handled as follows:

Small Purchases

Small purchases are defined by the Virginia Public Procurement Act as those under $50,000. Based upon the estimated value of the procurement, this CSB will utilize the following procedures:

NOTE: The dollar amounts shown below are examples. Each CSB may wish to establish their own procedures for purchases of less than $50,000.

- Up to $2,000 - Verbal (telephone) or written quotations may be used. Competition may be obtained but is not required.

- $2,000 to $14,999 - Verbal (telephone) or written quotations will be solicited from at least three (3) potential suppliers or providers. A record will be kept of each quotation, indicating the name of the individual giving the quotation, the date, the price and the product or service offered.

- $15,000 to $49,999 - Unsealed written bids or proposals will be solicited from at least four (4) potential sources. When written bids or proposals are solicited:

  - The solicitation (invitation for bids or request for proposals) will contain:

    - The specifications or scope of work (needs).
    - The date, time and place the bids or proposals are due.
    - The terms and conditions applicable to the solicitation.

  - Bids or proposals may be delivered in person, mailed, or sent via telefax; however, they must reach the office and/or person designated in the solicitation by the date and time indicated.

- Clarifications may be obtained by telephone; however, no change is made in the solicitation except by a written addendum.

- Bids or proposals are not opened publicly.

Sealed or Formal Bids

Invitations for Bids (IFB) are issued to request sealed or formal bids. Sealed or formal bids are primarily used for procurements of goods or services where the estimated value is $30,000 or more. The sealed or formal bid procedures include:

- Public posting for at least ten (10) days.

- Written sealed bids submitted by bidders.

- Public bid opening where bidders' names, prices, discount terms and brand names and model numbers are read aloud.

- Bid evaluation based upon the requirements as set forth in the IFB.

- Award made to the lowest responsive and responsible bidder(s).

- Late bids will be returned unopened.

Two-step Sealed Bidding

The two-step bid procedure is used where there are inadequate specifications or where the CSB wishes to obtain the latest technology or to take advantage of vendor innovation.

Step One: Solicitations are issued to request an unpriced technical proposal. The technical proposals are evaluated in accordance with the evaluation criteria indicated in the IFB.

Step Two: Invitations for Bids (IFB) are issued to those bidders who responded to Step One and whose technical proposals were determined to be acceptable. Award is made to the lowest responsive and responsible bidder(s).

Combination of Steps One and Two: Both the technical proposal and the bid prices may be requested at the same time but in separate

sealed envelopes. Only those price envelopes from bidders submitting acceptable technical proposals will be opened.

Competitive Negotiation (RFP)

Competitive Negotiation is used to procure goods or services upon determination in writing that competitive sealed bidding is:

- Not practicable or,
- Not fiscally advantageous to the CSB.

(Section 11-41-C of the Code of Virginia)

EXAMPLE: Providers of the required service have different approaches to achieve the end result. Also, the CSB wishes to consider the varying levels of experience and expertise of the potential offerors; therefore, an award cannot be based upon the lowest responsive and responsible bidder.

The competitive negotiation procedures includes:

- Request for Proposals (RFP) issued by the CSB. Stated in the RFP will be:

  - The due date and time for the proposals.
  - The evaluation criteria.
  - Terms and conditions pertaining to the procurement.
  - Any special requirements.

- Public posting for at least ten (10) days.

- Publication in a newspaper of general circulation in the area in which the contract is to be performed.

- The selection of two or more of the best suited offerors, based upon the evaluation criteria.

- Question and answer clarification conference with one or more offerors may be scheduled if the CSB deems it advisable. This conference:

  - May be conducted either in person or via the telephone.
  - Is limited to a clarification or verification of the offeror's written proposal.

- Will not include negotiations.
- May require the offeror to document an answer if a written clarification is deemed, by the CSB, to be advisable.

- Negotiations conducted with the two or more best suited offerors unless only one offeror is determined by the CSB to be fully or most highly qualified.

- Award to the offeror which, in the CSB's opinion, has made the best proposal or is the most highly qualified.

Professional Services

Definition - Professional services are defined, in Section 11-37 of the Code of Virginia, as "work performed by an independent contractor within the scope of the practice of accounting, actuarial services, architecture, land surveying, landscape architecture, law, dentistry, medicine, optometry, pharmacy or professional engineering".

Procedure - The procedures for Competitive Negotiation are used in the procurement of professional services with the following exceptions:

- The RFP will not request estimates of man-hours or cost for services.
- Repetitive informal interviews may be conducted in which non-binding estimates of total project cost and methods utilized in arriving at that cost may be discussed.
- Offers will be ranked in order of preference.
- Negotiations are conducted beginning with the first-ranked offeror.
- If agreement cannot be reached with the first-ranked offeror, negotiations are formally terminated with that offeror and negotiations are conducted with the second-ranked and so on until an agreement is reached.

At any time during the negotiations, the CSB may terminate all negotiations and readvertise the requirement.

2.6 Procurement of Conference Facilities

The cost of renting conference facilities is comprised of:

- Rental of guest rooms.
- Rental of meeting rooms.
- Purchase of food.
- Rented items (such as audio-visual equipment, etc.)

The rental of guest rooms and meeting rooms is considered rental of real estate and may be purchased without competition. The purchase of food and the rental of equipment is considered a procurement and, if these costs are expected to exceed *$2,000*, they will added to the anticipated cost of the rooms and the entire package will be purchased competitively.

2.7 General Rules Pertaining to Bids and Contracts

The following rules are applicable to all solicitation (IFBs or RFPs) and contracts issued by this CSB.

Bid Evaluation	The CSB reserves the right to reject any and all bids in whole or in part and to waive any informality in the bid. In the case of errors in the extension of prices, the unit price will govern.
Multiple Awards	Unless otherwise specifically indicated in the solicitation, the CSB may award a multi-line program in whole, in part, or on an individual line item basis.
Assignment of Contract	A contract shall not be assignable by the vendor in whole or in part without the written consent of the CSB office issuing the contract.
Contract Renewal or Extension	A contract may contain a renewal clause describing the conditions under which a term contract may be renewed. A contract not containing a renewal clause may be extended by mutual consent for a limited period of time, not to exceed six (6) months. The CSB may extend the term of an existing contract for services to allow completion of any work undertaken but not completed during the original term of the contract.
Negotiations with Bidders	Sealed bid (IFB) programs may be canceled or rejected by the CSB. If not canceled or rejected, a contract will be awarded to the lowest responsive and responsible bidder based upon the bid submitted except that if the bid exceeds available funds, the CSB may negotiate with the apparent low bidder to obtain a contract price within available funds.
Contract Modification	A contract may include provisions for renewal, extension, or modification; however, no additional consideration may be paid to the contractor because of renewal or extension unless specifically

authorized under the original contract. A public contract may include provisions for modification of the contract during performance, but no fixed price contract may be increased by more than 25 percent of the original amount of the contract or $10,000, whichever is greater, without the written approval of the Board.

CHAPTER 3

Responsibilities of Vendors and Providers

3.1 Application and Registration

Vendors or providers wishing to provide products or services to the CSB must submit a written request to the office of the Executive Director *(or his/her designee)* indicating the products or services being offered. The CSB may require additional information pertaining to the organization, financial condition and capabilities of the vendor or provider prior to the inclusion of that firm on the CSB vendor list.

In addition the CSB may:

- Require the submission of a vendor application form by the vendor or provider.
- Make on-site inspections to verify the capability of the vendor or provider prior to begin placed on the list.
- Remove a vendor or provider from the mailing list for failure to respond to *two* consecutive solicitations.

NOTE: Approval of a vendor or provider to be placed on the CSB vendor mailing list does not constitute any commitment on the part of the CSB to include that vendor or provider on the mailing list for all solicitations for the goods or services offered. The CSB will attempt to provide all vendors and providers an opportunity to respond to solicitations on a rotational basis; however, the mailing list for each solicitation will, of necessity, include responsible vendors or providers who consistently offer responsive bids and proposals.

Prospective vendors and providers may check the solicitations posted on the procurement bulletin board to learn of IFBs or RFPs for which they may not have been on the mailing list. Copies of these solicitations will be provided upon request.

3.2 Responsible Bidder or Offeror

In determining a responsible bidder or offeror, a number of factors including but not limited to the following are considered. The vendor should:

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

3.3 Debarment

Debarment is action taken by the Board of the CSB to exclude individuals or firms from contracting with the CSB for particular goods or services for specified periods of time. (Section 11-46.1 of the Code of Virginia). Debarment does not relieve the vendor or provider of responsibility for existing obligations.

Individuals or firms may be debarred for improper conduct including:

- Breach (including anticipatory breach) of a contract with the CSB.
- Stating an unwillingness or inability to honor a binding bid. A mere request to withdraw a bid, which does not otherwise state an unwillingness or inability to perform, is not a cause for debarment.
- Falsifying or misrepresenting manufacturer's specifications in order to appear responsive to a solicitation.
- Conferring or offering to confer any gift, gratuity, favor, or advantage, present or future, upon any employee of the CSB who exercises any

"official responsibility" for a "procurement transaction" as those terms are defined in Section 11-73 of the Code of Virginia. It is not necessary that the offer be accepted by the employee, or that the offer be made with intent to influence the employee in an official act. Extending to any CSB employee exercising official responsibility for a procurement transaction any discount or privilege not available to all CSB employees is considered to be offering an advantage.

- Any cause indicating that the individual or firm is not a responsible vendor.

- A determination by the Executive Director that a vendor has used abusive or obscene language or a threatening manner toward a CSB employee exercising official responsibility for a procurement transaction during the performance of their duties as a result of the performance of their duties.

- Conviction of any criminal offense involving public contracting.

- Court judgment finding a violation of either federal or state antitrust laws.

- Conviction of any offenses indicating a lack of moral or business integrity.

NOTE: The CSB board or your locality (if you are a single jurisdictional CSB) may determine different policies related to debarment. Changes to the above section may be necessary.

3.4 Debarment Notification

An individual or firm being debarred from contracting with the CSB will be notified in writing. The notice shall state the reasons for the action taken and the length of the debarment. This decision shall be final unless that action is overturned upon an appeal.

3.5 Debarment Period

Debarment shall be for a period of one (1) year except that debarment for court judgment finding a violation of either federal or state antitrust laws or conviction of any offenses indicating a lack of moral or business integrity shall be for a period of three (3) years. Debarment shall commence upon notification of debarment, or if later, upon expiration of any existing debarments.

Notwithstanding the prescribed duration of the debarment, at the discretion of the CSB Executive Director, a debarment may be lifted or suspended at any time if it is in the best interest of the CSB. A debarred individual or firm can apply for reinstatement in writing at any time to the debarring official. This request should:

- Cite actions taken to remedy the reason for debarment or,
- Cite actions taken to prevent recurrence of the situation that caused the debarment action to be taken.
- Cite evidence indicating that lifting or suspension of the debarment would be in the best interests of the CSB.

Examples of actions that the Executive Director may take into consideration include, but are not limited to:

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

3.6 Vendor Assistance to the CSB

Vendor sales efforts of a consultative or advisory nature are encouraged. These efforts provide information to keep the CSB up-to-date. The furnishing of product or service information by a vendor is considered to be normal sales effort and does not entitle the vendor to preferential treatment in the awarding of contracts.

3.7 Personal Interest and Gifts

No vendor shall offer any gift, gratuity, favor, or advantage to any CSB employee who exercises official procurement responsibility, develops procurement requirements, or otherwise influences procurement decisions. CSB employees may attend vendor-sponsored seminars or trade shows where the buying staffs will benefit from receiving product information and learning of new techniques and trends. Food, drinks, and give-away items offered to all participants at such functions may be accepted by CSB employees attending.

3.8 Copyright

No vendor may copyright any work contracted for by the CSB and produced for the CSB without the written consent of the CSB.

3.9 Ownership of Artwork, Negatives, etc. for Printing

All artwork, negatives, dies, overlays, or similar materials used to print a job shall be the property of the CSB and must be returned the CSB upon completion.

3.10 Overruns, Underruns for Printing Jobs

The CSB is not required to accept overruns unless so stated in the solicitation. The CSB may, at its discretion, accept up to a ten percent overrun. Prices for overruns shall not exceed the quoted base price per unit, or the quoted price for additional copies run at the same time. Whichever price is less will prevail. The CSB, at its discretion, accept an underrun, provided that credit is allowed the CSB at the full base price per unit for the quantity of the underrun.

CHAPTER 4

Solicitations - General Rules

4.1 Selection of Bidders and Offerors

All qualified vendors have access to CSB business unless they have been officially suspended or disbarred. (See Sections 3.3 and 5.11) It may not be practical, due to a large number of qualified vendors, for the CSB to mail solicitations to every known vendor for a particular goods or service; however all solicitations with an estimated value of $5,000 or more will be posted on the CSB Procurement Bulletin Board and any vendor may request a copy.

On occasion, a competitive procurement may be restricted to:

- Manufacturers.
- Vendors whose products or services have been pre-approved and are listed on a Qualified Products List (QPL) or a Qualified Contractors' List (QCL).
- Vendors who possess certain licenses or other qualifications.

When vendor restrictions are applicable to a solicitation, the restriction(s) will be so stated in the IFB or RFP.

4.2 Response Time

Normally, the time set for return of sealed bids or proposals is fourteen to seventeen days after publication of the IFB or RFP. The minimum time will not be less than ten calendar days and, if time is not critical, as much as thirty calendar days may be allowed.

4.3 Pre-Bid or Pre-Proposal Conference

Pre-Bid or Pre-Proposal conferences may be scheduled for certain solicitations, especially when the product or service being purchased is complex or contains critical elements. The date, time and place of the conference will be noted in the solicitation. Attendance at some conferences may be mandatory and, if so, this fact will also be noted in the solicitation. When attendance is mandatory, only bids or proposals submitted by vendors who were represented at the conference will be considered.

4.4 Receipt of Bids or Proposals

The solicitation will state where the bids or proposals are to be delivered and the due date and time. Bids or proposals not received in the designated place by the due date and time are automatically disqualified and will not be considered. The official time used in the receipt of responses is that time on the clock or automatic time stamp machine in the office that receives the bids or proposals.

The outside of the envelope containing a sealed bid or proposal must be marked with the name, number and due date of the solicitation. Sealed bids or proposals not marked may be inadvertently opened and the information compromised which may cause the bid or offer to be disqualified.

Vendors should not combine two or more responses to separate IFBs or RFPs into one envelope since they may have different due dates.

4.5 Canceling or Amending a Solicitation

The CSB may cancel or withdraw a solicitation in whole or in part and reject any and all bid or proposals at any time prior to an award.

Amendments may be made by the issuance of an addendum prior to the time set for receipt of response.

4.6 Facsimile Bids or Proposals

Facsimile responses will be accepted for unsealed (or informal) solicitations.

Telegraphic or facsimile responses will not be accepted for sealed or formal solicitations.

4.7 Signature on Bid or Proposal

Proposals, bids, and all addenda returned by the vendor must be signed in ink as instructed in the solicitation documents. The person signing the bid or proposal must be a person authorized by the vendor to sign bids or proposals. Facsimile or typewritten signatures are not acceptable responses to a formal IFB or RFP in which sealed responses are required. The person signing must include his or her title, and if requested, must verify his or her authority to bind his or her company in contract. **Failure to sign the face of the bid or proposal in the space provided will result in rejection of the bid or proposal except if the unsigned bid or proposal is accompanied by other signed documents indicating the bidder's or offeror's intent to be bound.**

4.8 Bonds and Insurance

Bid bonds, a performance and a payment bond may be required in a solicitation. When a bid bond is required, the amount required will not exceed 5% of the amount of the bid. A bid bond, when specified, must accompany the bid. (Section 11-57 of the Code of Virginia) Performance bonds and payment bonds, if requested, must be in an amount at least equal to 100% of the accepted bid or proposal unless otherwise specified. (Section 11.58 of the Code of Virginia)

The CSB (upon approval of its legal advisor) may accept, in lieu of a bid, payment or performance bond:

- Certified check.
- Cash escrow.
- Personal bond.
- Property bond.
- Bank or savings and loan association's letter of credit on certain designated funds in the face amount required for the bid, payment or performance bond.
  (Section 11-61-B of the Code of Virginia)

4.9 Specifications - Questions and Comments

The CSB intends to use specifications that encourage competition. Vendors are encouraged to inform the responsible purchasing office in writing whenever they have comments or questions concerning specifications or solicitation requirements. Suggestions concerning new products or services are also encouraged. This information should be provided to the responsible purchasing office as early as possible in order to provide time to consider the suggestion and take any necessary action before the scheduled receipt date.

4.10 Contractor Registration (License)

All vendors bidding on construction, demolition, repair, or improvements to facilities which are estimated to be $1,500 or more, must be registered contractors with the Department of Commerce, in accordance with Title 54, Chapter 7 of the Code of Virginia. In addition, all nonresident contractors and subcontractors submitting bids on the above work who are not registered with the Department of Commerce shall register with the Department of Labor and Industry under the provisions of Subsection 40.1-30 of the Code of Virginia.

4.11 Terms and Conditions

Solicitations contain general terms and conditions which incorporate the procedures and provisions of this manual as well as all statutory provisions. Special terms and conditions may change or rescind the procedures and provisions of this manual, and the solicitation should be read with care prior to submission of a bid or proposal. Modification of or additions to any portion of an IFB made by a bidder which affects quality, quantity, price or delivery may cause rejection of the bid as being nonresponsive. In the case of modifications or additions to IFBs which do not affect quality, quantity, price and delivery, the CSB may, in its sole discretion, on a case-by-case basis, reject them as nonresponsive, or waive them as informalities in appropriate situations or require the bidder to withdraw the nonresponsive language within a specified period of time as a condition to not being declared nonresponsive. Modifications or additions to any portion of an RFP, including but not limited to contractual terms and conditions and the requirements for that which is to be procured, are adequate grounds for rejecting the proposal unless undesired modifications or additions are amended or withdrawn to the satisfaction of the CSB during the course of discussions and negotiations. No modification of or addition to any provisions of a solicitation shall be effective unless reduced to writing and signed by the parties to the contract.

4.12 Pricing and Discounts

Solicitations normally request net price FOB destination for the unit, item or service specified. Cash discounts offered for prompt payment must be clearly shown and will be taken if payment is made within the specified time frame, i.e., 2%-20 days. Cash discounts will not be used as a factor in award unless the CSB so specifies in the solicitation.

4.13 Samples

Samples of items, when called for in a solicitation, must be furnished free of charge or expense. Samples submitted by the successful bidder or offeror may be held for comparison with merchandise furnished. All samples submitted may be subjected to tests and evaluation by either a qualified laboratory or test panel, and the results may be a factor in making the award. Samples not destroyed in testing will, if requested, be returned to the bidder or offeror at his or her own expense. Requests for the return of samples must be made within thirty (30) days following the due date for the solicitation. Requests for return of samples will be honored upon the completion of testing and evaluation. Samples not claimed within 60 days will be disposed of.

4.14 Alternate Bids

An alternate bid is a bid submitted in response to an IFB which is in knowing variance from the specifications. The CSB cannot accept an alternate bid, however, if it does not meet the requirements of the specifications or scope of work. If the CSB believes the alternate specification better meets its needs, it may reject all bids and rebid the requirement with a revised specification using the features of the alternate. Information on products or services with alternate specifications or scopes of work should be submitted to the CSB as early as possible in order for an evaluation to be made prior to issuing the solicitation.

4.15 Taxes

The CSB is exempt from Federal Excise Taxes and Virginia State Sales Tax. The State Sales Tax does not apply to most sales made to the CSB. Contractors doing business with the CSB are not exempt from sales tax on materials and supplies that are installed and become part of real property. The sales taxes paid by a contractor on such material or supplies are a cost of doing business and should be considered in pricing when preparing a solicitation response. (See Virginia Retail Sales and Use Tax Regulations, Sections 630-10-27 and 630-10-45 D and E.)

4.16 Amending or Withdrawing Bids or Proposals

The conditions under which bids or proposals may or may not be amended or withdrawn by a bidder or offeror are as follows:

Amend a bid or proposal prior to opening date and hour.

This action is permitted if a written request if received by the office which issued the solicitation.

Alter or amend a bid or proposal prior to opening date and hour

The person authorized to submit bids or proposals may request the return of the bid or proposal. He or she should then:

- Draw a single line through the information to be changed.
- Insert the desired information.
- Initial the change.
- Refrain from erasing or opaqueing information on bid or proposal.

OR

The person authorized to submit bids or proposals may submit a letter outlining the changes to be made in the bid or proposal.

Correct an informality discovered in a bid after the opening date and hour

An informality is a minor defect or variation of a bid or proposal that may be waived or corrected without prejudice to other bidders. It does not affect:

- Price,
- Quality,
- Quantity,
- Delivery schedule, or
- Contractual conditions.

The CSB may, in its sole discretion, waive such informalities or permit the bidder to correct them, whichever procedure is in the best interests of the CSB. Examples of informalities that may be corrected in this manner are:

- Return of less than the number of signed bids required by the IFB.
- Failure to sign the face of the bid in the space provided, but only if the unsigned bid is accompanied by other signed documents indicating the bidder's intent to be bound.
- Failure to acknowledge receipt of an addendum to the IFB, but only if it is clear from the bid that the bidder received the addendum and intends to be bound by its terms, or the addendum involved had a negligible effect on price, quantity, quality, or delivery.

Errors of judgment in a bid.

Bids may not be withdrawn or corrected due to mistakes which are attributable to errors in judgment and the fact that an error was made is not obvious to the person with the procurement responsibility.

Non-Judgmental errors in a bid.

Errors in bids may be corrected or withdrawn if the following conditions are present:

- Mistakes are present but the intended quotation is evident to the person with the procurement responsibility. The CSB may correct the bid or allow the bidder to withdraw the bid.

  EXAMPLES: Typographical errors, errors in extending unit prices, transposition errors, and arithmetical errors.

- Mistakes that are evident to the person with the procurement responsibility; however, the intended quotation is not evident. The bid cannot be corrected; however, the CSB may permit the bidder to withdraw the bid.

  EXAMPLES: A price that is significantly lower than the other bids received or a quote on an item that the bidder obviously does not supply.

Mistakes discovered in a bid or contract after award.

Mistakes may not be corrected or withdrawn after the award of a contract.

Construction bids.

A bidder for a construction contract may withdraw his or her bid from consideration if the:

- Price was substantially lower than other bids due solely to a mistake therein.
- Bid was submitted in good faith.
- Mistake was a clerical mistake as opposed to a judgmental mistake.
- Mistake was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of original work papers, documents

and materials used in the preparation of the bid sought to be withdrawn.

- Bidder submits to the CSB or designated official his or her original work papers, document and materials used in the preparation of the bid within one day after the dated fixed for submission of bids.
- Work papers are delivered by the bidder in person or by registered mail at or prior to the time fixed for the opening of bids. The bids shall be opened one day following the time fixed by the public body for the submission of bids.
- Bidder shall claim in writing, within two hours after the opening of bids, any mistake as defined herein and withdraw his or her bid.

The contract shall not be awarded by the public body until the two-hour period has elapsed. Such mistake shall be proved only from the original work papers, documents and materials delivered as required herein. (See Section 11-54 a. ii of the Code of Virginia.)

4.17 Open Records

Procurement records are open to the inspection of any citizen or any interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act. The following exceptions apply:

- Cost estimates relating to a proposed procurement transaction prepared by or for the CSB are not open to public inspection (section 11-52B, Code of Virginia).

- Bid and proposal records are not available to the public for inspection until after the award except that any bidder or offeror, upon request, shall be afforded the opportunity to inspect bid or proposal records within a reasonable time after the opening, evaluation, and negotiation (if applicable) of the bids or proposals but prior to award, except in the event that the CSB decides not to accept any of the bids or proposals and to resolicit.

- Any inspection of records shall be subject to reasonable restrictions to ensure the security and integrity of the records (section 11-52C of the Code of Virginia).

- The CSB may make reasonable charges for the copying, search time and computer time expended in the supplying information requested under the Virginia Freedom of Information Act. The charge shall not exceed the actual cost of supplying such records. Upon request, the CSB will furnish in advance an estimate of the charges for supplying procurement records.

- Trade secrets or proprietary information submitted by a bidder or offeror in connection with a procurement transaction is not subject to public disclosure under the Virginia Freedom of Information Act; however, the bidder or offeror must invoke the protection of Section 11-52 of the Code of Virginia "prior to or upon submission of the data or other materials, and must identify the data or other materials to be protected and state the reasons why protection is necessary".

4.18 Prohibited Purchases

Section 11-79 of the Code of Virginia prohibits the procurement of building materials to be used in the construction of a building or structure from the architect or engineer (or a sub-contractor thereof) who designed the building unless that architect or engineer has a design-build contract with the public body (CSB).

CHAPTER 5

Vendor Performance

5.1 Purchase Order or Contract Document, Authority and Shipment

The execution of a contract may take several different forms:

- A verbal contract or order may be issued by the CSB for items or services that do not exceed *$500* in value. The only form required in this instance would be the invoice submitted by the contractor after completion of the contract.

- A purchase order form may be used by the CSB to execute a purchase transaction or establish a contract. A purchase order may also be used to order out goods or services contracted for under the terms of a single signature or two-party contract form.

- A single signature contract form may also be used to establish a contract. This document will refer to the contractor's bid, proposal, memorandum of understanding, and/or best and final offer. The contractor's signature on these

documents and the authorized CSB official's signature on the contract document will constitute mutual acceptance of the contract provisions. This contract document may authorize immediate shipment of product or the beginning of the performance of services or this action may be provided for by issuance of a purchase order.

- A two-party contract form, signed by the contractor and the authorized CSB official may be used to establish a contract. This document will contain, either by inclusion or by reference, all of the provisions of the contract. As with the single signature contract form, this document may either authorize immediate provision of service or shipment of goods or it may provide for the issuance of a purchase order to authorize action by the contractor.

5.2 New/Used/Altered

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

5.3 Packaging

Shipping containers shall be legibly marked or labeled on the outside with the commodity description and number, size and quantity. A packing slip or invoice must accompany all shipments and must reference the purchase order number.

5.4 Substitutions

Substitution is defined as delivery of any item or provision of a service that does not conform to the specifications or scope of work of the purchase order or contract. Substitutions on purchase orders or contracts require the approval of the CSB official who signed the purchase order or contract. Any items or services that do not meet specifications may be rejected or returned to the contractor at the contractor's expense. When a shipment, item or service is returned or rejected, the contractor must make immediate replacement with acceptable merchandise or service or be considered in default.

5.5 Loss or Damage in Transit

Delivery by a vendor to a common carrier does not constitute delivery to the CSB. Any claim for loss or damage incurred during delivery shall be between the vendor and the carrier. The CSB accepts title only when goods are received regardless of the FOB point. The CSB will note all apparent damages in transit on the freight bill and notify the vendor. Discovery of concealed damage or loss must be reported by the CSB to the carrier and the vendor within seven days of receipt and prior to

removal from the point of delivery. The vendor shall make immediate replacement of the damaged or lost merchandise or be in default of the contract. It shall be the vendor's responsibility to file a claim against the carrier. If damage is to a small quantity, the vendor may, with the approval of the CSB, deduct the amount of damage or loss from his or her invoice to the CSB in lieu of replacement.

5.6 Freight

By signing a bid or proposal, bidders or offerors certify that the prices offered for FOB destination include only the actual freight rate costs at the lowest and best rate and are based upon the actual weight of the goods shipped. Freight charges are, therefore, established for each individual purchase. If a requirement is offered FOB origin, the vendor shall prepay the charges and add the amount to the invoice. A copy of the freight bill should be attached to all invoices that include freight charges. In a solicitation specifying FOB origin, the CSB will consider freight cost in the evaluation of bids and proposals.

5.7 Delivery Time

Delivery or performance of goods or service must be made by the date or period specified in the purchase order or contract or the vendor will be considered to be in default. If a vendor cannot make delivery or perform a service as specified under any existing purchase order or contract, the vendor must immediately notify the CSB. The vendor may offer a new delivery date; however, if it is not acceptable to the CSB and delivery cannot be made as originally specified, the vendor will be considered in default

5.8 Receipt of Goods

Shipments will be checked against a copy of the purchase order or contract. Quantities, units, etc., must match the purchase order or contract. Overshipments may be rejected and returned at the vendor's expense. Vendors should ensure that they have been given a specific delivery location and receive a signed receipt for goods delivered.

5.9 Inspection

All materials, equipment , supplies, and services are subject to inspection and testing. Failure to reject upon receipt, however, does not relieve the vendor for liability for latent or hidden defects subsequently revealed when goods are put to use or tested. If latent defects are found, the vendor is responsible for replacing the defective goods and is liable for any resulting expenses incurred by the CSB.

5.10 Failure to Deliver

Vendors unable to deliver goods or services when specified must notify the CSB. The vendor may offer a new delivery date; however, if it is not acceptable to the CSB and delivery cannot be made as originally specified, the vendor will be considered in default.

5.11 Termination for Default

In case of default by the vendor for failure to deliver or perform in accordance with specifications or scope of work, the CSB may procure the articles or services from other sources and hold the defaulting vendor responsible for any excess cost incurred. The CSB will normally repurchase from the next low bidder or the next highest rated offeror or purchase competitively by resolicitation; however, if this is not practical because of restraints of time or availability, the CSB may procure the goods or service from a vendor based solely on that vendor's capacity to deliver the required goods or services in the time frame required. If the repurchase results in increased cost to the CSB, a letter will be sent to the defaulted contractor requiring payment for additional costs. When repayment is requested, the Contractor will be suspended from the mailing list for purchase solicitations for a specified period of time or until the repayment has occurred, whichever occurs first. The vendor shall not be liable for any excess cost if the failure to perform arises out of any act of war, order of legal authority, strikes, act of God, or other unavoidable causes not attributed to the fault of negligence of the vendor. The burden of proof rests with the vendor.

5.12 Cancellation of Purchase Order and Contracts

No cancellation of purchase orders or contracts may be made except in writing by the office that issued the purchase order or contract. Orders or contracts may be canceled without the consent of the vendor in cases of default. A vendor may request cancellation , and the CSB will grant relief if the vendor is prevented from specific performance, including timely delivery, by an act of war, order of legal authority, act of God, or other unavoidable causes not attributed to the fault or negligence of the vendor. The burden of proof for need of such relief rests with the vendor. The CSB reserves the right to cancel all contracts with any vendor who fails to perform for any one contract.

5.13 Purchase Order or contract Changes

A purchase order change or contract change is used to correct errors, to add or delete small quantities of goods, or to make other minor adjustments in the original contract. They may also be used to cancel orders. Vendors who deviate from the requirements of a purchase order or contract prior to the receipt of any authorized change order do so at their own risk.

5.14 Claims

Contractual claims whether for money or other relief shall be submitted in writing no later than sixty days after final payment; however, written notice of the contractor's intention to file such claim must 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.

A contractor may not institute legal action prior to receipt of the Community Services Board's decision on the claim unless the CSB fails to render such decision within thirty days. The decision of the CSB shall be final and conclusive unless the contractor, within six months of the date of the final decision on the claim, institutes legal action as provided in Section 11-70 of the Code of Virginia.

CHAPTER 6

Protests and Appeals

6.1 Protests

Any bidder of offeror submitting a bid or proposal in response to a solicitation may protest the award or decision to award a contract by submitting such protest in writing to the Executive Director of the Community Services Board no later than ten calendar days after the public notice of the award or the announcement of the decision to award, whichever occurs first.

Any potential bidder or offeror on a contract negotiated on a sole source or emergency basis who desires to protest the award or decision to award such contract shall submit such protest in the same manner no later than ten calendar days after posting or publication of the notice of such contract.

The rules governing the filing of a protest are as follows:

- The written protest must be received in the Executive Director's office not later than 5:00 p.m. on the tenth day. If the tenth day falls on a weekend or an official CSB holiday, the ten day period expires at 5:00 p.m. on the next regular work day.

- The protest shall include the specific basis for the protest and the relief sought.

- The Executive Director shall issue a decision in writing with ten days stating the reason for the action taken. The decision shall be final unless the bidder or offeror appeals within ten days of the written decision by invoking the **APPEALS PROCEDURE** or institutes legal action as provided in Section 11-70 of the Code of Virginia.

- If the protest of any actual of potential bidder or offeror depends in whole or in part upon information contained in public records pertaining to the procurement transaction which are subject to inspection, then the time within which the protest must be submitted shall expire ten days after those records are available for inspection by such bidder or offeror, or at such later time as provided in Section 11-66 of the Code of Virginia.

- No protest shall lie for a claim that the selected bidder or offeror is not a responsible bidder or offeror.

6.2 Appeals Procedure

The rules regulating the reasons and procedure for appeals are contained in Article 3 of the Virginia Public Procurement Act (Sections 11-63 through 11-71 of the Code of Virginia). The Executive Director of the CSB will appoint a disinterested person or panel to hear appeals of the following actions of the CSB:

- Procurement decisions involving a contract award or decision to award.

- Determination that a vendor is ineligible to participate in public contracts.

- Refusal to allow withdrawal of bids.

- Disqualifications and determinations of nonresponsibility.

"Any party to the administrative procedure, including the public body, shall be entitled to institute judicial review if such action is brought within thirty days of receipt of the written decision." (Section 11-71-B of the Code of Virginia).

6.3 Exhaustion of Administrative Procedures

A bidder, offeror or contractor need not utilize the appeals procedure of the CSB; however, if the he or she initiates this procedure, it must be exhausted prior to instituting legal action concerning the same procurement transaction unless the CSB agrees otherwise. (Section 11-70-F of the Code of Virginia).

6.4 Effect of the Appeal on Procurement Proceedings

Pending final determination of a protest or appeal, the validity of a contract awarded and accepted in good faith shall not be affected by the fact that a protest or appeal has been filed. (Section 11-67 of the Code of Virginia).

An award need not be delayed for the period allowed a bidder or offeror to protest or appeal, but in the event of a timely protest or appeal, no further action to award the contract will be taken unless there is a written determination by the CSB that award of the contract is necessary to protect the public interest or unless the bid or offer would expire. (Section 11-68 of the Code of Virginia). When such a written determination is made, copies will be sent to all parties to a protest or appeal, and in the case of an appeal, to the individual or panel hearing the appeal.

6.5 Time and Place of Hearings

The parties will be given at least ten days' notice of the time and place of the appeal hearing. Appeals may be heard earlier upon the consent of all parties.

Hearings will be held at a site selected by the CSB.

6.6 Hearing Procedures

Hearing before an individual or panel appointed by the Executive Director of the CSB are subject to the following provisions:

- Hearings are not trials and will not be conducted as such.
- Hearings will be informal and each party will be given a reasonable period of time to state their position.
- Any party may be represented by legal counsel at the hearing.
- Rules of evidence do not apply, except that the individual or panel hearing the appeal may exclude evidence which is irrelevant or redundant and may limit testimony and argument as necessary to reasonably expedite the proceedings.

- Witnesses may be called to testify; but the individual or panel hearing the appeal does not have subpoena power and an oath will not be administered.

- The individual or panel hearing the appeal may:
  - Ask questions at any time but may not question any of the parties in closed session.
  - Limit the number of witnesses.
  - Control the discussion to the extent that he/she/they, in their opinion, feel will contribute to the identification and resolution of the issues.

- Hearings will be open to the public; however, the individual or panel hearing the appeal will adjourn the hearing to deliberate and reach a decision in private.

The manner of proceedings will be determined by the individual or panel hearing the appeal. Normally, the hearing will be conducted as follows:

- The appealing party will state its reasons for appealing and the desired relief. Points of contention between the vendor and the CSB will be limited to those points raised to the CSB by the vendor in its letter of protest.

- The appealing party will present its witnesses and evidence. The individual or panel hearing the appeal will be able to ask questions of each witness.

- Other parties may present their responses, the relief they desire, if any, and their witnesses and other evidence in the order determined by the individual or panel hearing the appeal. Questions may be asked of their witnesses by the individual or panel hearing the appeal or by other parties to the appeal.

- The CSB will provide for the taking of notes or electronic recording of the appeal hearing. The following rules apply to these recordings:
  - These records will be retained for sixty days. If judicial review of the Board's decision is instituted, the recording will be retained until the judicial review has been completed.
  - Any party may provide a court reporter at its own expense. If a court reporter is used, transcripts of the hearing shall be given to the individual or panel hearing the appeal at no expense, upon its request, and will be made part of the appeal hearing's records. If the individual or panel hearing the appeal determines the transcript to be inaccurate or incomplete,

he/she/they shall note for the record any inaccuracies or incomplete transcription of the hearing.

6.7 Appeal Decision

The individual or panel hearing the appeal will issue a written decision within seven days of the hearing date except when it is necessary to await a transcript of the hearing, in which case a written decision will be issued within seven days of receiving the transcript. This decision will include a brief statement of the relevant facts on which the decision was made. This will be called the "Findings of Fact". The individual or panel hearing the appeal will then state its decision, providing such detail as considered necessary. The decision will be signed by that individual or, if a panel, by the chairperson of the panel.

Copies of the decision will be mailed to all parties and will be available to other interested persons upon request.

6.8 Judicial Review

Any party to an appeal hearing will be entitled to institute judicial review if such action is brought within thirty days after receipt of the written appeal decision or within thirty days of attempted postal delivery of the written appeal decision to the last mailing address provided by the party to the individual or panel hearing the appeal.

The findings of fact by the individual or person hearing the appeal will be final and conclusive and will not be set aside by a Court unless fraudulent, arbitrary, or capricious, or so grossly erroneous as to imply bad faith. No determination on an issue of law will be final if appropriate legal action is instituted in a timely manner (Section 11-71 of the Code of Virginia).

CHAPTER 7

Disposal of Surplus Property

7.1 Policy

Property no longer needed by the Community Services Board will be reported to the *Fiscal Officer (or other position)* as surplus property. Surplus property is generally defined as that which has been designated as excess, obsolete or used beyond economic repair. It will be disposed of in accordance with one of the disposal methods noted in Section 7.2.

7.2 Disposal Methods

The methods authorized for disposal of surplus property include:

- Trade-in - Surplus property may be traded in on the purchase of other similar type of equipment; i.e., surplus office equipment traded in for new office equipment or a van traded in on a new vehicle. The items to be traded in will be fully described in an Invitation for Bids for new equipment and the low bidder will be determined by subtracting the price offered on the trade in from the price quoted on the new item.

- Sale to Another Public Agency - Surplus property may be sold to another public agency (CSB, county, etc.) at a fair market value.

- Public Auction - Surplus property may be sold to the general public at public auction on an "as is, where is" basis to the highest bidder(s). Auction notices will be placed in area newspapers.

- Sealed Bid - Surplus property may be listed in an Invitation for Bids. This procedure is handled similar to the purchase of goods except the items are sold to the highest bidder(s) on an "as is, where is" basis.

- Negotiated Sale - If competitive methods (public auctions or sealed bid) have been attempted with no success and no other public agency desires the property, it may be sold at a negotiated price.

- Set Price - If other methods are not practicable, surplus property may be priced at a fair market value and offered for sale to the public on a first come, first served basis. Notice of these sales will be placed in area newspapers.

- Donations - Occasionally, the Board may approve the donation of CSB property to a not for profit organization. Also, property that is deemed to have rare or historical value may be donated to an appropriate organization.

- Destruction of Abandonment - Property which is unusable, beyond economic repair and determined to have no commercial value, or the cost of sale would exceed the expected returns, may be destroyed or abandoned.

VENDORS' GUIDE TO CSB PROCUREMENT REGULATIONS

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APPENDIX C-1 - Model Invitation for Bids (IFB)

INVITATION FOR BIDS
IFB

Issue Date: (Date) IFB #(Number)

Title: (Commodity or Service)

Issuing Agency: _____ Community Services Board
(Mailing Address)

Delivery Points: (Address of delivery point(s) or city/town to which deliveries may be made under any resulting contract.

Period of Contract: (Date) through (Date) *If the purpose of the IFB is not to establish a term contract, this section may be replaced by the required delivery date or the section may be deleted.*

Sealed Bids will be received until (Date and Time) for furnishing the goods described herein and then opened in public.
Indicate IFB number and opening date and hour on envelope.

All inquiries for information should be directed to:
(Procurement Office and Phone Number)

IF BIDS ARE MAILED, SEND DIRECTLY TO ISSUING AGENCY SHOWN ABOVE. IF BIDS ARE HAND DELIVERED, DELIVER TO: (Location or Street Address)

PRE-BID CONFERENCE: A (mandatory) (optional) pre-bid conference will be held on _____ at the ___(location)___. Refer to Paragraph 3.0 herein.

In compliance with this Invitation for Bids and to all the conditions imposed herein, the undersigned offers and agrees to furnish the goods at the price indicated in the Quotation Section 7.0.

Name and Address of Firm:

_____ Date: _____

_____ By: _____
Signature in Ink
_____ Title: _____
_____Zip Code_____ Telephone Number: (___)_____
FEI/FIN No. _____ FAX Number: (___)_____

* Contractor ____ DOES ____ DOES NOT consider his firm to be a minority owned business.
Contractor ____ IS ____ IS NOT certified as a minority business by the Virginia Department of Minority Business Enterprise.

- Optional Information: Minority contractors are encouraged to submit bids; however, minority status does not influence award.

1.0. **PURPOSE:** The intent and purpose of this Invitation for Bids is to establish a contract with one qualified firm to provide (Commodity) to the _____ Community Services Board.

(NOTE: A purpose statement is not necessary for routine purchases of goods or services where it is readily apparent from the product or service what is wanted.)

2.0 **SCOPE OF WORK** or **DESCRIPTION OF ITEM:** *(Describe in complete detail the service to be performed, or that which is to be purchased, including quantity, as applicable. Specifications or drawings, if applicable, may be referenced and attached. This is the section on which bidders base their quotations; therefore it must be complete and accurate.)*

EXAMPLES OF WORDING THAT MAY BE USED TO BEGIN THIS SECTION:

A. GOODS (FURNISH ONLY): The Contractor shall furnish and deliver each of the following described item(s):

1. *(The purchase description(s) must be complete and specify the minimum needs of the CSB. Specifications may allow for bidding on a brand name or equal basis, if applicable.)*

2. *(Other items that should be addressed in the purchase description or in the Special Terms and Conditions, as appropriate, include but are not limited to: inside delivery; set up and assembly; removal of trash; warranty; maintenance; packaging; etc.)*

B. GOODS (FURNISH AND INSTALL): The Contractor shall provide all labor, supervision, equipment, tools, materials and incidentals necessary to furnish and install (state product). All equipment, materials and installation work shall comply with this specification, the Virginia OSHA Standards, and the Virginia Uniform Statewide Building Codes.

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C. SERVICES: The Contractor shall furnish all labor, supervision, equipment, tools, parts and materials, as necessary, to maintain the type of equipment listed in accordance with manufacturer's service manuals (or other).

1. *(Ensure that the scope of work is complete. The Contractor cannot be required to perform omitted work items.)*

2. *(Other items that should be addressed, as appropriate, include but are not limited to: repair response time; contractor certification-license requirement; workmanship; repair and maintenance records; working hours; response time; overtime; agency furnished materials; etc.*

3.0 **PRE-BID CONFERENCE:** *(If a pre-bid conference is desired, indicate date, time, place and whether attendance is mandatory or optional. See Appendix E, Section II, Clause 45.)*

4.0 **GENERAL TERMS AND CONDITIONS:** *(General Terms and Conditions must be used for every solicitation. These are those terms and conditions that are applicable to all IFBs or RFPs issued by the CSB. Those that are generally required are listed in Appendix E, Section I and can be entered into the CSB word processing system or printed separately and attached to the IFB. If attached, they should be referenced in this section of the IFB. Note that for some General Terms and Conditions, there are one or more optional clauses. You should choose those that best meet your requirements.)*

5.0 **SPECIAL TERMS AND CONDITIONS:** *(These are terms and conditions which are specific to the particular IFB. Therefore, different Special Terms and Conditions may be selected for each solicitation. They may be selected from Appendix E, Section II and III.)*

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6.0 **METHOD OF PAYMENT:** *(Specify when payment will be made, i.e., upon delivery, monthly, quarterly, completion of project, etc. In addition, specify when*

and where invoices are to be submitted, i.e., by the 10th of the month following the month services were rendered, upon shipment, completion of project, etc.)

7.0 **PRICING SCHEDULE:** *(Provide space for and specify how price is to be submitted, i.e., lump sum, hourly rate, unit price, etc. For example: Lump Sum $_____; Each $_____. Quantities may also be included in this section. In addition, optional quotes may also be requested. For example, one quote if the award is made on a lump sum basis and another if it is split between one or more providers.)*

8.0 **ATTACHMENTS:** *(List all applicable attachments with a brief statement of their purpose. For example: Contractor Data Sheet asks for the bidder's number of years in business and a specified number of references.)*

APPENDIX D-1 - Model Request for Proposals (RFP)

REQUEST FOR PROPOSALS

RFP#(Number)

Issue Date: (Date)

Issue Title: (Title)

Issuing Agency: _____ Community Services Board
(Address)

Location Where Work Will Be Performed: (Address or area)

Period of the Contract: (Date) through (Date) *If the purpose of the RFP is not to establish a term contract, this section may be replaced by the required or desired delivery or completion date or the section may be deleted.*

Renewals: (___) renewals of one year each. *This is used only for term contracts.*

Sealed proposals will be received for furnishing services described herein until:

(Date and time)

All inquiries for information should be directed to:

(Procurement Officer and Phone Number)

Pre-proposal Conference : *(Use if applicable)* A (mandatory) (optional) Pre-Proposal Conference to be held on (Date and Time) at (location) . (See Section 3.0 herein).

If Proposals are mailed**, send directly to the Procurement Office at the address shown above.** If Proposals are hand delivered**, deliver to (location or street address).** Envelopes should be marked with RFP number and opening date and time.

It is the contractor's responsibility to assure that proposals are received at the location indicated by the date and time above. This complete document with all attachments must accompany your proposal, with all information and signatures applied as required.

In compliance with this Request for Proposals and to all the conditions imposed herein and herein incorporated by reference, the undersigned offers and agrees to furnish the (goods) (services) in accordance with the attached signed proposal or as mutually agreed upon by subsequent negotiation.

Offeror Name and Address:

_____ Date_____

_____ By:_____
(Signature in ink)

_____ _____
Name (Printed/Typed)
Telephone No. _____
Title:_____
FEI/FIN Number: _____

* Offeror ____ DOES ____ DOES NOT consider his/her firm to be a minority owned business.
Offeror ____ IS ____ IS NOT certified as a minority business by the Virginia Department of Minority Business Enterprise.

* Optional Information: Minority contractors are encouraged to subnmit proposals; however, minority status does not influence award.

NOTE: For lengthy RFPs, consideration should be given to including an index on the following page. In addition, a check list of items that must be submitted by the offeror is also recommended.

1.0 **PURPOSE**: (Example) The purpose of this Request for Proposals (RFP) is to solicit sealed proposals from authorized dealers to establish a contract through competitive negotiations with one or more qualified contractors to provide for the

(purchase, lease-purchase, lease-rental) of (type of goods or service) by the _____ Community Services Board.

2.0 BACKGROUND: *(Include a brief statement concerning the current or historical conditions leading up to this procurement.)*

3.0 STATEMENT OF NEEDS or SCOPE OF WORK: *(Indicate, in general terms, the service to be performed or the goods to be purchased. Include the specific tasks that must be accomplished and considered by the Contractor or included in the final product as well as any reports, office space, etc. that will be furnished by the CSB. Do not use the words "must" or "shall" for any activity unless that is absolutely mandatory. If certain activities or actions are desired but not absolutely necessary or if it is possible these needs could be met in some alternative manner, the words "should" or "may" should be used to allow the offeror maximum flexibility in preparing his/her offer.)*

4.0 QUALIFICATIONS OF THE PROVIDER: *(This section may be Included to specify any specific requirements that the Offeror must possess in order to be considered for an award. The following two paragraphs are examples that may be used.)*

The Community Services Board (CSB) may make such reasonable investigations as deemed proper and necessary to determine the ability of the offeror to perform the work. The CSB reserves the right to inspect the facilities of the Contractor at any time during the contract period. The Offeror shall furnish the CSB all such information and data for this purpose as may be requested. The CSB further reserves the right to reject any proposal if the evidence submitted by, or investigation of, such offeror fails to satisfy the CSB that such offeror is properly qualified to carry out the obligations of the contract and to complete the work contemplated.

The Offeror must have an acceptable credit rating. Financial statement (assets and liabilities) should be listed in Dunn and Bradstreet.

5.0 PROPOSAL PREPARATION AND SUBMISSION REQUIREMENTS:

5.1 GENERAL REQUIREMENTS: *This section is used to inform the potential Offerors of how many copies of the proposal must be submitted, how the proposal is to be*

prepared, the possibility of oral presentations by the Offerors, etc. The following are sample paragraphs normally used in this section:

1. RFP Response: In order to be considered for selection, Offerors must submit a complete response to this RFP. One (1) original and (__) copies of each proposal must be submitted to the CSB. No other distribution of the proposal shall be made by the Offeror.

   (NOTE: The number of copies requested should be sufficient for each evaluator to have one.)

2. Proposal Preparation:

   a. Proposals shall be signed by an authorized representative of the Offeror. All information requested should be submitted. Failure to submit all information requested may result in the purchasing agency requiring prompt submission of missing information and/or giving a lowered evaluation of the proposal. Proposals which are substantially incomplete or lack key information may be rejected by the CSB. Mandatory requirements are those required by law or regulation or are such that they cannot be waived and are not subject to negotiation.

   b. Proposals should be prepared simply and economically, providing a straightforward, concise description of capabilities to satisfy the requirements of the RFP. Emphasis should be placed on completeness and clarity of content.

   c. Ownership of all data, materials and documentation originated and prepared for the CSB pursuant to the RFP shall belong exclusively to the CSB and be subject to public inspection in accordance with the Virginia Freedom of Information Act. Trade secrets or proprietary information submitted by an Offeror shall not be subject to public disclosure under the Virginia Freedom of Information Act; however, the Offeror must invoke the protection of Section 11-52D of the Code of Virginia, in writing, either before or at the time the data is submitted. The written notice must specifically identify the data or materials to be protected and state the reasons why protection is necessary. The proprietary or trade secret material submitted must be identified by some distinct method such as highlighting or underlining and must indicated only the specific words, figures, or paragraphs that constitute trade secret or proprietary information. The classification of an entire proposal document, line item prices

and/or total proposal prices as proprietary or trade secrets is not acceptable and will result in rejection and return of the proposal.

3. Oral Presentation: Offerors who submit a proposal in response to this RFP may be required to give an oral presentation of their proposal to the CSB. This provides an opportunity for the Offeror to clarify or elaborate on the proposal. This is a fact finding and explanation session only and does not include negotiation. The CSB will schedule the time and location of these presentations. Oral presentations are an option of the CSB and may or may not be conducted.

5.2 SPECIFIC PROPOSAL REQUIREMENTS: *(Use this section to inform the potential Offerors of the information that must be submitted with their proposals. Any information needed to properly evaluate the proposal evaluation criteria must be requested in this section. The following is a sample of the beginning language and examples of typical specific requirements):*

1. Proposals should be as thorough and detailed as possible so that the CSB may properly evaluate your capabilities to provide the required goods/services. Offerors are required to submit the following items as a complete proposal:

   a. The return of the RFP cover sheet and addenda, if any, signed and filled out as required.

   b. Complete Data Sheet, included as an attachment to the RFP, and other specific items or data requested in the RFP.

   c. A written narrative statement to include:

      (1) Experience in providing the goods/service described herein.

      (2) Names, qualification and experience of personnel to be assigned to the project.

      (3) Resumes of staff to be assigned to the project.

   d. Specific plans for providing the proposed goods/services including:

      (1) List of proposed equipment/goods/etc. including operating parameters, illustrations, etc.

      (2) What, when and how the service will be performed.

(3) Time frame for completion (if not otherwise specified by the CSB in the Statement of Needs).

e. Proposed Price. Indicate in the pricing schedule, Section 11 of the RFP (if provided).

6.0 EVALUATION AND AWARD CRITERIA

6.1 EVALUATION CRITERIA: Proposals will be evaluated by the Community Services Board using the following criteria: (Include the criteria that will be used to evaluate the proposals. These criteria should be developed from the items asked for the "Specific Requirements" section. Weights or percentages must be assigned to each criteria but should not be made public until the due date and hour when they are posted in the location used for public posting. The following are examples of criteria.)

(FOR SERVICES):

6.1.1 Qualifications and experience of Offeror in providing the services.

6.1.2 Specific plans or methodology to be use to perform the services.

6.1.3 Project cost: Indicate the pricing and discount structure.

(FOR GOODS):

6.1.1 Experience in providing the goods.

6.1.2 Quality of equipment offered and their suitability for the intended purposes.

6.1.3 Scope and suitability of training offered to CSB personnel.

6.1.4 Maintenance Support.

6.1.5 Price.

6.2 AWARD: 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 evaluation factors above. Negotiations shall be conducted with the Offerors so

selected. Price shall be considered, but need not be the sole determining factor. After negotiations have been conducted with each Offeror so selected, the agency shall select the Offeror which, in its sole opinion, has made the best proposal, and shall award the contract to that Offeror. The agency may cancel this Request for Proposals or reject proposals at any time prior to an award, and is not required to furnish a statement of the reason why a particular proposal was not deemed to be the most advantageous. (Section 11-65D, Code of Virginia.) Should the Community Services Board determine in writing and in its sole discretion that only one Offeror is fully qualified, or that one Offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that Offeror. The award document will be a contract incorporating by reference all the requirements, terms, and conditions of the solicitation and the Contractor's proposal as negotiated.

(NOTE: For professional services, use clause 6-F under the "Special Terms and Conditions" section of Appendix E, Section II and do not include "Price" as one of the "Evaluation Criteria".

7.0 REPORTING AND DELIVERY REQUIREMENTS: *(Use this section to identify all documentation, reports, etc, and the specific delivery date for each deliverable item that the Contractor must furnish during the contract period. The following clauses are examples of the type of reporting that may be required.):*

A) The Contractor shall provide the following documentation to _____ for approval.

B) The Contractor shall provide a (weekly/monthly) progress report to _____ outlining (tasks completed, specific accomplishments, etc.).

C) Within thirty (30) calendar days after the award date of the contract, the Contractor shall furnish a preliminary outline of the organizational structure of the final report to _____.

8.0 PRE-PROPOSAL CONFERENCE: *(If a pre-proposal conference is desired, indicate date, time, place and whether attendance is mandatory or optional. See Appendix E, Section II, Paragrapg 45 for correct wording.)*

9.0 GENERAL TERMS AND CONDITIONS: *(General terms and conditions must be used for every solication. Those are the terms and conditions that are applicable to all IFB s or RFPs issued by the CSB. Thost htat are generally required are listed in Appendix E, Section I and can be entered into the word processing system or*

printed separately and attached to the RFP. If attached, they should be referenced in this section of the RFP. Note that for some General Terms and Conditions, there are one or more optional clauses. You should choose those that best meet your requirements.)

7.0 **SPECIAL TERMS AND CONDITIONS:** *(These are terms and conditions which are specific to the particular RFP. Therefore, different Special Terms and Conditions may be selected for each solicitation. They may be selected from Appendix E, Section II and III.)*

8.0 **METHOD OF PAYMENT:** *(Specify when payment will be made, i.e., monthly, quarterly, completion of project, etc. In addition, you may specify when invoices are to be submitted, i.e., by the 10th of the month following the month services were rendered, upon shipment, upon completion of project, etc.)*

9.0 **PRICING SCHEDULE:** *(Provide space and specify how price is to be submitted, i.e., lump sum, hourly rate, unit price, etc. For example: Lump Sum $_____.)*

10.0 **ATTACHMENTS:** *(List any attachments including their purpose.)*

(This form is optional.)

ATTACHMENT A
CONTRACTOR DATA SHEET
To Be Completed By Offeror
RFP #_____

1. QUALIFICATIONS OF OFFEROR: The Offeror must have the capability and capacity in all respects in order to fully satisfy all of the contractual requirements.

2. YEARS IN BUSINESS: Indicate the length of time you have been in business providing this type of service: ____years____months.

3. REFERENCES: Indicate below a listing of at least four (4) recent references for whom you have provided this type of service. Include the date service was furnished and the name and address of the person the agency has your permission to contact.

CLIENT	DATE	ADDRESS	PERSON TO CONTACT AND PHONE NUMBER

4. Offeror name, phone number and State and date of incorporation. If not a corporation, state the type of business organization, names and addresses of owners, address and phone number of principal place of business, date business began and State in which organized: _____
_____

5. Are you a subsidiary firm: ___YES ___NO. If yes, list the name and location of your parent affiliation:
_____

6. Name and title of firm's official to whom further communication should be directed:
_____

I certify the accuracy of this information.
Signed: _____
Title: _____

Revised August 2000

APPENDIX E

TERMS AND CONDITIONS

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*** Retain and renumber existing pages in Section III and IV. Note new paragraphs 27 and 28 in Section IV.**

APPENDIX E - Model Terms and Conditions

SECTION I

GENERAL TERMS AND CONDITIONS
GOODS AND NONPROFESSIONAL SERVICES

These General Terms and Conditions are recommended for use in written solicitations issued by Community Services Boards unless changed, deleted or revised by your legal advisor. For service contracts the last three clauses R, S and T are normally not applicable and can be omitted.

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GENERAL TERMS AND CONDITIONS
GOODS AND NONPROFESSIONAL SERVICES

A. PROCUREMENT REGULATIONS: This solicitation is subject to the provisions of the purchasing regulations of the _____ Community Services Board and any revisions thereto, which are hereby incorporated into this contract in their entirety. A copy of these regulations are available for review at the purchasing office and in addition a copy can be obtained by calling _____.

(NOTE: CSBs must adopt rules and regulations regarding procurement. A sample "Vendors' Guide to CSB Procurement Regulations" is found in Appendix B of this manual and may be revised in accordance with the regulations adopted by your CSB.)

B. APPLICABLE LAWS AND COURTS: This solicitation and any resulting contract shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth. The Contractor shall comply with applicable federal, state and local laws and regulations.

C. COMPLIANCE:

1. COMPLIANCE: By signing this (Bid/Proposal), the (Bidder/Offeror) certifies that it is and will remain in full compliance with:

The Federal Civil Rights Act of 1964, as amended.
The Federal Immigration Reform and Control Act of 1986.
The Virginia Fair Employment Act of 1975, as amended, where applicable.
The Virginia Conflict of Interest Act.
The Virginians With Disabilities Act.
The Americans With Disabilities Act.
Section 11-51 (Employment Discrimination Act) of the Virginia Public Procurement Act.
Section 11.62-11 (Payment to Subcontractor) of the Virginia Public Procurement Act.
Sections 11-77 and 11-78 (Ethics in Public Contracting) of the Virginia Public Procurement Act.
The Antitrust laws of the United States and the Commonwealth of Virginia.

NOTE: The above Compliance clause is intended to be used in lieu of specific clauses addressing each requirement individually; however, if you

or your legal advisor feel these requirements need to be addressed in more detail, clauses 2 through 4 may be used in place of clause 1.

2. ANTI-DISCRIMINATION: By submitting their bids or proposals Bidders or Offerors certify to the Community Services Board that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Act of 1975, as amended, where applicable, and Section 11-51 of the Virginia Public Procurement Act which provides:

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

   a. During the performance of this contract, the Contractor agrees as follows:

      - The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

      - The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.

      - Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this Section.

   b. The Contractor will include the provisions of 1. above in every subcontract or purchase order over $10,000, so that the provisions will be binding upon each subcontractor or vendor.

3. IMMIGRATION REFORM AND CONTROL ACT OF 1986: By submitting their bids or proposals, the Bidders or Offerors certify that they do not and will not during the performance of this contract employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986.

4. ANTITRUST: By entering into a contract, the Contractor conveys, sells, assigns, and transfers to the Community Services Board all rights, title and interest in and to all causes of the action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the

particular goods or services purchased or acquired by the Commonwealth of Virginia under said contract.

D. DRUG FREE WORKPLACE: The unlawful or unauthorized use, manufacture, distribution, dispensing, or possession of alcohol or other drugs, or the impairment or incapacitation from the use of alcohol or other drugs in prohibited in the workplace by the contractor or his/her employees utilized to provide services herein. By submitting bids, bidders certify their compliance and understand that violation of these prohibitions is a breach of contract and can result in default action.

E. ETHICS IN PUBLIC CONTRACTING: By submitting their bids or proposals, Bidders or Offerors certify that their bids or proposals are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other Bidder/Offeror, supplier, manufacturer or subcontractor in connection with their bid or proposal, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised unless consideration of substantially equal or greater value was exchanged.

F. DEBARMENT STATUS: By submitting their bids or proposals, Bidders or Offerors certify that they are not currently debarred from submitting bids or proposals on contracts by any agency of the Commonwealth of Virginia, nor are they an agent of any person or entity that is currently debarred from submitting bids or proposals on contracts by any agency of the Commonwealth of Virginia.

G. MANDATORY USE OF CSB FORM AND TERMS AND CONDITIONS:

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

(2) Request For Proposals: Failure to submit a proposal on the official form provided for that purpose may be a cause for rejection of the proposal. Return of the complete document is required. Modification of or additions to any portion

the solicitation may be cause for rejection of the proposal; however, the Community Services Board reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a proposal.

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

I. PAYMENT:

1. To Prime Contractor:

a) Invoices for items ordered, delivered and accepted shall be submitted by the contractor directly to the payment address shown on the purchase order/contract. All invoices shall show the state contract number and/or purchase order number; social security number (for individual contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations).

b) Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however. Invoices must show the contract or purchase order number assigned by the Community Services Board and shall be submitted by the contractor to the attention of (the fiscal office) and mailed to (address).

c) All goods or services provided under this contract or purchase order, that are to be paid for with public funds, shall be billed by the contractor at the contract price, regardless of which public agency is being billed.

d) The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or the date of offset when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act.

e) **Unreasonable Charges.** Under certain emergency procurement and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges which appear to be unreasonable will be researched and challenged, and that portion of the

invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, the Commonwealth shall promptly notify the contractor, in writing, as to those charges which it considers unreasonable and the basis for the determination. A contractor may not institute legal action unless a settlement cannot be reached within thirty (30) days of notification. The provisions of this section do not relieve the CSB of its prompt payment obligations with respect to those charges which are not in dispute *(Code of Virginia, Section 11-69)*.

2. To Subcontractors:

a) A contractor awarded a contract under this solicitation is hereby obligated:

1) To pay the subcontractor(s) within seven (7) days of the contractor's receipt of payment from the CSB for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or

2) To notify the CSB and the subcontractor(s), in writing, of the contractor's intention to withhold payment and the reason.

a)

b) The contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all amounts owed by the contractor that remain unpaid seven (7) days following receipt of payment from the CSB, except for amounts withheld as stated in (2) above. The date of mailing of any payment by U.S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier contractor performing under the primary contract. A contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the CSB.

J. PRECEDENCE OF TERMS: Except for Paragraphs titled Procurement Regulations, Applicable Law and Courts, Compliance, Debarment Status, Mandatory Use of CSB Forms and Terms and Conditions, and Precedence of Terms herein, which shall apply in all instances, in the event there is a conflict between the other General Terms and Conditions and any Special Terms and Conditions in this solicitation, the Special Terms and Conditions shall apply.

K. DELIVERY POINT: Except when otherwise specified herein, all items shall be F.O.B. delivery point.

L. QUALIFICATIONS OF BIDDERS OR OFFERORS: The Community Services Board may make such reasonable investigations as deemed proper and necessary to

determine the ability of the Bidder or Offeror to perform the work/furnish the item(s) and the Bidder or Offeror shall furnish to the Community Services Board all such information and data for this purpose as may be requested. The Commonwealth reserves the right to inspect Bidder's or Offeror's physical facilities prior to award to satisfy questions regarding the Bidder's or Offeror's capabilities. The Commonwealth further reserves the right to reject any bid or proposal if the evidence submitted by, or investigations of, such Bidder or Offeror fails to satisfy the Community Services Board that such Bidder or Offeror is properly qualified to carry out the obligations of the contract and to complete the work/furnish the item(s) contemplated therein.

M. ADDITIONAL INFORMATION: The Community Services Board reserves the right to ask any bidder to submit information missing from its bid, to clarify its bid, and to submit additional information which the Community Services Board deems desirable.

NOTE: The above clause is used with Invitations for Bids only.

N. ASSIGNMENT OF CONTRACT: A contract shall not be assignable by the Contractor in whole or in part without the written consent of the Community Services Board.

O. CHANGES TO THE CONTRACT - Use either the long version (O-1) or the short version (O-2):

O-1. CHANGES TO THE CONTRACT:

Changes can be made to the Contract in any one of the following ways:

1. The Community Services Board may order changes within the general scope of the contract at any time by written notice to the Contractor. Changes within the scope of the contract include, but are not limited to things such as the method of packing or shipment and the place of delivery or installation. The Contractor shall comply with the notice upon receipt. The Contractor shall be compensated for any additional costs incurred as the result of such order and shall give the Purchasing Agency a credit for any savings. Said compensation shall be determined by one of the following methods:

    a. By mutual agreement between the parties in writing; or

    b. By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the Contractor accounts for the number of units of work performed, subject to the Community Services Board's right to audit the Contractors records and/or to determine the correct number of units independently; or

c. By ordering the Contractor to proceed with the work and to keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The Contractor shall present the Purchasing Agency with all vouchers and records of expenses incurred and savings realized. The Community Services Board shall have the right to audit the records of the Contractor as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the Purchasing Agency within thirty (30) days from the date of receipt of the written order from the Community Services Board. If the parties fail to agree on an amount of adjustment, the question of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the procedures for resolving disputes provided by the Disputes Clause of this contract or, if there is none, in accordance with the disputes provisions of the Community Services Board's Procurement Policy. Neither the existence of a claim or a dispute resolution process, litigation or any other provision of this contract shall excuse the Contractor from promptly complying with the changes ordered by the Purchasing Agency or with the performance of the contract generally.

2. The parties may agree in writing to modify the scope of the contract. An increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.

O-2. CHANGES TO THE CONTRACT:

By written notice to the Contractor, the Community Services Board may from time to time make changes, within the general scope of the contract, in the services provided by the Contractor. The Contractor shall promptly comply with the notice and shall perform services in conformity to the notice. If any such change causes an increase or decrease in the Contractor's cost of performance, an equitable adjustment in the payment rate shall be negotiated and the contract modified accordingly by written supplemental agreement.

P. TESTING AND INSPECTION: The Community Services Board reserves the right to conduct any test/inspection it may deem advisable to assure supplies and services conform to the specification.

Q. DEFAULT: In case of failure to deliver goods or services in accordance with the contract terms and conditions, the Community Services Board, after due oral or written

notice, may procure them from other sources and hold the Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the Community Services Board may have.

R. TAXES: Sales to the Community Services Board are normally exempt from State sales tax. State sales and use tax certificates of exemption, Form ST-12, will be issued upon request. Deliveries against this contract shall be free of Federal excise and transportation taxes.

(NOT NORMALLY REQUIRED FOR SERVICE CONTRACTS)

S. USE OF BRAND NAMES: Unless otherwise provided in this solicitation, the name of a certain brand, make or manufacturer does not restrict Bidders or Offerors to the specific brand, make or manufacturer named, but conveys the general style, type, character, and quality of the article desired. Any article which the public body in its sole discretion determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. The Bidder or Offeror is responsible to clearly and specifically indicate the product being offered and to provide sufficient descriptive literature, catalog cuts and technical detail to enable the Community Services Board to determine if the product offered meets the requirements of the solicitation. This is required even if offering the exact brand, make or manufacturer specified. Normally in competitive sealed bidding only the information furnished with the bid will be considered in the evaluation. Failure to furnish adequate data for evaluation purposes may result in declaring a bid nonresponsive. Unless the Bidder/Offeror clearly indicates in its bid/proposal that the product offered is an "equal" product, such bid/proposal will be considered to offer the brand name product referenced in the solicitation.

(NOT NORMALLY REQUIRED FOR SERVICE CONTRACTS)

T. TRANSPORTATION AND PACKAGING: By submitting their bids or proposals, all Bidders or Offerors certify and warrant that the price offered for FOB destination includes only the actual freight rate costs at the lowest and best rate and is based upon the actual weight of the goods to be shipped. Except as otherwise specified herein, standard commercial packaging, packing and shipping containers shall be used. All shipping containers shall be legibly marked or labeled on the outside with purchase order number, commodity description, and quantity.

(NOT NORMALLY REQUIRED FOR SERVICE CONTRACTS)

APPENDIX E - TERMS AND CONDITIONS

SECTION II

SPECIAL TERMS AND CONDITIONS
GOODS AND NONPROFESSIONAL SERVICES

The following is an index of special terms and conditions clauses that may to be used at the buyer's discretion in IFBs and RFPs as the individual procurement may dictate. These clauses cover a broad spectrum of goods, printing and services and are followed by a brief explanation (indicated by an asterisk *) of when each should be used. Other special terms and conditions may be developed and included in the solicitation when appropriate.

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1. ADVERTISING: In the event a contract is awarded for supplies, equipment, or services resulting from this bid/proposal, no indication of such sales or services to the (name of CSB) will be used in product literature or advertising. The Contractor shall not state in any of the advertising or product literature that the Community Services Board has purchased or uses its products or services.

   *** When used: This provision is for use in solicitations for goods or services when the CSB wants to ensure that the use of the goods or services by the CSB is not used in advertising or product literature.**

2. ASBESTOS: Whenever and wherever during the course of performing any work under this contract, the Contractor discovers the presence of asbestos or suspects that asbestos is present, he shall stop the work immediately, secure the area, notify the Building Owner and await positive identification of the suspect material. During the downtime in such a case, the Contractor shall not disturb any surrounding surfaces but shall protect the area with suitable dust covers. In the event the Contractor is delayed due to the discovery of asbestos or suspected asbestos, then a mutually agreed extension of time to perform the work shall be allowed the Contractor but without additional compensation due to the time extension.

   *** When used: For use in service contracts or furnish and install goods contracts when it is possible that the contractor may encounter asbestos during performance of the contract.**

3. AS-BUILT DRAWINGS: The Contractor shall provide the Community Services Board a clean set of reproducible "as built" drawings and wiring diagrams, marked to record all changes made during installation or construction. The Contractor shall also provide the Community Services Board with maintenance manuals, parts lists and a copy of all warranties for all equipment. All "as built" drawings and wiring diagrams, maintenance manuals, parts lists and warranties shall be delivered to the Community Services Board upon completion of the work and prior to final payment.

   *** When used: For furnish and install and construction and renovation projects; i.e., fire alarm systems, heating and air conditioning systems, refrigeration rooms, building modifications, major equipment installations, etc.**

4. AUDIT: The Contractor hereby agrees to retain all books, records, and other documents relative to this contract for five (5) years after final payment, or until audited by the Community Services Board, whichever is sooner. The agency, its authorized

agents, and/or State auditors shall have full access to and the right to examine any of said materials during said period.

- **When used: Should be included in all term contracts for goods or services. Do not use in spot purchases.**

5.. AUTHORIZED USERS: Additional Community Services Boards, state or local government agencies, institutions and/or other public bodies may be added or deleted to receive the goods or services resulting from this solicitation. The addition or deletion of authorized users shall be made only by written modification to the contract. Such modification shall name the specific agency added or deleted and the effective date.

- **When used: If it is determined that other public agencies (public bodies) may benefit from participating in a cooperative purchasing agreement. To obtain maximum pricing advantage, every effort should be made to identify participating agencies and their expected usage in the solicitation.**

6. AUTHORIZED USERS: _____ CSB is issuing this solicitation in cooperation with other public bodies. Requirements of _(other public bodies)_ have been combined, and the total estimated usage is shown within this solicitation. _____ CSB is responsible for administering the program; therefore, correspondence should be directed to the _____ CSB. The contractor shall provide a volume purchase report prior to contract expiration or renewal action.

7. AVAILABILITY OF FUNDS: It is understood and agreed between the parties herein that the agency shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this agreement.

*** When used: Term contracts only or if the contract performance will overlap fiscal years.**

*** When used: Used in cooperative purchasing solicitations where requirements of two or more public bodies have been combined to increase efficiency or reduce administrative expenses.**

8. AWARD OF CONTRACT: (Note: All solicitations must specify the method of award. Select one of the following clauses, as appropriate, for the type of procurement:)

A. AWARD: Awards are made to the lowest responsive and responsible Bidder. Evaluation will be based on net prices. Unit prices, extensions and grand total must be shown. In case of arithmetic errors, the unit price will govern. If cash

discount for prompt payment is offered, it must be clearly shown in the space provided. Discounts for prompt payment will not be considered in making awards. The Community Services Board reserves the right to reject any and all bids in whole or in part, to waive any informality, and to delete items prior to making an award.

*** When used: This award clause can be used in invitation for bids for goods or services.**

B. Award: The Community Services Board will make the award(s) on basis to the lowest responsive and responsible Bidder. The purchasing office reserves the right to conduct any test it may deem advisable and to make all evaluations. The Community Services Board also reserves the right to reject any or all bids, in whole or in part, to waive informalities and to delete items prior to making the award, whenever it is deemed in the sole opinion of the procuring public body to be in its best interest.

*** When used: For goods or nonprofessional services by filling in the blank, i.e., line item, total sum, lot, etc. This clause shall not be used in a Request for Proposals.**

C. Award: The right is reserved to make a separate award of each item, a group of items or all items, and to make an award either in whole or in part, whichever is deemed in the best interest of the Community Services Board. The award or awards will be made to the lowest responsible Bidder or Bidders as applicable.

*** When used: For goods only when multiple line items are involved, provided a prior written determination has been made that multiple awards may result in a savings to the Community Services Board. This clause shall not be used in a Request for Proposals.**

D. Award To Multiple Bidders: The Community Services Board will make awards on a _____ basis to the lowest responsive and responsible Bidders, provided that the next lowest Bidders are within __% of the lowest Bidder and provided that different brands are offered. Due consideration will be given to price, quality as judged by tests and previous experience, and of the ability of the Bidder to render required services. The Community Services Board reserves the right to conduct any tests it may deem advisable and to make all evaluations. The Community Services Board also reserves the right to reject any or all bids, in whole or in part, to waive informalities and to delete items prior to making the award, whenever it is deemed in the sole opinion of the procuring public body to be in its best interest.

*** When used: For goods term contracts only when multiple awards will be made based on different brands being offered. Specify how the award will be made, i.e., line item, total sum, lot, etc. plus the number of awards and the percentage figure. <u>This clause shall not be used in a Request for Proposals</u>.**

E. <u>Award to Multiple Bidders</u>: The Community Services Board reserves the right to make multiple awards as a result of this solicitation. The award(s) will be made to the lowest responsive and responsible bidder(s) meeting the requirement of the solicitation. The Community Services Board reserves the right to conduct any tests it may deem advisable and to make all evaluations. The Community Services Board also reserves the right to reject any or all bids, in whole or in part, to waive informalities and to delete items prior to making the award, whenever it is deemed in the sole opinion of the procuring public body to be in its best interest.

* When used: For goods and nonprofessional services when multiple awards may be made in order to meet the requirements of the purchasing entity. This clause cannot be used for construction or professional services (over $30,000).

F. <u>Award</u>: 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 evaluation factors included in the Request for Proposals, including price, if so stated in the Request for Proposals. Negotiations shall be conducted with the Offerors so selected. Price shall be considered, but need not be the sole determining factor. After negotiations have been conducted with each Offeror so selected, the agency shall select the Offeror which, in its opinion, has made the best proposal, and shall award the contract to that Offeror. The Community Services Board may cancel this Request for Proposals or reject proposals at any time prior to an award, and is not required to furnish a statement of the reason why a particular proposal was not deemed to be the most advantageous. (Section 11-65D, <u>Code of Virginia</u>.) Should the Community Services Board determine in writing and in its sole discretion that only one Offeror is fully qualified, or that one Offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that Offeror. The award document will be a contract incorporating by reference all the requirements, terms and conditions of the solicitation and the contractor's proposal as negotiated.

*** When used: For goods and nonprofessional services when competitive negotiation will be used. <u>This clause shall not be used in an Invitation for Bids nor a professional services Request for Proposal (over $30,000)</u>.**

G. Award: The Community Services Board shall engage in individual discussions with two or more Offerors deemed fully qualified, responsible and suitable on the basis of initial responses and with emphasis on professional competence, to provide the required services. Repetitive informal interviews shall be permissible. Such 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. At the discussion stage the public body may discuss nonbinding estimates of total project costs, including, but not limited to, life-cycle costing, and, where appropriate, nonbinding estimates of price for services. Proprietary information from competing Offerors shall not be disclosed to the public or to competitors. At the conclusion of the informal interviews, on the basis of evaluation factors published in the Request for Proposals and all information developed in the selection process to this point, the purchasing agency shall select, in the order of preference, two or more Offerors whose professional qualifications and proposed services are deemed most meritorious. Negotiations shall then be conducted, beginning with the Offeror ranked first. If a contract satisfactory and advantageous to the purchasing agency 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 fair and reasonable price. Should the Community Services Board 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.

- **When used: Professional services only. This clause shall not be used in an Invitation for Bids.**

H. Award to Multiple Offerors: 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 evaluation factors included in the Request for Proposals, including price, if so stated in the Request for Proposals. Negotiations shall be conducted with the offerors so selected. Price shall be considered, but need not be the sole determining factor. After negotiations have been conducted with each offeror so selected, the purchasing agency shall select the offeror which, in its opinion, has made the best proposal, and shall award the contract to that offeror. The Commonwealth reserves the right to make multiple awards as a result of this solicitation. The Commonwealth may cancel this Request for Proposals or reject proposals at any time prior to an award, and is not required to furnish a statement of the reasons why a particular proposal was not deemed to be most advantageous *(Code of Virginia, Section 11-65D)*. Should the Community Services Board determine in writing and in its sole discretion that only one offeror

is fully qualified, or that one offeror is clearly more highly qualified that the others under consideration, a contract may be negotiated and awarded to that offeror. The award document will be a contract incorporating by reference all the requirements, terms and conditions of the solicitation and the contractor's proposal as negotiated.

* When Used: For goods and nonprofessional services when competitive negotiation will be used and multiple awards are desired to meet the requirements of the CSB. This clause cannot be used in an Invitation for Bids or a professional services Request for Proposals (over $30,000).

9. BEST AND FINAL OFFER: At the conclusion of negotiations the offeror(s) may be asked to submit in writing, a best and final offer (BAFO). After the BAFO is submitted, no further negotiations shall be conducted with the offeror(s). The offeror's proposal will be rescored to combine and include the information contained in the BAFO. The decision to award will be based on the final evaluation including the BAFO

*** When used: Used only in Request for Proposals. This clause should not be used as a matter of routine. If it is anticipated that because of the nature of the requirement, the negotiations could linger, this provision should be used to show clearly when negotiations would end or to cut off negotiations at a particular point called for by the contract officer.**

10. BID ACCEPTANCE PERIOD: Any bid in response to this solicitation shall be valid for ( ) days. At the end of the ( ) days the bid may be withdrawn at the written request of the Bidder. If the bid is not withdrawn at that time it remains in effect until an award is made or the solicitation is canceled.

*** When used: Procurement Regulations normally state that unless otherwise provided a bid is valid for 30 days. If it is anticipated that it will take longer than 30 days to evaluate and make an award then the above clause should be used and the appropriate number of days inserted in the blanks.**

11. BID BOND OR GUARANTEE: Each bid shall be accompanied by a bid bond or guarantee of five percent (5%) of the amount of the bid, which shall be a certified check, cashier's check, or a bid bond payable to the _____ Community Services Board. The sureties of all bonds shall be of such surety company or companies as are approved by the State and are authorized to transact business in the Commonwealth of Virginia. Such bid bond or check shall be submitted with the understanding that it shall guarantee that the Bidder will not withdraw such bid during the period of _____ days following the opening of bids; that if such bid is accepted, the Bidder will accept and perform under the terms of the Invitation for Bid and

purchase order or contract. The bid guarantee will be returned upon award of contract.

*** When used: Must be used in all solicitations for construction type contracts over $100,000. Insert the same number of days in the space provided as entered in the Bid Acceptance Period Clause. This clause may also be used for construction type services under $100,000, as well as for goods or services of any dollar amount.**

12. BID PRICES: Bid shall be in the form of a firm unit price for each item during the contract period.

    *** When used: In annual goods contracts without a price escalation/de-escalation clause. A different version of this clause, specifically worded to fit the situation, should be used in solicitations for various types of services, and in solicitations for the lease or rental of equipment.**

13. BLANKET FIDELITY BOND: Contractor shall maintain a blanket fidelity bond obtained from an insurance company licensed to conduct fidelity business in the home state of the Contractor and which has earned an A.M. Best Company, Inc. rating of A or better, as reflected in their most current publication, covering all personnel under contract to the _____ Community Services Board, with a penalty amount of not less than $_____, naming the _____ Community Services Board as co-obligee. Certificate of such protection must be presented to the purchasing agency prior to the start of the service showing name of surety, limit and type of coverage, term of coverage, co-obligee provision and name and address of licensed Virginia insurance agent. The Contractor agrees to maintain such bond until one year after the completion of the contract.

    *** When used: Debt collection type services. The amount to be inserted in the blank space should be based on the total value of accounts expected to be turned over to the contractor at any one time for collection and not the entire amount of the CSB's outstanding accounts.**

14. Breach: In the event of breach by the Contractor, the Community Services Board shall have the right to immediately, or thereafter, terminate the contract. In the alternative, the Community Services Board may give written notice to the Contractor specifying the breach and providing a period of time in which such breach must be corrected. Should the Community Services Board find that the Contractor has failed to properly cure any breach after being provided with appropriate notification then the Community Services Board can cause the contractual agreement between the Contractor and the Community Services Board to be terminated for breach. All remedies provided by law will then apply to those orders or the agreement as a whole. The Community Services

Board's failure to exercise its right to terminate for breach under this provision shall not e construed as a waiver of its right to terminate, rescind or revoke a contract in the event of any subsequent breach of any provisions of this Agreement.

15. CANCELLATION OF CONTRACT: The Community Services Board reserves the right to cancel and terminate any resulting contract, in part or in whole, without penalty, upon 60 days written notice to the Contractor. Any contract cancellation notice shall not relieve the Contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation.

    *** When used: May be included in contracts for goods or services. This clause is not appropriate for use in spot purchases.**

16. CERTIFICATION OF MEAT PRODUCTS: By my signature on this solicitation, I hereby certify and warrant that all products offered for delivery meet or exceed the requirements of the Federal Institutional Meat Purchase Specifications (IMPS), Virginia Department of Agriculture Regulations, Federal Food, Drug and Cosmetic Act, and the Federal Wholesome Meat Act. All products awarded and delivered against this solicitation shall be subject to inspection at destination for specification compliance.

    *** When used: All solicitations for meat products.**

17. CERTIFIED TEST REPORT: Each Bidder shall provide a copy of a certified test report with their bid. The certified test report shall be from a recognized independent testing laboratory or manufacturer's quality control laboratory showing all test results and full compliance with the appropriate specifications indicated herein. However, the Community Services Board reserves the right to perform any tests or inspections when and as deemed necessary to verify the certified test report.

    *** When used: For solicitation of goods where a certified test report may be the only method of determining an item offered would meet specifications.**

18. CONFIDENTIALITY: The Contractor assures that information and data obtained as to personal facts and circumstances related to clients will be collected and held confidential, during and following the term of this agreement, and will not be divulged without the individual's and the Community Services Board's written consent. Any information to be disclosed, except to the Community Services Board, must be in summary, statistical, or other form which does not identify particular individuals.

*** When used: For solicitation of services where the contractor may have access to records of or contact with clients.**

19. Contract Management and Administration: A contract manager will be appointed by the Community Services Board who will be responsible for monitoring contractor performance, resolving contractual issues, and interpreting contractual terms and conditions. Further, the Contract Manager may pursue any issue(s), relating to the contract agreement that results from this solicitation, that are in the best interest of the Community Services Board. The Contract Manager is not authorized to make or authorize changes to the contract, to approve additional work or expenditures, or to change deliverables or timeframes. Requests for such changes shall be directed to the Purchasing Officer.

20. CONTRACTOR/SUBCONTRACTOR LICENSE REQUIREMENT: By my signature on this solicitation, I certify that this firm/individual and/or subcontractor is properly licensed for providing the goods/services specified.

    Contractor Name: _____ Subcontractor Name: _____

    License # _____ Type

    *** When used: Include in all solicitations for specific types of services for which State statutes or regulatory agencies require contractors to be properly registered, licensed or hold a permit prior to performing such work. See 2.9.**

21. CONTRACTOR REGISTRATION: If a contract for construction, removal, repair or improvement of a building or other real property is for seventy thousand dollars ($70,000) or more, or if the total value of all such contracts undertaken by Bidder/Offeror within any twelve-month period is five hundred thousand dollars ($500,000) or more, the Bidder/Offeror is required under Title 54.1-1100, Code of Virginia (1950), as amended, to be licensed by the State Board of Contractors as a "CLASS A CONTRACTOR". If such a contract is for seventy five hundred dollars ($7,500) or more but less than seventy thousand dollars ($70,000), (one thousand dollars [$1,000] for electrical, plumbing and HVAC work) the Bidder/Offeror is required to be licensed as a "CLASS B CONTRACTOR". If such a contract is for one thousand dollars ($1,000) or more but less than seventy five hundred dollars ($7,500) and is not for electrical, plumbing and HVAC work, the bidder is required to be licenses as a “CLASS C CONTRACTOR” The Bidder/Offeror shall place on the outside of the envelope containing the bid/proposal and shall place in the bid/proposal over his signature whichever of the following notations is appropriate, inserting his contractor license number:

Licensed Class A Virginia Contractor No.
Specialty

Licensed Class B Virginia Contractor No.
Specialty

Licensed Class C Virginia Contractor No. _____
Specialty _____

If the Bidder/Offeror shall fail to provide this information on his bid/proposal or on the envelope containing the bid/proposal and shall fail to promptly provide said Contractor license number to the Community Services Board in writing when requested to do so before or after the opening of Bids/Proposals, he shall be deemed to be in violation of Section 54-1115 of the Code of Virginia (1950), as amended, and his bid/proposal will not be considered.

If a Bidder/Offeror shall fail to obtain the required license prior to submission of his bid/proposal, the bid/proposal shall not be considered.

*** When used: Required to be used in all solicitations by the Code of Virginia for all construction, removal, repair or improvements to facilities. This includes almost all specialty trades, i.e., glue down carpet, painting, fencing, roofing, plumbing, electrical, carpentry, etc. When in doubt as to whether or not this clause should be included in the solicitation, contact the Department of Commerce, State Board for Contractors, telephone, (804) 367-2785.**

22. CONTRACTOR'S TITLE TO MATERIALS: No materials or supplies for the work shall be purchased by the Contractor or by any Subcontractor subject to any chattel mortgage or under a conditional sales or other agreement by which an interest is retained by the seller. The Contractor warrants that he has clear title to all materials and supplies for which he invoices for payment.

    *** When used: For use in solicitations for construction and for furnish and install equipment.**

23. CRIMINAL HISTORY: The Community Services Board reserves the right to restrict activities required to provide the services herein to only those persons who are without criminal conviction. This restriction shall not relieve the contractor of any requirements herein. Upon request of the Community Services Board, the contractor shall obtain a criminal history background check on any person, employee or subcontractor used for the delivery of services herein. The Community Services Board may, in its sole decision, determine that an individual possessing a criminal conviction poses no risk

or threat to the Community Services Board, its employees or clients, and may waive this restriction on a case by case basis.

*** When used: When the Contractor may have direct contact with clients or with financial records.**

24. DELIVERY: State your earliest firm delivery or performance date: _____ 20 __. This date may be a factor in making the award.

    *** When used: When delivery time is critical for either goods or services.**

25. DELIVERY AND STORAGE: It shall be the responsibility of the Contractor to make all arrangements for delivery, unloading, receiving and storing materials in the building during installation. The Owner will not assume any responsibility for receiving these shipments. Contractor shall check with the Owner and make necessary arrangements for security and storage space in the building during installation.

    *** When used: For furnish and install solicitations, if applicable.**

26. DELIVERY NOTIFICATION: The Community Services Board shall be notified hours prior to delivery of any items so that personnel may be available to allow access to the building and verify items received. Notification shall be made to :

    _____.
    Name Phone

    *** When used: Use in solicitations for goods if the receiving facility is not staffed at all times during normal working hours.**

27. DISCOUNTS: A prompt payment discount offered for prompt payment within ( ) calendar days or longer will be considered in determining net low bid.

    *** When used: When the CSB knows payments can be made within the time frame specified.**

28. DISCOUNTS - SPECIAL OR PROMOTIONAL DISCOUNTS: The Contractor shall extend any special promotional sale prices or discounts immediately to the Community Services Board during the term of the contract. Such notice shall also advise the duration of the specific sale or discount price.

    *** When used: This clause should be considered for use when soliciting bids for products where it is known that vendors or manufacturers have promotional sales opportunities.**

29. DISPUTES: Disputes shall be communicated between Contractor's assigned coordinator and assigned CSB official, who will negotiate resolution of dispute. If the condition is not corrected, the coordinator and official shall meet with the CSB's Contract Officer who will negotiate resolution of the dispute. If the condition is not corrected at the above level, a meeting shall be scheduled with the CSB Executive Director or his/her designee by the CSB Contract Officer, including all interested parties. The decision of the CSB Executive Director/designee shall be final.

*** When used: In contracts or solicitations where the CSB's procurement regulations are not referenced. If the procurement regulations contain a disputes resolution clause and these regulations are referenced, this clause may not be needed.**

30 DRAWINGS: The Contractor shall provide the Community Services Board a clean set of reproducible "as built" drawings and wiring diagrams, marked to record all changes made during installation or construction. The Contractor shall also provide the Community Services Board with maintenance manuals and parts lists for all equipment. All "as built" drawings and wiring diagrams, maintenance manuals, and parts lists shall be delivered to the Community Services Board upon completion of the work and prior to final payment.

*** When used: For furnish and install and construction and renovation projects; i.e., fire alarm systems, heating and air conditioning systems, refrigeration rooms, building modifications, major equipment installations, etc.)**

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

For the purposes of this section, *"drug-free workplace"* means a site for the performance of work in connection with a specific contract awarded to a contractor in accordance with this chapter, the employees of whom are prohibited from engaging in

the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the cotnract.

* When used: **Required under Section 11-51.1 of the Code of Virginia** to be included in every contract over $10,000. If procuring by unsealed solicitation, the Community Services General Terms and Conditions may be incorporated by reference.

32. EXTRA CHARGES NOT ALLOWED: The bid price shall be for complete installation ready for the Community Services Board's use, and shall include all applicable freight and installation charges; extra charges will not be allowed.

    *** When used: For furnish and install solicitations. Also may be used for inside delivery by changing the wording.**

33. FINAL INSPECTION: At the conclusion of the work, the Contractor shall demonstrate to the authorized owners representative that the work is fully operational and in compliance with contract specifications and codes. Any deficiencies shall be promptly and permanently corrected by the Contractor at the Contractor's sole expense prior to final acceptance of the work.

    *** When used: For furnish and install solicitations.**

34. FLAME RETARDANT CERTIFICATE: Each Bidder/Offeror shall submit a certification in writing with their bid/proposal that all materials used in fabricating draperies or curtains are inherently flame retardant or have been treated to meet NFPA Standard 701, large and small scale test.

    *** When used: Must be used in solicitations for draperies or curtains that will be installed in office spaces and dormitories, but not state-owned housing.**

35. HUMAN RIGHTS: The Contractor shall comply with and adopt the Board's Human Rights Policy. This policy complies with the Community Human Rights Regulations promulgated in 1986 and has been approved by the State Human rights Committee.

    *** When used: When a contractor is to provide direct care services to CSB clients and where these protections are not elsewhere covered in the contract. This clause may need to be revised to comply with the individual CSB's situation.**

36. IDENTIFICATION OF BID/PROPOSAL ENVELOPE: If a special envelope is not furnished, or if return in the special envelope is not possible, the signed bid/proposal should be returned in a separate envelope or package, sealed and identified as follows:

From:
Name of Bidder/Offeror Due Date Time

Street or Box Number IFB No./RFP No.

City, State, Zip Code IFB/RFP Title

Name of Contract/Purchase Officer or Buyer

The envelope should be addressed as directed on Page 1 of the solicitation.

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

*** When used: For use in solicitations for which the purchasing agency has not furnished a special bid/proposal return envelope or the envelope furnished is not adequate.**

37. INDEMNIFICATION: Contractor agrees to indemnify, defend and hold harmless the Community Services Board, its officers, agents, and employees from any claims, damages and actions of any kind or nature, whether at law or in equity, arising from or caused by the use of any materials, goods, or equipment of any kind or nature furnished by the Contractor/any services of any kind or nature furnished by the Contractor, provided that such liability is not attributable to the sole negligence of the using agency or to failure of the using agency to use the materials, goods, or equipment in the manner already and permanently described by the Contractor on the materials, goods or equipment delivered.

*** When used: For contracts involving substantial risk of third party injuries/claims. Use of this clause requires prior approval of your legal counsel.**

38. INSPECTION OF JOB SITE: My signature on this solicitation constitutes certification that I have inspected the job site and am aware of the conditions under which the work must be accomplished. Claims, as a result of failure to inspect the job site, will not be considered by the Community Services Board.

*** When used: Should be used in furnish and install, services and non-capital outlay construction projects.**

39. INSTALLATION: All items must be assembled and set in place, ready for use. All crating and other debris must be removed from the premises.

*** When used: For inside delivery of goods which require unpacking and assembly.**

40. INSURANCE, MONEY AND SECURITIES : Contractor shall maintain a Broad Form Money and Securities Insurance Policy obtained from an insurance company licensed to conduct crime insurance business in the home state of the contractor and which has earned an A.M. Best Company, Inc. rating of A or better, as reflected in their most current publication, covering all money and property entrusted to the contractor by the Community Services Board, with limits of coverage of not less than $_____ for Loss Inside the Premises Coverage and not less than $_____ for Loss Outside the Premises Coverage, naming the Commonwealth of Virginia as additional named insured as respects this contract. Certificate of such protection must be presented to the purchasing agency prior to the start of the service showing name of insurance company, limits and type of coverage, term of coverage, additional insured provision and name and address of licensed insurance agent. The contractor agrees to maintain such policy until the completion of the contract and all money and property of the Community Services Board is remitted to the Community Services Board.

*** When used: Required for contracts covering the collection, handling, safekeeping, and/or transporting CSB monies or securities. The amounts to be entered by the agency should be equal to the estimated maximum amount of monies or securities that would be in the contractor's possession at any one time.**

41. INSURANCE:

By signing and submitting a bid or proposal under this solicitation, the Bidder or Offeror certifies that if awarded the contract, it will have the following insurance coverages at the time the work commences. For construction contracts, if any subcontractors are involved, the subcontractor will have workers' compensation

insurance in accordance with Sections 11-46.3 and 65.2-800 et seq. Of the *Code of Virginia*.

The bidder or offeror further certifies that the contractor and any subcontractors will maintain these during the entire term of the contract and that all insurance coverages will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

INSURANCE COVERAGES AND LIMITS REQUIRED:

A. Worker's Compensation - Statutory requirements and benefits.

B. Employers Liability - $100,000.

C. General Liability - $500,000 combined single limit. The Community Services Board is to be named as an additional insured with respect to the services being procured. These coverages are to include Premises/Operations Liability, Products and Completed Operations Coverage, Independent Contractor's Liability, Owner's and Contractor's Protective Liability and Personal Injury Liability.

D. Automobile Liability - $500,000. Combined single limit.

NOTE: In addition, various Professional Liability/Errors and Omissions coverages are required when soliciting those services shown below:

Profession/ Service	Limits
Accounting	$1,000,000 occurrence, $3,000,000 aggregate
Architecture	$2,000,000 occurrence, $6,000,000 aggregate
Asbestos Design, Inspection or Abatement Contractors	$1,000,000 occurrence, $3,000,000 aggregate
Health Care Practitioner **	Must be covered by Health Care Practitioner liability insurance which meets the minimum level required under Section 8.01-581.15 of the Code of Virginia.

Insurance/ Risk Management	$1,000,000 per occurrence, $3,000,000 aggregate
Landscape/ Architecture	$500,000 occurrence, $1,000,000 aggregate
Legal	$1,000,000 occurrence, $5,000,000 aggregate
Professional Engineer	$2,000,000 occurrence, $6,000,000 aggregate
Surveying	$100,000 occurrence, $300,000 aggregate

Garagekeeper's Liability and Garagekeeper's Legal Liability - $500,000. This coverage shall include those specified in c. above. These are needed when automobile or unlicensed motor vehicle maintenance contracts are procured.

- **When used: Required in all solicitations where a contractor will perform work or services in or on the CSB site. The limits are minimums and may be increased. Your insurance agent or advisor should be contacted when other types of coverage may be required or when in doubt as to the need for other limits.**

** Includes, dentists, optometrists, nurses, pharmacists, doctors, etc.

42. INTEGRATION AND MODIFICATION: This contract constitutes the entire agreement between the Contractor and the Purchaser. No alteration, amendment or modification in the provisions of this agreement shall be effective unless reduced to writing, signed by the parties and attached hereto.

43. LABELING OF HAZARDOUS SUBSTANCES: If the items or products requested by this solicitation are "Hazardous Substances" as defined by the § 3.1-250 of the Code of Virginia (1950), as amended, or § 1261 of Title 15 of the United States Code, then the Bidder/Offeror, by submitting his bid/proposal, certifies and warrants that the items or products to be delivered under this contract shall be properly labeled as required by the foregoing sections and that by delivering the items or products the Bidder/Offeror does not violate any of the prohibitions of § 3.1-252 of the Code of Virginia or Title 15 U.S.C. § 1263.

*** When used: Must be included in all solicitations for the purchase of chemicals or compounds which may contain toxic or hazardous substances, i.e., cleaning, janitorial supplies, chemicals of all types, etc. (See clause #32).**

44. LIQUIDATED DAMAGES: **(Note: Review the guidance contained in the General Comments and Procedures below before deciding to include one of the following clauses in a solicitation.**

A. Liquidated Damages, Goods and Nonprofessional Services: Delivery is required not later than _____. It is understood and agreed by the Bidder/Offeror that time is of the essence in the delivery of supplies, services, materials or equipment of the character and quality specified in the bid/proposal document. In the event these specified supplies, services, materials or equipment are not delivered by the date specified there will be deducted, not as a penalty but as liquidated damages, the sum of $_____ per day for each and every calendar day of delay beyond the time specified; except that if the delivery be delayed by any act, negligence or default on the part of the Community Services Board, public enemy, war, embargo, fire or explosion not caused by the negligence or intentional act of the Contractor or his supplier(s), or by riot, sabotage or labor trouble that results from a cause or causes entirely beyond the control or fault of the contractor or his supplier(s), a reasonable extension of time as the procuring public body deems appropriate may be granted. Upon receipt of a written request and justification for any extension from the Contractor, the purchasing office may extend the time for performance of the contract or delivery of goods herein specified, at the purchasing office's sole discretion, for good cause shown.*** When used: For critical delivery of goods or services. The required delivery date and the dollar amount must be filled in by the agency.**

B. LIQUIDATED DAMAGES, FURNISH AND INSTALL: Work shall begin calendar days after receipt of purchase order or contract and all work shall be completed in __ calendar days. It is hereby understood and agreed by the Bidder that time is of the essence in the delivery of supplies, services, materials or equipment of the character and quality specified in the bid document. In the event these specified supplies, services, materials or equipment are not delivered by the date specified, there will be deducted, not as a penalty but as liquidated damages, the sum of $_____per day for each and every calendar day of delay beyond the time specified; except that if the delivery be delayed by any act, negligence or default on the part of the Community Services Board, public enemy, war, embargo and fire or explosion not caused by the negligence or intentional act of the Contractor or his supplier(s), or by riot, sabotage or labor trouble that results from a cause or causes entirely beyond the control or fault of the contractor or his supplier(s), a reasonable extension of time as the procuring public body deems appropriate may be granted. Upon receipt of a written request and justification for an extension from the Contractor, the purchasing office may extend the time for performance of the contract or delivery of goods herein specified at the purchasing office's sole discretion for good cause shown.

*** When used: For furnish and install contracts covering modifications, repair and other non-capital outlay construction-type contracts. The dollar amount must be filled in by the agency. The two blanks for the number of calendar days may be filled in by the agency prior to issuing the solicitation or the Bidder/Offeror may be required to fill in the number of days with the bid/proposal. The dollar amount must be reasonable.**

NOTE: GENERAL COMMENTS:

These clauses are not to be used as a penalty, but as a means to assess damages when both (1) the time of delivery or performance is such an important factor in the award of the contract that the Community Services Board may reasonably expect to suffer damage if the delivery or performance is delinquent, and (2) the extent or amount of such damage would be difficult or impossible to ascertain or prove. In deciding whether to include a liquidated damages clause in a contract, the purchase officer should consider the probable effect on such matters as pricing, competition, and the costs and difficulties of contract administration.

When a liquidated damages clause is to be used in a contract, the applicable clause and appropriate rate(s) of liquidated damages shall be included in the solicitation. The rate of liquidated damages used must be reasonable and considered on a case-by-case basis since liquidated damages fixed without any reference to probable actual damages may be held to be a penalty, and therefore unenforceable.

When a liquidated damages clause is used in a construction, modification or repair contract, the rate(s) of liquidated damages to be assessed against the contractor should be for each day of delay and the rate(s) should, as a minimum, cover the estimated cost of inspection and superintendence for each day of delay in completion. Whenever the Community Services Board will suffer other specific losses due to the failure of the Contractor to complete the work on time, the rate(s) should also include an amount for these items. Examples of specific losses are:

(1) The cost of substitute facilities;

(2) The rental of buildings and/or equipment.

ASSESSMENT PROCEDURES:

If a liquidated damages clause is included in a contract and the contractor is late or behind schedule and the delay is not an excusable one, the purchase officer should (1) issue a Notice of Contract Deficiency or "Cure Letter" to the Contractor (See Appendix M); and (2) in addition, if there is a performance bond, send a copy of the cure letter to the bonding company. If the Contractor does not comply with the cure letter, notify the bonding company that they are responsible to complete the contract and at the same time, terminate the contract for default. (See Appendix M).

If there is no performance bond with the contract, (1) send a cure letter to the contractor. If the Contractor does not correct the problem, issue a termination for default letter and re-bid the requirement. Assess liquidated damages against the Contractor from the date the project was to be completed, as stated in the liquidated damages clause, to the date of the termination of default letter. In addition, any excess costs encountered in the re-purchase action may also be held against the defaulted contractor.

45. MAINTENANCE MANUALS: The Contractor shall provide with each piece of equipment an operations and maintenance manual with wiring diagrams, parts list, and a copy of all warranties.

    *** When used: For solicitations to purchase or furnish and install major equipment or systems.)**

46. MATERIAL SAFETY DATA SHEETS: Material Safety Data Sheets and descriptive literature shall be provided with the bid/proposal for each chemical and/or compound offered. Failure on the part of the Bidder/Offeror to submit such data sheets may be cause for declaring the bid/proposal as nonresponsive.

    *** When used: Must be used for the purchase of all chemicals or compounds which may contain toxic or hazardous substances, i.e., cleaning, janitorial supplies, chemicals of all types.**

47. NAME OF MANUFACTURER AND SHIPPING POINT: Each Bidder/Offeror shall supply in the space below the name and address of the manufacturer of each item offered and the shipping point.

    ITEM NUMBER (S):
    MANUFACTURER:
    ADDRESS:

SHIPPING POINT:

*** When used: For spot purchases or annual contracts for goods if the agency desires this information.**

48. NEGOTIATION WITH THE LOWEST BIDDER: Unless all bids are canceled or rejected, the Community Services Board reserves the right granted by Section 11-53 of the Code of Virginia to negotiate with the lowest responsive, responsible Bidder to obtain a contract price within the funds available to the State agency whenever such low bid exceeds the Community Services Board's available funds. For the purpose of determining when such negotiations may take place, the term "available funds" shall mean those funds which were budgeted by the Community Services Board agency for this contract prior to the issuance of the written Invitation for Bids. Negotiations with the low Bidder may include both modifications of the bid price and the Scope of Work/Specifications to be performed. The State agency shall initiate such negotiations by written notice to the lowest responsive, responsible Bidder that its bid exceeds the available funds and that the State agency wishes to negotiate a lower contract price. The times, places, and manner of negotiating shall be agreed to by the State agency and the lowest responsive, responsible Bidder.

    *** When used: For use only in an Invitation for Bids, for goods or services. This clause shall not be used as a matter of routine.**

49. OBLIGATION OF OFFEROR: By submitting a proposal, the Offeror covenants and agrees that he/she has satisfied him/herself, from his/her own investigation of the conditions to be met, that he/she fully understands his/her obligation, and that he/she will not make any claim for, or have right to cancellation or relief from the contract because of any misunderstanding or lack of information

    *** When used: May be used in RFP when Offerors' proposals must be based upon information they have obtained regarding the needs of the CSB.**

50. ORDERING OPTION: The _____ Community Services Board may during the first 60 days after this contract is awarded, with the concurrence of the contractor, place additional orders under the contract at the original unit price through the issuance of separate purchase orders. The aggregate of such additional orders shall not exceed 100%of the quantity originally stated in the contract.

    *** When used: This can be used when purchasing goods on a spot basis and the purchaser anticipates that there might be an additional requirement for the same goods within the next sixty days. When it is used in a solicitation, a**

statement on the face of the invitation should direct the bidder's attention to this clause. It is not for use with term type contracts.

51. OWNERSHIP OF MATERIAL: Ownership of all data, material, and documentation, including electronic data and media originated and prepared for the Community Services Board pursuant to the RFP shall belong exclusively to the Community Services Board and be subject to public inspection in accordance with the Virginia Freedom of Information Act; however, the Offeror must invoke the protection of this section prior to or upon submission of the data or other materials, and must identify the data or other materials to be protected and state the reasons why protection is necessary.

    *** When used: Used in RFPs when Offerors will be required to submit various material and data to be used by the CSB in the evaluation process.**

52. PERFORMANCE AND PAYMENT BONDS: The successful Bidder shall deliver to the purchasing office executed Standard Performance and Labor and Material Payment Bonds, each in the sum of the contract amount, with the Community Service Board as obligee. The surety shall be a surety company or companies approved by the State Corporation Commission to transact business in the Commonwealth of Virginia. No payment shall be due and payable to the Contractor, even if the contract has been performed in whole or in part, until the bonds have been delivered to and approved by the purchasing office. Standard bond forms will be provided by the purchasing office prior to or at the time of award.

    *** When used: Must be used in all solicitations for construction which exceed $100,000, but may be for construction, goods and services for less than $100,000.**

53. PRE-BID/PRE-PROPOSAL CONFERENCE - MANDATORY/OPTIONAL: (Note: Select one of the following two clauses if a mandatory or optional pre-bid or pre-proposal conference is desired and include it in the solicitation.)

    A. MANDATORY PRE-BID/PRE-PROPOSAL CONFERENCE: A mandatory pre-bid/pre-proposal conference will be at _____(time) and (date)_____ at the (place)_____. The purpose of this conference is to allow potential Bidders/Offerors an opportunity to present questions and obtain clarification relative to any facet of this solicitation.

    Due to the importance of all Bidders/Offerors having a clear understanding of the specifications/scope of work and requirements for this solicitation, attendance at this conference will be a prerequisite for submitting a bid/proposal. Bids/Proposals will only be accepted from those Bidders/Offerors

who are represented at this bid/proposal conference. Attendance at the conference will be evidenced by the representative's signature on the attendance roster.

Bring a copy of the solicitation with you. Any changes resulting from this conference will be issued in a written addendum to the solicitation.

*** When used: For use in complex procurements when clarification of the contents of the solicitation to potential Bidders/Offerors will greatly enhance understanding of what is sought to be procured. "CAUTION":, use of this clause may limit competition because only those that attend can submit a bid/proposal. Use wording appropriate to the type of solicitation, i.e., pre-bid, bid, Bidder in an IFB and pre-proposal, proposal, Offeror in an RFP.**

B. OPTIONAL PRE-BID/PRE-PROPOSAL CONFERENCE: An optional pre-bid/pre-proposal conference will be held at (time) and (date) at the (place). The purpose of this conference is to allow potential Bidders/Offerors an opportunity to present questions and obtain clarification relative to any facet of this solicitation.

While attendance at this conference will not be a prerequisite to submitting a bid/proposal, Bidders/Offerors who intend to submit a bid/proposal are encouraged to attend. Any changes resulting from this conference will be issued in a written addendum to the solicitation.

*** When used: For use in less complex procurements when vendor input is desired. Bidders/Offerors that do not attend may still submit a bid/proposal. Use wording appropriate to the type of solicitation as described above.**

54. PREVENTIVE MAINTENANCE: The Contractor shall provide necessary preventive maintenance, required testing and inspection, calibration and/or other work necessary to maintain the equipment in complete operational condition during the warranty period.

    *** When used: For equipment purchases only in conjunction with a warranty clause which requires preventive maintenance during the warranty period.**

55. PRICE ESCALATION/DEESCALATION: Price adjustments may be permitted only for changes in the Contractor's cost of materials not to exceed the increase in the following index/indices:

_____No price increases will be authorized for calendar days after the effective date of the contract. Price escalation may be permitted only at the end of this period and each ___ days thereafter and only where verified to the satisfaction of the purchasing office. However, "across the board" price decreases are subject to implementation at any time and shall be immediately conveyed to the Community Services Board.

Contractor shall give not less than 30 days advance notice of any price increase to the purchasing office. Any approved price changes will be effective only at the beginning of the calendar month following the end of the full 30 day notification period. The Contractor shall document the amount and proposed effective date of any general change in the price of materials. Documentation shall be supplied with the Contractor's request for increase which will: (1) verify that the requested price increase is general in scope and not applicable just to the Community Services Board; and (2) verify the amount or percentage of increase which is being passed on to the Contractor by the Contractor's suppliers.

The purchasing office will notify Contractor in writing of the effective date of any increase which it approves. However, the Contractor shall fill all purchase orders received prior to the effective date of the price adjustment at the old contract prices. The Contractor is further advised that decreases which affect the cost of materials are required to be communicated immediately to the purchasing office.

*** When used: For annual goods contracts only where, because of rapidly changing market conditions, a firm fixed price cannot be secured for one (1) year or more. Depending on the commodity and how frequent costs change, the number of days that should be entered by the CSB in the blank space are 30, 60, 90 or 180 days.**

56. PRIME CONTRACTOR RESPONSIBILITIES: The Contractor shall be responsible for completely supervising and directing the work under this contract and all subcontractors that he may utilize, using his best skill and attention. Subcontractors who perform work under this contract shall be responsible to the prime Contractor. The Contractor agrees that he is as fully responsible for the acts and omissions of his subcontractors and of persons employed by them as he is for the acts and omissions of his own employees.

    *** When used: For use in solicitations to furnish and install goods or provide services when subcontracting will be permitted.**

57. PRINTING: (Note: Select any or all of the following clauses, as may be appropriate, and include in solicitations for printing.)

A. PRINTING RAST: Bids for printing will be rejected when the additional per thousand cost, run at the same time (R.A.S.T.) equals or exceeds the base lot per thousand price quoted and/or incremental unit cost. On bids for multiple part forms and envelopes, the additional per thousand price (R.A.S.T.) shall not exceed the base lot per thousand price quoted and/or incremental unit cost.

*** When used: USE IN ALL PRINTING BIDS.**

B. ACCEPTABLE MILL BRANDS: Only those papers listed in the latest edition of The Competitive Grade Finder Directory fine paper directory book, will be considered as equal.

*** When used: Whenever a specific paper is specified along with the phrase "or equal."**

C. OWNERSHIP OF PRINTING MATERIALS: All artwork, camera-ready copy, negative, dies, photos, and similar materials used to produce a printing job shall become the property of the Community Services Board. Any furnished materials shall remain the property of the Community Services Board. All such items and materials shall be delivered to the ordering agency in usable condition after completion of the work, and prior to submission of the invoice for payment.

*** When used: Must be included in all printing solicitations.**

D. PRINTING PICKUPS/DELIVERIES: Contractor shall be responsible for all pickups and deliveries of all materials.

*** When used: Include in all printing solicitations when the contractor will be required to pick up artwork, negatives, etc. for the job and deliver the finished product to the CSB.**

E. QUALITY COLOR PRINTING: Contractor shall analyze each four-color subject and make separations individually. Contractor shall allow for color correction, dot etching, etc., in order to achieve top-quality production from each separation made.

*** When used: Include in all printing solicitations involving four-color process of more than one picture.**

58. PRINTING DEFINITIONS: **(Note: Include the appropriate definition in the solicitation whenever any of the following terms are used to describe the quality of the printing requirement.)**

A. CLASS 1 - CRITICAL QUALITY PRINTING: This class shall be used for four-color process printing where critical color matches are necessary or where engraved and/or embossed invitations are required. Typical examples: matching artists' original paintings or sculptures, or product colors so that they represent true colors or materials used in creating the original are accurately represented, and reproduction of medical slides where true color may be critical. This is a step above "pleasing colors." Finishing and bindery operations shall be of this same critical quality.

B. CLASS 1 - EXCELLENT QUALITY PRINTING: This class shall be used when good clean, crisp reproduction is required. One color or multiple color jobs may be classified as "Class 1." Four-color process subjects shall have pleasing color matches with good skin tones; some color correction may be necessary. PMS color matches may be required. Very fine lines and drawings may be required. Normally half-tones or screen tints will require 133, 150, or 200 line screens. There is to be large reverse areas, and/or large solid areas where good even ink coverage is necessary. Because of the overall design, very accurate registration is required. Camera-ready copy is generally furnished. Metallic inks may be used. Finishing and bindery operations shall be of the same excellent quality.

C. CLASS 2 - GOOD QUALITY PRINTING: This class shall be used for the majority of black and white or one color jobs where no critical registration is required or when no colors overprint. Multiple color jobs may be classified as "Class 2." Original copy is uniform and may have medium lines and drawings, medium-sized halftones and screens, medium-sized reverses and solid areas. Normally halftones and screentints would be produced with 120 or 133 line screens. Metallic inks and process work are not generally included in the class. Normally metal plates and negatives are required. No cut lines or spots are acceptable. Finishing and bindery operations shall be of the same good quality.

D. CLASS 3 - MEDIUM QUALITY PRINTING: This class denotes the least expensive kind of printing and shall be used for short-run, reproduction duplicator-type work where electrostatic or other direct plate methods are acceptable. Original copy is usually type written and may have coarse lines, drawings, and small reverses or solid areas. Evenness of ink coverage is not required. Coarse screen halftones or coarse screens may be used. No colors

overprint each other and no metallic inks are used. Finishing and bindery operations would normally be simple stapling or punching.

59. PRODUCT INFORMATION: The Bidder/Offeror shall clearly and specifically identify the product being offered and enclose complete and detailed descriptive literature, catalog cuts and specifications with the bid/proposal to enable the Community Services Board to determine if the product offered meets the requirements of the solicitation. Failure to do so may cause the bid/proposal to be considered nonresponsive.

    *** When used: For solicitations to furnish and install or deliver goods when detailed specifications are required to properly evaluate items offered.**

60. QUANTITIES: Quantities set forth in this solicitation are estimates only, and the Contractor shall supply at bid prices actual quantities as ordered, regardless of whether such total quantities are more or less than those shown.

    *** When used: For solicitations for requirements type term contracts.**

61. REFERENCES: Bidders shall provide a list of at least 3 references where similar goods and/or services have been provided. Each reference shall include the name of the organization, the complete mailing address, the name of the contact person and telephone number.

	ORGANIZATION	ADDRESS	CONTACT PERSON	TELEPHONE
1.	_____	_____	_____	_____
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____

    *** When used: For any solicitation where the purchaser must evaluate offers based upon the offerors ability to provide certain services.**

62. RENEWAL OF CONTRACT: (NOTE: A term contract may not be renewed unless a renewal clause is included in the solicitation. Select one of the following clauses if an option to extend the contract beyond the original period of the contract is desired.)

    A. RENEWAL OF CONTRACT: This contract may be renewed by the Community Services Board upon written agreement of both parties for (one year)/(

successive one year periods), under the terms of the current contract, and at a reasonable time (approximately 90 days) prior to the expiration.

*** When used: For solicitations for term contracts to permit renewal of the contract for a specific period of time, i.e. one year, two successive one-year periods, etc. at the same price(s), terms and conditions as in the original contract. Renegotiation of the price(s), terms and conditions is not permitted. Unless market prices are expected to remain stable, however, the Price Escalation/Deescalation clause (No. 38) should be considered for use with this provision.**

B. RENEWAL OF CONTRACT: This contract may be renewed by the Community Services Board for a period of (one year)/(___ successive one year periods) under the terms and conditions of the original contract except as stated in 1. and 2. below. Written notice of the Community Services Board's intention to renew shall be given approximately 90 days prior to the expiration date of each contract period.

1. If the Community Services Board elects to exercise the option to renew the contract for an additional one-year period, the contract price(s) for the additional one year shall not exceed the contract price(s) of the original contract increased/decreased by no more than the percentage increase/decrease of the _____ category of the CPI-W section of the Consumer Price Index of the United States Bureau of Labor Statistics for the latest twelve months for which statistics are available.

2. If during the first one-year renewal the Community Services Board elects to exercise the option to renew the contract for the second additional one-year period, the contract price(s) for the second additional one-year period shall not exceed the contract price(s) of the first one-year extension period increased/decreased by no more than the percentage increase/decrease of the _____category of the CPI-W section of the Consumer Price Index of the United States Bureau of Labor Statistics for the latest twelve months for which statistics are available.

*** When used. For service contracts, use of this clause permits renewal of a contract with an increase/decrease in the labor rate portion only of the original contract. This clause should only be used during periods of abnormal economic uncertainty where an extension of one or more additional years may be desired.**
Select the most appropriate category that would apply to the contract and fill in the blank. If only a one-year extension is desired, delete paragraph 2. of the clause.

63. REPRODUCTION RIGHTS: The Contractor shall provide the Community Services Board with free and unrestricted right of reproduction of any of the products developed pursuant to a resulting contract.

*** When used: For contracts in which the Contractor will be required to produce publications or other materials for the CSB.**

64. RESPONSIBILITIES OF PARTIES: Each party to this contract shall assume responsibility for any action or inaction resulting from its negligence, error or omission or that of its employees, agents or clients which results in any claim, damage or action of any kind or nature, whether at law or in equity. No claim or law suit shall be made against the Contracting Agency, its employees, agents or clients for any action or inaction by the Lessor, its employees, agents or clients. This provision shall in no way be construed as a waive of the Contracting Agency's sovereign immunity or other defenses.

*** When used: As alternate to Indemnification clause (#30, page E-22 of this manual) when both parties are held responsible for their own negligence. Legal counsel is recommended before including either this or the Indemnification clause in any contract.**

65. SERVICE AUTHORIZATION: All services delivered under the resulting contract must be authorized in writing by the Board's staff, to be designated upon execution of the contract. In no instance will the Contractor render services, in whole or in part using resources provided under the contract to any unauthorized individual, group, agency or organization.

*** When used: When the CSB wants services rendered only at their direction.**

66. SEVERABILITY: Each paragraph and provision of this agreement is severable from the entire agreement, and if any provision is declared invalid, the remaining provisions shall nevertheless remain in effect.

67. SUBCONTRACTING ENCOURAGED: It is the policy of the Community Services Board to contribute to the establishment, preservation, and strengthening of disadvantaged minority, small and women-owned businesses and to encourage their participation in the CSB procurement activities. Toward that end, the CSB encourages contractors to provide for the participation of disadvantaged minority businesses, small, and women-owned businesses through partnerships, joint ventures, subcontracts, and other contractual opportunities.

***When used: To encourage participation by small, minority and women-owned businesses.**

68. SUBCONTRACTS: No portion of the work shall be subcontracted without prior written consent of the Community Services Board. In the event that the Contractor desires to subcontract some part of the work specified herein, the Contractor shall furnish the purchasing agency the names, qualifications and experience of their proposed subcontractors. The Contractor shall, however, remain fully liable and responsible for the work to be done by his subcontractor(s) and shall assure compliance with all requirements of the contract.

    *** When used: In solicitations for furnish and install or services when subcontracting will be permitted only upon prior approval of the purchasing agency.**

69. WARRANTY: All materials and equipment shall be fully guaranteed against defects in material and workmanship for a period of _____ days following date of delivery. Should any defect be noted by the owner, the Purchasing Office will notify the Contractor of such defect or nonconformance. Notification will state either (1) that the Contractor shall replace or correct, or (2) the owner does not require replacement or correction, but an equitable adjustment to the contract price will be negotiated. If the Contractor is required to correct or replace, it shall be at no cost to the Community Services Board and shall be subject to all provisions of this clause to the same extent as materials initially delivered. If the Contractor fails or refuses to replace or correct the deficiency, the office issuing the purchase order may have the materials corrected or replaced with similar items and charge the Contractor the costs occasioned thereby or obtain an equitable adjustment in the contract price.

    *** When used: Include in solicitations to furnish and install or deliver goods when the procuring agency wants to specify the length of time the warranty is to run; i.e., equipment 1 year, compressor 5 years, piano 10 years, etc.**

70. WARRANTY (COMMERCIAL): The Contractor agrees that the supplies or services furnished under any award resulting from this solicitation shall be covered by the most favorable commercial warranties the Contractor gives any customer for such supplies or services and that the rights and remedies provided therein are in addition to and do not limit those available to the Community Services Board by any other clause of this solicitation. A copy of this warranty must be furnished with the bid/proposal.

    *** When used: Include in solicitations for goods, furnish and install or services when commercial warranty provisions for a particular item or service are acceptable.**

71. WORK SITE DAMAGES: Any damage, including damage to finished surfaces, resulting from the performance of this contract shall be repaired to the Community Services Board's satisfaction at the Contractor's expense.

*** When used: Include in solicitations to furnish and install equipment. May also be used in solicitations for services such as moving, maintenance, removal of equipment, non-capital outlay construction projects, etc.**

APPENDIX E - TERMS AND CONDITIONS

SECTION III

ADDITIONAL TERMS AND CONDITIONS FOR NON-CAPITAL OUTLAY CONSTRUCTION PROJECTS

The following Additional Terms and Conditions may be used in all solicitations for non-capital outlay projects that involve building, altering, repairing, improving or demolishing any structure, building or paving project (other than highways), and any draining, dredging, excavation, grading or similar work upon real property which do not require the use of capital outlay procedures. These Additional Terms and Conditions may be included in the IFB in addition to those listed in Appendix E, Section I. The Virginia Public Procurement Act requires the use of competitive sealed bidding for construction projects unless the use of competitive negotiation can be justified under the provisions of Section 11-41C.2.

1. DEFINITIONS E-41 2. CONTRACT DOCUMENTS E-42
3. LAWS AND REGULATIONS E-43
4. PREPARATION AND SUBMISSION OF BIDS E-43
5. WITHDRAWAL OR MODIFICATION OF BIDS E-44
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13. SUPERINTENDENCE BY CONTRACTOR E-48
14. ACCESS TO WORK E-49
15. AVAILABILITY OF MATERIALS E-49
16. CONTRACTOR'S TITLE TO MATERIALS E-49
17. WARRANTY OF MATERIALS AND WORKMANSHIP E-49
18. USE OF PREMISES AND REMOVAL OF DEBRIS E-49
19. PROTECTION OF PERSONS AND PROPERTY E-51
20. CONTRACTOR'S RIGHT TO STOP WORK OR TERMINATE THE CONTRACT E-51
21. OWNER'S RIGHT TO TERMINATE THE CONTRACT FOR CAUSE E-52
22. TERMINATION BY OWNER FOR CONVENIENCE E-53
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24. ASBESTOS E-55
25. TRAINING, OPERATIONS AND MAINTENANCE OF EQUIPMENT E-56
26. DRUG FREE WORKPLACE E-56

1. DEFINITIONS:

a. **CSB:** The term "CSB" shall mean the Owner which is the _____ Community Services Board through the governing Body, the Board, the Building Committee or other agent with authority to execute the contract for the _____ Community Services Board. The Community Services Board's Agent is the official with the authority to sign the contract on behalf of the Community Services Board.

b. **Construction:** As used in these documents shall include new construction, reconstruction, renovation, restoration, major repair, demolition and all similar work upon buildings and ancillary facilities owned or to be acquired by the CSB and any draining, dredging, excavation, grading or similar work upon real property.

c. **Contractor:** The term "Contractor" means the person, firm or corporation with whom the Owner has entered into a contractual agreement and includes the plural number and the feminine gender when such are named in the contract as the Contractor.

d. **Defective:** An adjective which when modifying the word "Work" refers to Work that is unsatisfactory, faulty or deficient, or does not conform to the Contract Documents, or does not meet the requirements of any inspections, standard, test or approval referred to in the Contract Documents, or has been damaged prior to final payment.

e. **Emergency:** Any unforeseen combination of circumstances or a resulting state that poses imminent danger to health, life or property.

f. **Final Acceptance:** The CSB's acceptance of the Project from the Contractor upon confirmation from the Project Inspector and the Contractor that the project is totally complete in accordance with the contract requirements and that all defects have been eliminated. Final acceptance is confirmed by the making of final payment of the contract amount including any change orders or adjustment thereto.

g. **Notice:** All written notices, demands, instructions, claims, approvals and disapprovals required to obtain compliance with the Contract requirements. Any written notice by either party to the Contract shall be sufficiently given if delivered to or at the last known business address of the person, firm or

corporation constituting the party to the Contract, or to his, their or its authorized agent, representative or officer, or when enclosed in a postage prepaid envelope addressed to such last known business address and deposited in a United States mailbox.

h. **Notice to Proceed:** A written notice given to the Owner to the Contractor fixing the date on which the Contract time will commence for the Contractor to begin the prosecution of the Work in accordance with the requirements of the Contract Documents.

i. **Owner:** The Community Services Board, with whom the Contractor has entered into a contract and for whom the Work or services is to be provided.

j. **Project Inspector:** One or more individuals employed by the Owner to inspect the Work and/or to act as clerk of the works to the extent required by the Owner. The Owner shall notify the Contractor in writing of the appointment of such Project Inspector(s).

k. **Provide:** Shall mean furnish and install ready for its intended use.

l. **Submittals:** All drawings, diagrams, illustrations, schedules and other data required by the Contract Documents which are specifically prepared by or for the Contractor to illustrate some portion of the Work and all illustrations, brochures, standard schedules, performance charts, instructions, diagrams and other information prepared by a Supplier and submitted by the Contractor to illustrate material or equipment for some portion of the Work.

m. **Subcontractor:** An individual, partnership or corporation having a direct contract with the Contractor or with any Subcontractor for the performance of the Work. It includes one who provides on-site labor but does not include one who furnishes or supplies materials for the project.

n. **Substantial Completion:** The Work which is sufficiently complete, in accordance with the Contract Documents, so that the project can be utilized by the Owner for the purposes for which it is intended.

o. **Supplier:** A manufacturer, fabricator, distributor, materialman or vendor who provides material for the project but does not provide on-site labor.

p. **Underground Facilities:** All pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels or other such facilities or attachments, and any encasements containing such facilities which are or have been installed underground to furnish any of the following services or materials: electricity,

gases, steam liquid petroleum products, telephone or other communications, cable television, sewage and drainage removal, traffic or other control systems or water.

q. **Work:** The entire completed construction or the various separately identifiable parts thereof required to be furnished under the Contract Documents. Work is the result of performing services, furnishing labor, and furnishing and incorporating materials and equipment into the construction, all as required by the Contract Documents.

2. CONTRACT DOCUMENTS:

a. The contract entered into by the parties shall consist of the Invitation for Bids, the signed bid submitted by the Contractor; General Terms and Conditions; these Additional Terms and Conditions; the Special Terms and Conditions; the drawing, if any; the specifications; and all modifications and addenda to the foregoing documents, all of which shall be referred to collectively as the Contract Documents.

b. All time limits stated in the Contract Documents, including but not limited to the time for completion of the Work, are of the essence of the Contract.

c. Anything called for by one of the Contract Documents and not called for by the others shall be of like effect as if required or called for by all, except that a provision clearly designed to negate or alter a provision contained in one or more of the other Contract Documents shall have the intended effect.

3. LAWS AND REGULATIONS:

a. The Contractor shall comply with all laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of the Work and shall give all notices required thereby.

b. This Contract and all other contracts and subcontracts are subject to the provisions of Articles 3 and 5, Chapter 4, Title 40.1, *Code of Virginia*, relating to labor unions and the "right to work,", The Contractor and its Subcontractors, whether residents or nonresidents of the Commonwealth, who perform any work related to the project shall comply with all of the said provisions.

c. The provisions of all rules and regulations governing safety as adopted by the Safety Codes Commission of the Commonwealth of Virginia, and as issued by the Department of Labor and Industry under Title 40.1 of the *Code of Virginia* shall apply to all work under this contract. Inspectors from the Department of

Labor and Industry shall be granted access to the Work for inspection without first obtaining a search warrant from the court.

d. Building Permit: Building permits where required will be obtained and paid for by the Owner. This does not include any local license fees, business fees or similar assessments which may be imposed by the appropriate political subdivision.

e. The Contractor, if not licensed as an asbestos abatement contractor or an RFS contractor in accordance with Section 54.1-514, *Code of Virginia*, shall have all asbestos related Work performed by subcontractors who are duly licensed as asbestos contractors of RFS contractors as appropriate for the Work required.

4. PREPARATION AND SUBMISSION OF BIDS: Bids must give the full business address of the Bidder and be signed by him/her with his/her usual signature. Bids by partnerships must furnish the full name of all partners and must be signed in the partnership name by one of the members of the partnership or any authorized representative, followed by the designation of the person signing. Bids by corporations must be signed with the legal name of the corporation followed by the name of the State in which it is incorporated and by the signature and designation of the president, secretary or other person authorized to bind it in the matter. The name of each person signing shall also be typed or printed below the signature. A bid by a person who affixes to the signature the word "President", "Secretary", "Agent" or other designation without disclosing the principal, may be held to be the bid of the individual signing. When requested by the CSB, satisfactory evidence of the authority of the officer signing in behalf of the corporation shall be furnished.

5. WITHDRAWAL OR MODIFICATION OF BIDS: Bids may be withdrawn or modified by written notice received from bidders prior to the time fixed for bid receipt. The withdrawal or modification may be made by the person signing the bid or by an individual(s) who is authorized by him on the face of the bid. Written modifications may be made on the bid form itself, on the envelope in which the bid is enclosed, or on a separate document. Written modifications, whether the original is delivered or transmitted by facsimile, must be signed by the person making the modification or withdrawal.

6. RECEIPT AND OPENING OF BIDS:

a. It is the responsibility of the Bidder to assure that the bid is delivered to the place designated for receipt of bids and prior to the time set for receipt of bids. No bids received after the time designated for receipt of bids shall be considered.

b. Bids will be opened at the time and place stated in the advertisement, and their contents made public for the information of the bidders and others interested who may be present either in person or by representative. The officer or agent of the Owner, whose duty it is to open them, will decide when the specific time has arrived. No responsibility will be attached to any officer or agent for the premature opening of a bid not properly addressed and identified.

c. The provisions of Section 11-52 of the *Code of Virginia*, as amended, shall be applicable to the inspection of bids received.

7. ERRORS IN BIDS

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

In accordance with Section 11-54 A.(ii) of the *Code of Virginia*, the bidder must submit to the contracting authority his original work papers, documents and materials used in the preparation of the bid within one day after the date fixed for submission of bids. Such work papers must be submitted in an envelope or package separate and apart from the envelope containing the bid and marked clearly as to the contents and shall be delivered to the contracting authority by the bidder in person or by registered mail at or prior to the time fixed by the contracting authority for the opening of bids and may not be withdrawn until after the two-hour period (referred to later) has elapsed. Such work papers, documents and materials may be considered as trade secrets or proprietary information subject to the conditions of subsection D of Section 11-52, *Code of Virginia*. The bids shall be opened one day following at the time fixed by the contracting authority for the submission of bids. Thereafter, the bidder shall have two (2) hours after the opening of bids within which to claim in writing any mistake as defined herein and withdraw his bid. The contract shall not be awarded by the contracting authority until such two-hour period has elapsed. Such mistake shall be proved only from the original work papers, documents and materials delivered to the contracting authority as required herein. This procedure (ii) shall not apply to any bid required to be submitted on a unit price basis.

Failure of a bidder to submit his original work papers, documents and materials used in the preparation of his bid at the time, date and place required shall constitute a waiver by that bidder of his right to claim any mistake in his bid.

No bid may be withdrawn under this section when the result would be the awarding of the contract on another bid of the same bidder.

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

If a bid is withdrawn under authority of this section, the next higher bidder shall be deemed to be the low bidder on the project.

8. SUBCONTRACTS

(a) The Contractor shall as soon as practicable after the signing of the contract, notify the Owner in writing of the names of Subcontractors proposed for the principal parts of the Work. The Contractor shall not employ any Subcontractor that the Owner may, within a reasonable time, object to as unsuitable. The Owner will not direct the Contractor to contract with any particular Subcontractor unless provided in the specifications or Bid form.

(b) The Owner shall, on request, furnish to any Subcontractor, if practicable, the amounts of payments made to the Contractor, the Schedule of Values and Requests for Payment submitted by the Contractor which would tend to show what amounts are due and payable by the Contractor to the Subcontractor.

(c) The Contractor agrees that he is a fully responsible to the Owner for the acts and omissions of his Subcontractors, Suppliers, and invitees upon the site of the project and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by him.

9. SEPARATE CONTRACTS

(a) The Owner reserves the right to let other contracts in connection with the project, the work under which may proceed simultaneously with the execution of this contract. The Contractor shall afford other separate Contractors reasonable opportunity for the introduction and storage of their materials and the execution of their Work. The Contractor shall cooperate with them and

shall take all reasonable action to coordinate his Work with theirs. If the Owner has listed other separate contracts in the Invitation for Bids which it expects to proceed simultaneously with the Work of the Contractor, and has included the estimated timing of such other Contracts in the Invitation for Bids, the Contractor shall integrate the schedule of those separate contracts into his scheduling. The Contractor shall make every reasonable effort to assist the Owner in maintaining the schedule for all separate contracts. If the Work performed by the separate Contractor is defective or performed so as to prevent this Contractor from carrying out his Work according to the drawings and specifications of this contract, this Contractor shall immediately notify the Owner upon discovering such conditions.

(b) If a dispute arises between the Contractor and separate contractors as to their responsibility for cleaning up as required by Sections 18(c) and 18(d) of these Additional Terms and Conditions, the Owner may clean up and charge the cost thereof to the respective Contractors in proportion to their responsibility. If a Contractor disputes the Owner's apportionment of clean-up costs, it shall be that Contractor's burden to demonstrate and prove the correct apportionment.

10. TAXES: The Contractor shall, without additional expense to the Owner, pay all applicable federal, state, and local taxes, fees, and assessments except the taxes, fees and assessments on the real property comprising the site of the project. If the State Building Official elects to have the local building official inspect the Work as provided by Section 36-98.1 of the *Code of Virginia*, the Owner will pay the resulting fees to the local building official.

11. PATENTS: The Contractor shall obtain all licenses necessary to use any invention, article, appliance, process or technique of whatever kind and shall pay all royalties and license fees. The Contractor shall hold and save the Owner, its officers, agents and employees, harmless from any loss or liability for or on account of the infringement of any patent rights in connection with any invention, process, technique, article or appliance manufactured or used in the performance of the Contract, including its use by the Owner, unless such invention, process, technique, article or appliance is specifically named in the specifications or drawings as acceptable for use in carrying out the Work. If, before using any invention, process, technique, article or appliance specifically named in the specifications or drawings as acceptable for use in carrying out the Work, the Contractor has or acquires information that the same is covered by letters of patent making it necessary to secure the permission of the patentee, or other, for the use of the same, he shall promptly advise the Owner. The Owner may direct that some other invention, process, technique, article or appliance be used. Should the Contractor have reason to believe that the invention, process, technique, article or appliance so specified is

an infringement of a patent, and fail to inform the Owner, he shall be responsible for any loss due to the infringement.

12. INSPECTION

a. All material and workmanship shall be subject to inspection, examination and test by the Owner and its Project Inspector at any and all times during construction. The Project Inspector shall have authority to reject defective material and workmanship and require its correction. Rejected workmanship shall be satisfactorily corrected and rejected material shall be satisfactorily replaced with proper material without charge therefor, and the Contractor shall promptly segregate and remove the rejected material from the premises. If the Contractor fails to proceed at once with replacement of rejected material and/or the correction of defective workmanship, the Owner may, by contract or otherwise, replace such material and/or correct such workmanship and charge the cost to the Contractor, or may terminate the right of the Contractor to proceed, the Contractor and surety being liable for any damages.

b. Job-site inspections, tests conducted on site or tests of materials gathered on site, which the Contract requires to be performed by independent testing entities, shall be contracted and paid for by the Owner. Examples of such tests are the testing of cast in-place concrete, foundation materials, soil compaction, pile installations, caisson bearings and steel framing connections. Although conducted by independent testing entities, the Owner will not contract and pay for tests or certifications of materials, manufactured products or assemblies which the Contract, codes, standards, etc. require to be tested and/or certified for compliance with industry standards such as Underwriters Laboratories, Factory Mutual or ASTM. If there are any fees to be paid for such tests and certifications, they will be paid by the Contractor. The Contractor shall also pay for all inspections, tests, and certifications which the Contract specifically requires him to perform or pay, together with any inspections and tests which he chooses to perform for his own quality control purposes. The Contractor shall promptly furnish, without additional charge, all reasonable facilities, labor and materials necessary and convenient for making such tests. Except as provided in (c) below, whenever such examination and testing finds defective materials, equipment or workmanship, the Contractor shall reimburse the Owner for the cost of reexamination and retesting.

c. Should it be considered necessary or advisable by the Owner at any time before final acceptance of the entire Work to make an examination of any part of the Work already completed, by removing or tearing out portions of the Work, the Contractor shall on request promptly furnish all necessary facilities, labor and material to expose the Work to be tested to the extent required. If

such Work is found to be defective in any respect, due to the fault of the Contractor or his Subcontractors, he shall defray all the expenses of uncovering the Work, of examination and testing, and of satisfactory reconstruction. If, however, such work is found to meet the requirements of the Contract, the actual cost of the Contractor's labor and material necessarily involved in uncovering the Work, the cost of examination and testing and Contractor's cost of material and labor necessary for replacement shall be paid to the Contractor and he shall, in addition, if completion of the Work has been delayed thereby, be granted a suitable extension of time.

d. The Project Inspector will recommend to the Owner that the Work be suspended when in his judgment the drawings and specifications are not being followed. Any such suspension shall be continued only until the matter in question is resolved to the satisfaction of the Owner. The cost of any such Work stoppage shall be borne by the Contractor unless it is later determined that no fault existed in the Contractor's Work.

e. The Project Inspector has no authority to and shall not:

(1)Authorize deviations from the Contract Documents;

(2)Enter into the area of responsibility of the Contractor's superintendent;

(3)Issue directions relative to any aspect of construction means, methods, techniques, sequences or procedures, or in regard to safety precautions and programs in connection with the Work;

(4)Authorize or suggest that the Owner occupy the project, in whole or in part;

(5)Issue a certificate for payment.

13. <u>SUPERINTENDENCE BY CONTRACTOR</u>

a. The Contractor shall have a competent foreman or superintendent, satisfactory to the Owner, on the job site at all times during the progress of the Work. The Contractor shall be responsible for all construction means, methods, techniques, sequences and procedures, for coordinating all portions of the Work under the Contract except where otherwise specified in the Contract Documents, and for all safety and worker health programs and practices. The Contractor shall notify the Owner, in writing, of any proposed change in superintendent including the reason therefor prior to making such change.

b. The Contractor shall, at all times, enforce strict discipline and good order among the workers on the project, and shall not employ on the work any unfit person, anyone not skilled in the work assigned to him, or anyone who will not work in harmony with those employed by the Contractor, the Subcontractors, the Owner or the Owner's separate contractors and their subcontractors.

c. The Owner may, in writing, require the Contractor to remove from the Work any employee the Owner deems to be incompetent, careless, not working in harmony with others on the site, or otherwise objectionable.

14. ACCESS TO WORK

The Owner, the Owner's inspectors and other testing personnel, and inspectors from the Department of Labor and Industry shall have access to the Work at all times. The Contractor shall provide proper facilities for access and inspection.

15. AVAILABILITY OF MATERIALS

If material specified in the Contract Documents is not available on the present market, alternate materials may be proposed by the Contractor for approval of the Owner.

16. CONTRACTOR'S TITLE TO MATERIALS

No materials or supplies for the work shall be purchased by the Contractor or by any Subcontractor subject to any security interest, installment or sales contract or any other agreement or lien by which an interest is retained by the seller or is given to a secured party. The Contractor warrants that he has clear title to all materials and supplies which he uses in the Work or for which he accepts payment in whole or in part.

17. WARRANTY OF MATERIALS AND WORKMANSHIP

a. The Contractor warrants that, unless otherwise specified, all materials and equipment incorporated in the Work under the Contract shall be new, in first class condition, and in accordance with the Contract Documents. The Contractor further warrants what all workmanship shall be of the highest quality and in accordance with Contract Documents and shall be performed by persons qualified at their respective trades.

b. Work not conforming to these warranties shall be considered defective.

c. This warranty of materials and workmanship is separate and independent from and in addition to any of the Contractor's other guarantees or obligations in this Contract.

18. USE OF PREMISES AND REMOVAL OF DEBRIS:

a. The Contractor shall:

(1) Perform his contract in such a manner as not to interrupt or interfere with the operation of any existing activity on the premises or with the Work of any Contractor;

(2) Store his apparatus, materials, supplies, and equipment in such orderly fashion at the site of the Work as will not unduly interfere with the progress of his Work or the Work of any other Contractor; and

(3) Place upon the Work or any part thereof only such loads as are consistent with the safety of that portion of the Work.

b. The Contractor expressly undertakes, either directly or through his Subcontractor(s), to effect all cutting, filling or patching of his work required to make the same conform to the drawings and specifications, and, except with the consent of the Owner, not to cut or otherwise alter the work of any other Contractor. The Contractor shall not damage or endanger any portion of the Work or premises, including existing improvements, unless called for by the Contract.

c. The Contractor expressly undertakes, either directly or through his Subcontractor(s), to clean up frequently all refuse, rubbish, scrap materials and debris caused by his operations, to the end that at all times the site of the work shall present a neat, orderly and workmanlike appearance. No such refuse, rubbish, scrap material and debris shall be left within the completed Work nor buried on the building site, but shall be removed from the site and properly disposed of in a licensed landfill or otherwise as required by law.

d. The Contractor expressly undertakes, either directly or through his Subcontractor(s), before final payment, to remove all surplus material, false work, temporary structures, including foundations thereof, plants of any description and debris of every nature resulting from his operations and to put the site in a neat, orderly condition; to thoroughly clean and leave reasonably dust free all finished surfaces including all equipment, piping, etc. on the interior of all buildings included in the Contract; and to thoroughly clean all glass installed under the Contract including the removal of all paint and mortar

splatters and other defacements. If a Contractor fails to clean up at the completion of the Work, the Owner may do so and charge for costs thereof to the Contractor.

e. During and at completion of the Work, the Contractor shall prevent site soil erosion, the runoff of silt and/or debris carrying water from the site, and the blowing of debris off the site in accordance with the applicable requirements and standards of the Virginia Erosion and Sediment Control Handbook, latest edition, and of the Contract Documents.

f. The Contractor shall not operate or disturb the setting of any valves, switches or electrical equipment on the service lines to the building except by proper previous arrangement with the Owner. The Contractor shall give ample advance notice of the need for cut-offs which will be scheduled at the convenience of the Owner.

19. PROTECTION OF PERSONS AND PROPERTY

a. The Contractor expressly undertakes, both directly and through its Subcontractor(s), to take every precaution at all times for the protection of persons and property which may come on the building site or be affected by the Contractor's operation in connection with the Work.

b. The Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work.

c. The provisions of all rules and regulations governing safety as adopted by the Safety Codes Commission of the Commonwealth of Virginia, issued by the Department of Labor and Industry under Title 40.1 of the *Code of Virginia* shall apply to all work under this Contract.

d. The Contractor shall continuously maintain adequate protection of all his work from damage and shall protect the Owner's property from injury or loss arising in connection with this Contract. He shall make good any such damage, injury or loss, except such as may be directly due to errors in the Contract Documents or caused by agents or employees of the Owner. He shall adequately protect adjacent property to prevent any damage to it or loss of use and enjoyment by its owners. He shall provide and maintain all passageways, guard fences, lights and other facilities for protection required by public authority, local conditions, any of the Contract Documents or erected for the fulfillment of his obligations for the protection of persons and property.

e. In an emergency affecting the safety or life of persons or of the Work, or of the adjoining property, the Contractor, without special instruction or authorization from the Owner, shall act, at his discretion, to prevent such threatened loss or injury. Also, should he, to prevent threatened loss or injury, be instructed or authorized to act by the Owner, he shall so act immediately, without appeal. Any additional compensation or extension of time claimed by the Contractor on account of any emergency work shall be determined as provided by paragraph O. of the General Terms and Conditions.

20. CONTRACTOR'S RIGHT TO STOP WORK OR TERMINATE THE CONTRACT

If the Work should be stopped under any order of any court or other public authority for a period of ninety (90) days through no fault of the Contractor or of anyone employed by him, or if the Owner should fail to pay to the Contractor within thirty (30) days when no dispute exists as to the sum, then the Contractor may, upon ten (10) calendar days written notice to the Owner, stop work or terminate the Contract and recover from the Owner payment for the cost of the Work actually performed, together with overhead and profit thereon, but profit shall be recovered only to the extent that the Contractor can demonstrate that he would have had profit on the entire Contract if he had completed the Work. The Contractor may not receive profit or any other type of compensation for parts of the Work not performed. The Contractor may recover the cost of physically closing down the job site, but no other costs of termination. The Owner may offset any claims it may have against the Contractor against the amounts due to the Contractor. In no event shall termination of the Contract by the Contractor terminate the obligations of the Contractor's surety on its payment and performance bonds.

21. OWNER'S RIGHT TO TERMINATE THE CONTRACT FOR CAUSE

a. If the Contractor should be adjudged as bankrupt, or if he should make a general assignment for the benefit of his creditors, or if a receiver should be appointed on account of his insolvency, the Owner may terminate the Contract. If the Contractor should persistently or repeatedly refuse or should fail, except in cases for which extension of time is provided, to supply enough properly skilled workmen or proper materials, or if he should fail to make prompt payment to subcontractors or suppliers of material or labor, or persistently disregards laws, ordinances or the written instructions of the Owner, or otherwise be guilty of a substantial violation of any provision of the Contract, then the Owner may terminate the Contract.

b. Prior to termination of the Contract, the Owner shall give the Contractor and his surety ten (10) calendar days written notice, during which the Contractor and/or his surety may rectify the cause of the termination. If rectified to the

satisfaction of the Owner within said ten (10) days, the Owner may rescind its notice of termination. If it does not, the termination for cause shall become effective at the end of the ten day (10) notice period. In the alternative, the Owner may postpone the effective date of the termination notice, at its sole discretion, if it should receive reassurances from the Contractor and/or its surety that the causes of termination will be remedied in a time and manner which the Owner finds acceptable. If at any time more than ten (10) days after the notice of termination, the Owner determines that Contractor and/or its surety has not or is not likely to rectify the causes of termination in an acceptable manner or within the time allowed, then the Owner may immediately terminate the Contract for cause by giving written notice to the Contractor and its surety. In no event shall termination for cause terminate the obligations of the Contractor's surety on its payment and performance bonds.

c. Notice of terminations, whether initial or given after a period of postponement, may be served upon the Contractor and the surety by mail or any other means at their last known places of business in Virginia or elsewhere, by delivery to any officer or management/supervisory employee of either wherever they may be found, or, if no such officer, employee or place of business is known or can be found by reasonable inquiry within three (3) days, by posting the notice at the job site. Failure to accept or pick up registered or certified mail addressed to the last known address shall be deemed to be delivery.

d. Upon termination of the Contract, the Owner shall take possession of the premises and of all materials, tools and appliances thereon and finish the work by whatever method he may deem expedient. In such case the Contractor shall not be entitled to receive any further payment. If the expense of finishing the Work, including compensation for additional managerial and administrative services shall exceed the unpaid balance of the Contract price, the Contractor shall pay the difference to the Owner, together with any other expenses of terminating the Contract and having it completed by others.

e. If it should be judicially determined that the Owner improperly terminated this Contract for cause, then the termination shall be deemed to be a termination for the convenience of the Owner.

f. Termination of the Contract under this section is without prejudice to any other right or remedy of the Owner.

22. <u>TERMINATION BY OWNER FOR CONVENIENCE</u>

a. Owner may terminate this Contract at any time without cause, in whole or in part, upon giving the Contractor notice of such termination. Upon such termination, the Contractor shall immediately cease Work and remove from the project site all of its labor forces and such of its materials as Owner elects not to purchase or to assume in the manner hereinafter provided. Upon such termination, the Contractor shall take such steps as Owner may require to assign to the Owner the Contractor's interest in all Subcontracts and purchase orders designated by Owner. After all such steps have been taken to Owner's satisfaction, the Contractor shall receive as full compensation for termination and assignment the following:

(1)All amounts then otherwise due under the terms of this Contract,

(2)Amounts due for work performed subsequent to the latest Request for Payment through the date of termination,

(3)Reasonable compensation for the actual cost of demobilization incurred by the Contractor as a direct result of such termination. The Contractor shall not be entitled to any compensation for lost profits or for any other type of contractual compensation or damage other than those provided by the preceding sentence. Upon payment of the forgoing, Owner shall have no further obligations to the Contractor of any nature.

b. In no event shall termination for the convenience of the Owner terminate the obligations of the Contractor's surety on its payment and performance bonds.

23. GUARANTEE OF WORK

a. Except as otherwise specified, all work shall be guaranteed by the Contractor against defects resulting from the use of inferior materials, equipment or workmanship for one (1) year from the date of final acceptance of the entire project by the Owner in writing. Equipment and facilities, which have seasonal limitations on their operation, shall be guaranteed for one (1) full year from the date of seasonally appropriate tests and acceptance, in writing, by the Owner.

b. If, within the guarantee period, defects are noticed by the Owner which require repairs or changes in connection with the guaranteed work, those repairs or changes being in the opinion of the Owner rendered necessary as the result of the use of materials, equipment or workmanship, which are defective, or inferior or not in accordance with the terms of the contract, then the Contractor shall, promptly upon receipt of notice from the Owner, such notice being given not

more than two weeks after the guarantee period expires, and without expense to the Owner:

(1)Place in satisfactory condition in every particular all of such guaranteed work and correct all defects therein;

(2)Make good all damage to the structure or site or equipment or contents thereof, which is the result of the use of materials, equipment or workmanship which are inferior, defective or not in accordance with the terms of the contracts; and

(3)Make good any work or materials or the equipment and contents of structures or the site disturbed in fulfilling any such guarantee.

c. In any case, where in fulfilling the requirements of the Contract or any guarantee embraced in or required thereby, the Contractor disturbs any work guaranteed under contract, he shall restore such work to a condition satisfactory to the Owner and guarantee such restored work to the same extent as it was guaranteed under such other Contract.

d. If the Contractor, after notice, fails to proceed promptly to comply with the terms of the guarantee, the Owner may have the defects corrected and the Contractor and his surety shall b liable for all expense incurred.

e. All special guarantees applicable to definite parts of the work that may be stipulated in the specifications or other papers forming a part of the Contract shall be subject to the term of this section during the first year of the life of such special guarantee.

f. Nothing contained in this section shall be construed to establish a period of limitation with respect to any other obligation which the Contractor might have under the Contract Documents, including liability for defective work under Section 17 of these additional terms and conditions. This paragraph relates only to the specific obligation of the Contractor contained in this section to correct the work and does not limit the time within which his obligation to comply with the Contract Documents may be sought to be enforced, nor of the time within which proceedings may be commenced to establish the Contractor's liability with respect to his other obligations under this Contract.

g. In the event the work of the Contractor is to be modified by another Contractor, either before or after the Final Inspection, the first Contractor shall remain responsible in all respect under the Guarantee of Work and under any other warranties provided in the contract or by law. However, the Contractor shall

not be responsible for any defects in material or workmanship introduced by the Contractor modifying its work. Both the first Contractor and the Contractor making the modifications shall each be responsible solely for the work done by each. The Contractor modifying the earlier work shall be responsible for any damage to or defect introduced into the work which it is modifying. If any Contractor shall claim that another Contractor has introduced defects of materials and/or workmanship into the work of the first, it shall be the burden of the Contractor making the claim to clearly demonstrate the nature and extend of such introduced defects and the responsibility of the other Contractor. Any Contractor modifying the work of another shall have the same burden if he asserts defects to have been caused by the Contractor whose work he is modifying.

24. ASBESTOS

a. This subsection applies to projects involving existing buildings where asbestos abatement is not a part of the Work. If the Contractor discovers or inadvertently disturbs any material that may contain asbestos that has not been previously identified, that was overlooked during the removal, or which was deemed not to be friable or which was encapsulated, the Contractor shall stop work in the area containing the asbestos, secure the area, and notify the Owner immediately by telephone or in person with written notice as soon as possible. The Owner will have the suspect material sampled.

If the sample is positive and must be disturbed in the course of the Work, the Owner will have the material repaired or removed and will pay for the bulk sample analysis.

If the material disturbed is not within the Contractor's authorized Work and/or Work area or under this Contract, the Contractor will pay for all associated sampling and abatement costs.

b. If asbestos abatement is included as a part of the Work, the Contractor shall assure that the asbestos abatement work is accomplished by those duly licensed in accordance with the specific requirements of the Contract Documents.

c. If asbestos abatement is included as part of the Work, the licensed asbestos Subcontractor shall, in the insurance required, name the Community Services Board and the Contractor as additional insureds.

25. TRAINING, OPERATION AND MAINTENANCE OF EQUIPMENT

a. The Contractor, in conjunction with his Subcontractors and Suppliers, shall provide the Owner's operations and maintenance personnel with instruction and training in the proper operation and maintenance of the equipment and related controls provided or altered in the Work.

b. The Contractor shall provide the Owner with a minimum of two (2) copies of operating, maintenance and parts manuals for all equipment provided in the project. Further specific requirements may be indicated in the specifications.

26. DRUG FREE WORKPLACE: The Contractor acknowledges and certifies that it understands that the following acts by the Contractor, its employees, and/or agents performing services on state property are prohibited.

a. The unlawful manufacture, distribution, dispensing, possession or use of alcohol or other drugs; and

b. Any impairment or incapacitation from the use of alcohol or other drugs (except) the use of drugs for legitimate medical purposes.

APPENDIX E - TERMS AND CONDITIONS

SECTION IV

SPECIAL TERMS AND CONDITIONS
INFORMATION TECHNOLOGY GOODS AND SERVICES

The following is a list of special terms and conditions that may be used at the buyer's discretion in information technology IFBs and RFPs as appropriate. The Community Services Board's General Terms & Conditions, any other special terms and conditions as listed in previous sections of this appendix, and any specific terms developed by the buyer should also be included as needed.

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1. **CERTIFICATION TESTING PERIOD - SYSTEMS**: The system specified in the contract shall be considered ready for testing upon receipt of documentation from the contractor that a successful system audit or diagnostic test was performed at the site demonstrating that the system meets the minimum design/performance capabilities stipulated in the purchase agreement. The ___ day testing period shall commence on the next calendar day following receipt of this documentation. Upon request, the procuring agency will provide written confirmation of its acceptance following successful completion of the certification period. Such acceptance shall not be conclusive of complete conformance in all respects to the contract specifications and other requirements, or the nonexistence of potential latent defects.

   When Used: In solicitations for computer systems requiring the installation of multiple components and configuration prior to system operation. NOTE: Specific certification criteria should be stated either in the specification or as a part of this provision.

   CERTIFICATION TESTING PERIOD - HARDWARE: Equipment ordered herein shall be subject to inspection and a 30-day testing period by the procuring agency. Contractor equipment which is found to not meet the specifications or other requirements of the purchase agreement may be rejected and returned to the vendor at no cost (including return transportation) by the procuring agency. Unless otherwise notified or mutually agreed, acceptance shall become effective at the end of the 30-day testing period. Such acceptance shall not be conclusive of complete conformance in all respects to the contract specifications and other requirements, or the nonexistence of potential latent defects.

   When Used: In solicitations for computer hardware requiring the integration of multiple components for utilization. Specific certification/performance criteria should be stated either in the specification or as a part of this provision.

2. **CONFIDENTIALITY (CSB)**: The Community Services Board agrees that neither it nor its employees, representatives, or agents shall knowingly divulge any proprietary information with respect to the operation of the software, the technology embodied therein, or any other trade secret or proprietary information related thereto, except as specifically authorized by the contractor in writing or as required by the Freedom of Information Act or similar law. It shall be the contractor's responsibility to fully comply with Section 11-52 D. of the Code of Virginia. All trade secret or proprietary information must be identified in writing or other tangible form and conspicuously labeled as "proprietary" either prior to or at the time of submission to the CSB.

   When Used: Solicitations for commercially developed software that has been patented, copyrighted, otherwise protected by law, or when it is anticipate the

vendor may claim that the software contains trade secrets or proprietary information.

CONFIDENTIALITY (Contractor): The contractor assures that information and data obtained as to personal facts and circumstances related to patients or clients will be collected and held confidential, during and following the term of this agreement, and will not be divulged without the individual's and the CSB's written consent. Any information to be disclosed, except to the CSB, must be in summary, statistical, or other form which does not identify particular individuals. Contractors and their employees working on this project will be required to sign the Confidentiality statement in this solicitation.

When Used: Solicitations for commercially developed software that has been patented, copyrighted, otherwise protected by law, or when it is anticipate the vendor may claim that the software contains trade secrets or proprietary information.

3. **DEMONSTRATIONS**: By submitting a bid or proposal, the bidder or offeror certifies that the specified equipment is in productive use and capable of demonstration in the proposed configuration. The CSB reserves the right to require bidders or offerors to demonstrate the functionality of proposed equipment to its satisfaction prior to making an award decision. Such demonstration is intended to show that a vendor's products will perform in a completely satisfactory manner and that they will meet or exceed the performance specifications contained in the solicitation. Failure by a vendor to promptly comply with a request for demonstration could result in their bid being rejected. Failure to reject shall not relieve the vendor of its obligation to fully comply with all requirements of the contract.

   When Used: Equipment purchases in which the agency has a concern that proposed equipment may not be currently available or capable of performing as promised.

4. **EQUIPMENT ENVIRONMENT**: Environmental specifications for any equipment to be delivered under the resulting contract shall be furnished in writing along with the vendor's bid or proposal, should any such requirements be applicable. These specifications must be in sufficient detail to permit all installed equipment to function efficiently from an environmental perspective. Unless otherwise stated in the solicitation, it will be the procuring agency's responsibility to prepare the site at its own expense to meet the environmental specifications provided.

   When Used: For equipment purchases when it is anticipated that the equipment must function in a controlled environment, i.e., a regulated temperature or humidity range, or the absence of electromagnetic interference.

5. **EXCESSIVE DOWNTIME**: Equipment or software furnished under the contract shall be capable of continuous operation. Should the equipment or software become inoperable for a period of more than 24 hours, the contractor agrees to pro-rate maintenance charges to account for each full day of inoperability. The period of inoperability shall commence upon initial notification. In the event the equipment or software remains inoperable for more than ____ consecutive calendar days, the contractor shall promptly replace the equipment or software at no charge upon request of the procuring agency. Such replacement shall be with new, unused product(s) of comparable quality, and must be installed and operational within days following the request for replacement.

   When Used: In solicitations for hardware or software to be used on a continuous basis to support essential activities, and the contractor is responsible for providing full service maintenance.

6. **LIMITATION OF USE**: The Community Services Board's right to use computer software developed entirely at private expense may be limited by the contractor as stipulated in this contract. Notwithstanding any provision to the contrary however, the CSB shall have at a minimum: unlimited use of the software on the equipment for which it is purchased; use of the software on a secondary system for backup purposes should the primary system become unavailable, malfunctions, or is otherwise rendered inoperable; use of the software at another CSB site should the system be entirely transferred to that location; the right to make a backup copy for safekeeping; the right to modify or combine the software with other programs or materials at the CSB's risk; and the right to reproduce any and all documentation provided such reproduction is for the sole use of the CSB. These rights are perpetual and irrevocable; in the event of any actual or alleged breach by the CSB, the contractor's sole remedy shall be to pursue a monetary claim in accordance with Section 11-69 of the Code of Virginia.

   When Used: In solicitations which will result in the acquisition of commercially developed software, when the agency intends to use such software to support critical activities or functions.

7. **MAINTENANCE**: Upon expiration of the specified warranty period and at the Community Services Board's option, the contractor shall provide up to ___ additional one-year periods of on-site maintenance (including labor, parts, and travel) at the prices set forth in the pricing schedule. Maintenance shall not include external electrical work, providing supplies, and adding or removing accessories not provided for in the contract. Maintenance shall also not include repairs of damage resulting from: acts of God, transportation between state locations, negligence by state personnel, or other causes not related to ordinary use in the production environment

in which installed. Each successive year of maintenance may be ordered by the CSB in writing at least __ days prior to expiration of the existing maintenance period.

When Used: In solicitations for computer hardware and software, when maintenance services beyond the basic warranty period are desired, and such extended maintenance service is included in the solicitation's pricing schedule. This clause should be used in conjunction with one of the "service period" clauses. NOTE: The specific maintenance requirements or duties must be stated either in the specifications or as a separate condition of the contract.

8. **NEW PRODUCTS**: Unless otherwise expressly stated in this solicitation, any equipment furnished under the contract shall be new, unused equipment. Any software provided under the contract shall be the latest version available to the general public as of the due date of this solicitation.

   When Used: For purchases where used, reconditioned, or remanufactured equipment and components or other than the latest version of a software package is not acceptable.

9. **OPERATIONAL COMPONENTS**: Unless otherwise requested in the solicitation, stated equipment prices shall include all cables, connectors, interfaces, documentation for all components, and any other items necessary for full systems operation at the user site. This does not include consumable supplies such as paper, tapes, disks, etc., unless such supplies are expressly identified in the pricing schedule.

   When Used: For system purchases requiring incidental hardware for the interconnection of system components.

10. **OWNERSHIP OF INTELLECTUAL PROPERTY**: All copyright and patent rights to all papers, reports, forms, materials, creations, or inventions created or developed in the performance of this contract shall become the sole property of the Community Services Board. On request, the contractor shall promptly provide an acknowledgment or assignment in a tangible form satisfactory to the Commonwealth to evidence the CSB's sole ownership of specifically identified intellectual property created or developed in the performance of the contract.

    When Used: For purchases of software or applications development services which result in deliverables that were developed to specifically meet the state's performance requirements, or when state employees will participate in the creation or invention of any copyright or patentable material.

11. **PRODUCT SUBSTITUTION**: During the term of any contract resulting from this solicitation, the vendor is not authorized to substitute any item for that product and/or software identified in the solicitation without the prior written consent of the Contracting Officer whose name appears on the front of this solicitation, or their designee.

    When Used: Purchases where the vendor will be responsible for maintenance after the sale, and the agency desires to protect against item substitutions.

12. **QUALIFIED REPAIR PERSONNEL**: All warranty or maintenance services to be performed on the items specified in this solicitation as well as any associated hardware or software shall be performed by qualified technicians properly authorized by the manufacturer to perform such services. The Community Services Board reserves the right to require proof of certification prior to award and at any time during the term of the contract.

    When Used: In solicitations for hardware or software when the performance of warranty/maintenance must be performed by qualified personnel so as not to invalidate any warranty or support provided by the product manufacturer.

13. **RELOCATION OF EQUIPMENT**: Should it become necessary to move equipment covered by the contract to another location, the Community Services Board reserves the right to do so at its own expense. If contractor supervision is required, the CSB will provide prior written notice of the move at least thirty days in advance, in which case the contractor shall provide the required services and be reasonably compensated by the CSB. Both the compensation to be paid and any adjustment to the maintenance terms resulting from the move shall be as mutually agreed between the parties. Regular maintenance charges shall be suspended on the day the equipment is dismantled and resume once the equipment is again certified ready for operational use.

    When Used: In solicitations for the acquisition of major computer components or systems for which the contractor is normally the sole provider of maintenance services.

14. **RENEWAL OF MAINTENANCE**: Maintenance of the hardware or software specified in the resultant contract may be renewed by the mutual written agreement of both parties for an additional ____ one-year period(s), under the terms and conditions of the original contract except as noted herein. Price changes may be negotiated at time of renewal; however, in no case shall the maintenance costs for a succeeding one-year period exceed the prior year's contract price(s), increased or decreased by no more than the percentage increase or decrease in the

category of the CPI-W section of the US Bureau of Labor Statistic's Consumer Price Index, for the latest twelve months for which statistics are available.

When Used: In solicitations for hardware or software where extended maintenance beyond the warranty period is not included in the pricing schedule, but the agency wishes to retain the option to acquire such maintenance services with a pre-established cap on the future cost of such services.

15. **REPAIR PARTS**: In the event that the performance of maintenance services under the contract results in a need to replace defective parts, such items may only be replaced by new parts. In no instance shall the contractor be permitted to replace defective items with refurbished, remanufactured, or surplus items without prior written authorization of the Community Services Board.

    When Used: In solicitations for computer hardware that require maintenance after the sale, and the agency wishes to have defective parts replaced only by new parts.

16. **SERVICE PERIOD (EXTENDED)**: Due to the criticality of the applications for which the equipment and/or software is purchased, the contractor shall provide 24 hours a day, 7 days a week, maintenance support, including state holidays. On-site response time shall be within ___ hours following initial notification. All necessary repairs or corrections shall be completed within __ hours of the initial notification.

    When Used: In solicitations for hardware or software when it is essential that the equipment remain in continuous operation due to the criticality of the process or function for which it was obtained.

17. **SERVICE PERIOD (ROUTINE)**: Contractor shall provide 24 hour toll free phone support with a __ hour return call response time. On-site maintenance services shall carry a __ hour response time following initial notification and be available during the normal working hours of 8 A.M. to 5 P.M. Monday through Friday, excluding state holidays. All necessary repairs or corrections shall be completed within ___ hours of the initial notification.

    When Used: In solicitations for hardware or software which require regular maintenance support but which are not of such a critical nature as to require expeditious response times or after hours support.

18. **SERVICE REPORTS**: Upon completion of any maintenance call, the contractor shall provide the agency with a signed service report that includes, at a minimum: a

general statement as to the problem, action taken, any materials or parts furnished or used, and the number of hours required to complete the repairs.

When Used: In solicitations requiring maintenance services when the agency intends to maintain detailed service records. This clause should always be included in any solicitation where maintenance is to be performed on a time and materials basis.

19. **SOFTWARE UPGRADES**: The Community Services Board shall be entitled to any and all upgraded versions of the software covered in the contract that becomes available from the contractor. The maximum charge for upgrade shall not exceed the total difference between the cost of the CSB's current version and the price the contractor sells or licenses the upgraded software under similar circumstances.

    When Used: In solicitations for the purchase of computer software when the agency desires the opportunity to acquire future upgrades as they become available, and the availability of upgrades is not a condition stated elsewhere in the contract.

20. **SOFTWARE DISPOSITION**: Unless otherwise instructed by the contractor, the Community Services Board shall render unusable all copies of software acquired under the contract within thirty days of termination of its license, except that the CSB does reserve the right to retain one copy of the software for archival purposes when appropriate.

    When Used: In solicitations for software when it is anticipated that the software license will only be maintained for a limited period of time.

21. **SOURCE CODE**: In the event the contractor ceases to maintain experienced staff and the resources needed to provide required software maintenance, the Community Services Board shall be entitled to have, use, and duplicate for its own use, a copy of the source code and associated documentation for the software products covered by the contract. Until such time as a complete copy of such material is provided, the CSB shall have exclusive right to possess all physical embodiments of such contractor owned materials. The rights of the CSB in this respect shall survive for a period of twenty years after the expiration or termination of the contract. All lease and royalty fees necessary to support this right are included in the initial license fee as contained in the pricing schedule.

    When Used: In solicitations for the purchase of computer software when it is necessary to assure either the availability of program support or the opportunity to provide internal program support.

22. **TERM OF SOFTWARE LICENSE**: Unless otherwise stated in the solicitation, the software license(s) identified in the pricing schedule shall be purchased on a perpetual basis and shall continue in perpetuity. However the Community Services Board reserves the right to terminate the license at any time, although the mere expiration or termination of this contract shall not be construed as an intent to terminate the license. All acquired license(s) shall be for use at any computing facilities, on any equipment, by any number of users, and for any purposes for which it is procured. The CSB further reserves the right to transfer all rights under the license to another CSB or state or local agency to which some or all of its functions are transferred.

    When Used: In all software procurements when the agency intends to acquire unlimited rights to use computer software for an indefinite amount of time.

23. **THIRD PARTY ACQUISITION OF SOFTWARE**: The contractor shall notify the procuring agency in writing should the intellectual property, associated business, or all of its assets be acquired by a third party. The contractor further agrees that the contract's terms and conditions, including any and all license rights and related services, shall not be affected by the acquisition. Prior to completion of the acquisition, the contractor shall obtain, for the Community Services Board's benefit and deliver thereto, the assignee's agreement to fully honor the terms of the contract.

    When Used: In solicitations for commercial software when it is necessary to maintain continuity of support even in the event of sell or transfer of rights to another party.

24. **TITLE TO SOFTWARE**: By submitting a bid or proposal, the bidder or offeror represents and warrants that it is the sole owner of the software or, if not the owner, that it has received all legally required authorizations from the owner to license the software, has the full power to grant the rights required by this solicitation, and that neither the software nor its use in accordance with the contract will violate or infringe upon any patent, copyright, trade secret, or any other property rights of another person or organization.

    When Used: All solicitations for the procurement of computer software for the purpose of assuring the agency only acquires software from an entity legally authorized to market it.

25. **WARRANTY AGAINST SHUTDOWN DEVICES**: The contractor warrants that the equipment and software provided under the contract shall not contain any lock, counter, CPU reference, virus, worm, or other device capable of halting operations or erasing or altering data or programs. Contractor further warrants that neither it, nor

its agents, employees, or subcontractors shall insert any shutdown device following delivery of the equipment and software.

When Used: In solicitations for hardware or software when the agency wishes to protect both its purchase and existing information resources from possible damage or destruction due to computer viruses or other shutdown devices.

26. **WARRANTY OF SOFTWARE**: The contractor warrants the operation of all software products for a period of __ months from the date of acceptance. During the warranty period, the contractor shall provide ___ hour toll free phone support and all patches, fixes, revisions, updates, upgrades, and minor releases to both the software and its supporting documentation. In addition, the contractor shall provide a two hour return call response time and complete all necessary patches/fixes within __ hours of initial notification.

When Used: In software purchases where the software will be used to support critical agency activities that can not endure extended periods of downtime. NOTE: The warranty requirements or duties are not cited and need to either be added to this clause or included in the specification.

27. **NONVISUAL ACCESS TO TECHNOLOGY:** All information technology which, pursuant to this Agreement, is purchased or upgraded by or for the use of the Community Services Board (the "Technology") shall comply with the following nonvisual access standards from the date of purchase or upgrade until expiration of this Agreement:

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

(II) the Technology equipped for nonvisual access shall be compatible with information technology used by other individuals with whom any blind or visually impaired user of the Technology interacts;

(III) nonvisual access technology shall be integrated into any networks used to share communications among employees, program participants or the public; and

(IV) the technology for nonvisual access shall have the capability of providing equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired.

Compliance with the foregoing nonvisual access standards shall not be required if the head of the using purchasing agency determines that (I) the

Technology is not available with nonvisual accress because the essential elements of the Technology are visual and (ii) nonvisual equivalence is not available.

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

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

The requirements of this Paragraph shall be construed to achieve full compliance with the Information Technology Access Act, Sections 2.1-807 through 2.1-811 of the Code of Virginia.

• **When Used: In all contracts for the procurement of electronic information processing hardware and software, including telecommunications. The head of the Community Services Board may, with respect to nonvisual access software or peripheral devices, approve the exclusion of this clause only to the extent that the cost of such software or devices for the using agency would increase the total cost of the procurement by more than five percent.**

28. **LATEST SOFTWARE VERSION:** Any software product(s) provided under the contract shall be the latest version available to the general public as of the due date of this solicitation.

*** When Used: For purchases where other than the latest available version of a software package is not acceptable.**

APPENDIX F TITLE: Model IFB/RFP Addendum

(CSB Letterhead)

(Date)

SOLICITATION NUMBER: IFB #_____

ADDENDUM NO. 1 TO ALL BIDDERS

COMMODITY (SERVICE): (Title of IFB or RFP)

FOR DELIVERY TO: (Location)

BIDS (PROPOSALS) DUE: (Due Date)

PRE-BID (PROPOSAL)
CONFERENCE: (Conference Date if applicable)

The solicitation referenced above is hereby modified as follows:

Page __, Section __ Change the second sentence to read: _____-
_____

Page __, Section __ Delete the phrase "hours per week" and substitute the phrase "hours per day" from the third sentence. Also, add the following sentence:
_____

The Bids (Proposals) Due Date and hour will remain the same

Note: A signed acknowledgment of this addendum must be received by this office either prior to the bid (proposal) due date and hour or attached to your bid (proposal). Signature on this addendum does not substitute for your signature on the original bid document. The original bid (proposal) document must also be signed.

Very truly yours,

Jane Purchaser
Procurement Officer

_____
Name of Firm

_____
Signature/Title

_____
Date

APPENDIX G - Model Advertisements

NEWSPAPER ADVERTISEMENT

FAX TO:
Classified Advertisement Department
FAX No. _____

Please run the following advertisement for one day in the _____:

_____ Community Services Board
_____, Virginia

Request for Proposals No. _____. To provide _(Title of RFP)_.

Proposals Due by ____ P.M. on __(Date)__ at _(Address)

A (mandatory) (non-mandatory) pre-proposal conference will be held at (Time)_ on _(Date)_ at _(Address)_.

For information, call _(Purchasing Officer)_ at __(Phone Number)_.

Send invoice to above address, attention: _____.

(Note: *Newspaper advertisements need not be lengthy. For purposes of economy, they should restricted to the basic information about what is being purchased, when bids/proposals are due, and where to obtain further information and/or a copy of the solicitation.)*

TO: The Division of Purchases and Supply
805 East Broad Street
P. O. Box 1199
Richmond, Virginia 23209

FAX: 371-8937

FROM: _____Community Services Board
___(Address)
_____, Virginia (Zip)

FOR PUBLICATION IN THE
VIRGINIA BUSINESS OPPORTUNITIES

AGENCY NAME: _____ Community Services Board

DATE:

CATEGORY:

ITEM/SERVICE:

AGENCY REFERENCE NUMBER: (RFP or IFB number)

DESCRIPTION OF SERVICE: (Brief description of work.)

LOCATION:

PROPOSAL RESPONSE DATE:

CONTACT NAME(S): **(Purchasing Officer)** PHONE:

PRE-PROPOSAL CONFERENCE: (Yes or No)
DATE & TIME:
MANDATORY?:

Date Prepared: _____
Date Faxed: _____
Date Mailed: _____

APPENDIX H
TABULATION AND EVALUATION FORMS

Appendix H-1	Evaluation Instrument *This is a model form that may be used by each member of an RFP Evaluation committee to record his/her score. A separate form is used for each Offeror.*	Page H-3
Appendix H-2	Proposal Evaluation Summary *This is a model form that may be used to record information from the Evaluation Instruments.*	Page H-5
Appendix H-3	Proposal Evaluation Consensus	Page H-6

This is a model form that may be used to list the average points assigned to each proposal by the RFP Evaluation Committee. It is a recap of the "Proposal Evaluation Summary" and notes the original and final ranking of each Offeror. All members of the Evaluation Committee should sign this form.

Appendix H-4	Oral Bid Tabulation	Page H-7

This format may be used to record phone quotes. The object is to assure that all bidders are quoting on the same specification. If the specification is a brand name and model number, bidders should quote on the specified item or an equal thereto. If the buyer determine that a lesser quality product is acceptable, all bidders must be allowed to requote on the lesser specification.

APPENDIX H-1

EVALUATION INSTRUMENT
RFP #_____

Name of Offeror: _____

Last four digits of Evaluator SSN#: _____ Date: _____

Did the Proposal include:	YES	NO
Written Narrative	___	___
Other Mandatory Requirements:		
_____	___	___
_____	___	___
_____	___	___
_____	___	___
If any of the above are NO, we <u>may</u> want to consider that proposal as non-responsive. Do you recommend we consider proposal as non-responsive?	___	___

EVALUATION AND AWARD CRITERIA:

1. **(State Criteria #1.)**

   Comments: _____

   _____

   _____

   Points allowed this criteria: _____
   Points assigned by this evaluator for this criteria: _____

2. **(State Criteria #2.)**

   Comments: _____

   _____

   _____

Points allowed this criteria: _____
Points assigned by this evaluator for this criteria: _____

3. **(State Criteria #3.)**

Comments: _____

_____

_____
Points allowed this criteria: _____
Points assigned by this evaluator for this criteria: _____

4. **(State Criteria #4.)**

Comments: _____

_____

_____
Points allowed this criteria: _____
Points assigned by this evaluator for this criteria: _____

5. **(State Criteria #5.)**

Comments: _____

_____

_____
Points allowed this criteria: _____
Points assigned by this evaluator for this criteria: _____

General Comments: _____

_____

_____

TOTAL POINTS ASSIGNED TO THIS PROPOSAL: _____
(Total Possible Points = 100)

APPENDIX H-2

Proposal Evaluation Summary																
Offeror's Names																
Evaluator	1	2	3	4	5	Total	1	2	3	4	5	Total	1	2	3	4
	AVERAGE POINTS ALL EVALUATORS						AVERAGE POINTS ALL EVALUATORS						AVERAGE POINTS ALL EVALUATORS			
TOTAL POSSIBLE POINTS INCLUDING ALL CRITERIA: _____	Comments:						Comments:						Comments:			

APPENDIX H-3

Proposal Evaluation Consensus				
OFFEROR	Average Points	First Ranking	Final Ranking	PROJECT:

COMMENTS:

BY EVALUA

_____

_____

_____

_____

_____

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APPENDIX I - Guidelines For Negotiation

These guidelines were developed primarily for procurement by competitive negotiation for goods and non-professional services. However, much of the data is applicable to competitive negotiations for professional services, negotiation for technical proposals, non-competitive negotiation and negotiation for resolution of problems arising out of performance under contract.

Procurement by negotiation is the art of arriving at a common understanding through bargaining on the essentials of a contract, such as delivery, specifications, price, and terms. Because of the interrelation of these factors with many others, it is a difficult art and requires experience and the exercise of judgment, tact, and common sense. An effective negotiator must be thoroughly prepared and aware of the strengths and weaknesses of his/her position versus the other party to the negotiation. Only through an awareness of relative bargaining strength can a negotiator know where to be firm or where he/she may make permissive concessions in price or terms.

Competitive negotiation really begins with the development of the Request for Proposals (RFP). A well prepared RFP will strengthen the negotiator's position.

Negotiation consists of four equally important steps: Preparation for Negotiation, Conduct of Negotiation, Post Negotiation Actions and Review of Lessons Learned.

PREPARATION:

Plan sufficient time for the negotiation process. Insufficient time leads to hasty decisions. The vendor will sense the pressure of time and take advantage of the situation.

Make a methodical study of all proposals and compare prices, terms and conditions. This will provide the negotiator with the facts required to place the burden on the vendor to justify prices or contractual terms that appear unwarranted. Notes should be made of issues which are likely to arise during negotiation and plans made to deal with these issues. Determine from the proposals those areas in which assistance may be required; technical, engineering, legal, etc.

If a market survey was not conducted prior to issuing the RFP, conduct one. This type information is essential to sound negotiation.

Establish the parameters for specific points in the RFP and vendor proposals that might be traded for more important issues.

Determine the bargaining authority of the vendor representative. Insist on dealing with someone with full authority to commit the vendor. Otherwise, you may have to do the job twice.

Arrange for adequate facilities for the negotiations.

Prepare an agenda.

Be prepared. Study all issues thoroughly. Do not go into a session without having done your homework! Negotiate with the confidence gained from advanced preparation. If unsure contact DPS for assistance in negotiation.

CONDUCTING NEGOTIATIONS:

There are many ways in which negotiations may be conducted. Therefore, each negotiator must develop the techniques which they can utilize most effectively.

Outline the important contract issues and obtain the vendor's position on each. The vendor may not want to consider the logic of the negotiator's position until he/she has explained his/her side of the issue. Try to identify the areas of weakness in the vendor's position.

The negotiator should then make his or her own position known in general terms, citing such areas as policy or budget as justification for the position. This places the burden on the vendor to find a way to comply or justify the exception.

Here, the negotiator brings into play the information gained in the market survey and the competitors' proposals without disclosing what the competition offered. When the vendor disputes the validity of the information, require him to provide the specific information on which his position is based; i.e., cost price analysis.

Reach an agreement on the most important issues before discussing the less important items. If agreement cannot be reached on the major items, the negotiator may use the minor issues for bargaining on the major issues. Be prepared to explore alternatives in the event of disagreement.

Reach an agreement on all contract terms.

One person should be designated as the spokesperson and negotiate for the agency. Team participation in the actual negotiation may be required but the agency's position is finalized by the spokesperson.

POST NEGOTIATION ACTIONS:

Be sure all participants fully understand what has been agreed to.

Reduce the agreements to writing and have both parties sign.

Prepare the final contract, obtain necessary signature and any required supporting documents.

REVIEW OF LESSONS LEARNED:

Critique the negotiations with members of your team, pointing out the strong and weak points observed during the negotiation.

Determine if future requirements can be competitively bid.

DO'S AND DON'TS OF NEGOTIATION

DO'S

Develop your own technique for negotiations.

Be well prepared.

Identify each point to be negotiated.

Establish parameters of discussion for each point.

Determine whether you wish to seek resolution of important issues or small issues first.

Try to settle one point before moving to the next.

Discuss budget limitations, policy and restrictions related to the program.

Be prepared to discuss alternatives.

Negotiate on an even basis. If the vendor has legal or technical support, bring you qualified counterparts.

Avoid arguments.

Avoid interruption.

Avoid quick deals.

Be ethical, fair and firm.

Control the negotiation session.

Attempt to reach a WIN-WIN result e.g. both parties at the conclusion of the negotiation of the negotiation believe they have reached a satisfactory contract.

DON'TS

Under estimate the ability of the vendor.

Disclose the specific contents of other proposals.

Negotiate areas beyond the scope of the solicitation.

Make a concession without obtaining a concession.

Accept the first no.

Be unreasonable or unfair.

Negotiate to the point that the price is no longer fair and reasonable.

APPENDIX J - Model Notice of Intent to Award

_____ COMMUNITY SERVICES BOARD

PUBLIC NOTICE

NOTICE OF INTENT TO AWARD

DATE:	(Date Posted)
SERVICE (PRODUCT):	(Title of IFB or RFP)
SOLICITATION NUMBER:	
INTENDED CONTRACTOR:	(Name) (Address)
AMOUNT:	(Dollar Amount of Award)
CONTRACT OFFICER:	(Name) (Phone Number)
POSTED:	(Date and Time)

APPENDIX N

Virginia Public Procurement Act

The Virginia Public Procurement Act may be accessed at the following E-Mail address: www.dgs.state.va.us/DPS/index.htm

Revised 2002

Then click on VPPA

Appendix A - Definitions

Administrative Lead Time

That period of time from initiation of the requirement by the user to issuance of an award (contract or purchase order).

Agreement

A duly executed and legally binding contract. A consensus of two or more minds in respect of anything done or to be done.

Appeal

Action taken by a bidder, offeror (actual or prospective) or by a contractor to seek a hearing before a disinterested person or panel or in an appropriate circuit court challenging a decision in accordance with Sections 2.2-43364 or 2.2-4365 of the *Virginia Public Procurement Act*.

Bartering

The act of exchanging one good or service for another, without the exchange of money.

Best and Final Offer

The last offer provided by an offeror in response to a Request for Proposals. If a best and final offer is requested, offerors are given the opportunity to submit a best and final offer after negotiations have been held. After the best and final offers are submitted, no further negotiations shall be conducted with any of the offerors and the decision to award is based on the rescoring of the best and final offers.

Bid

A competitively prices 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 prices offer in response to an invitation for bids.

Boiler Plate

A slang word for terms and conditions.

Blanket Purchase Agreement (BPA)

An arrangement under which a purchaser contracts with a vendor to provide the purchaser's requirement for an item(s) or a service, on an as-required and over-the-counter basis. Properly prepared, such an arrangement sets a limit of 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 those persons authorized to accept goods. A BPA may also contain other terms and conditions, such as the discount or specific price list that applies to purchases made under the agreement and what items or services are included (or excluded) under the agreement.

Broker

A person or agent acting as an independent manufacturer's or distributor's representative dealing in products or goods normally sold through the brokerage process in which there is a previously established relationship with the supplier before the bid is submitted.

Charge Card

In the context of this manual, a charge card is a Small Purchase Charge Card (SPCC), used for small purchases ($5,000 or less) of frequent, over-the-counter, Maintenance, Repair, and Operating (MRO) items used in the daily operations of the CSB and for placing orders up to $5,000 against term contracts. It is NOT a credit card.

Collusion

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

Collusive Bidding

An unethical and illegal practice in which suppliers act in collusion to “fix” their bids in a collectively advantageous manner.

Competitive Bidding

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

Competitive Negotiation

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

Competitive Sealed Bid

A bid submitted in a sealed envelope to prevent disclosure of its contents before the deadline for the receipt of all bids. Competitive bidding is the preferred method of procurement for goods and non-professional services amounting to $50,000 or more. Competitive sealed bidding shall not be used to contract for professional services.

Confirming Purchase Order

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

Consideration

Something of value given for a promise to make the promise binding. One of the essentials 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. (See Section 2.2-4301 of the *Code of Virginia*.)

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, firm, or organization under contract to that agency.

Consumer Price Index (CPI)

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

Contract

Contract (noun) - A legally binding promise, enforceable by law. An agreement between parties, with binding legal and moral force, usually exchanging goods or services for money or other consideration. Contracts are any type of agreement, regardless of what it may be called, for the procurement or disposal of supplies, services, or construction.

Contract (verb) - The making of an agreement for consideration.

Contract Administration

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

Contract Management

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

Contract, Cost-Plus-A-Fixed-Fee

A cost-reimbursement type contract that provides for the payment of a fixed fee to the contractor. 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 contractor's actual cost of accomplishing the work. Except in the 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. (See Section 2.2-4331 of the *Code of Virginia*.)

Contract, Design-Build

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

Contract, Fixed Price

A contract which provides for a firm unit or total price to be established at the time of order placement or contract award. The contractor bears the full risk for profit or loss.

Contract, Fixed Price, Incentive

A fixed price is agreed upon with a target cost/profit, a ceiling price, and a profit formula. Below target, the contractor and state share savings. Above ceiling, the contractor must assume all costs.

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

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 or 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 contractor wherein the service rendered does not consist primarily of the acquisition of equipment or materials, or the rental of equipment, materials or supplies. The "rule-of-thumb" is that if the cost of the service provided exceeds the cost of goods that are incidental to the contract, it is a service contract.

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

Contractor

An individual or firm that has entered in an agreement to provide goods or services to the CSB.

Cooperative Procurement

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

CORPRINT

Virginia Department of Corrections, Correctional Enterprises, Printing Facilities.

Cure Notice

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

Debarment

Action taken to exclude individuals or firms for cause from contracting with the CSB for particular types of supplies and/or services for specified periods of time. (See Section 2.2-4321 of the *Code of Virginia*.)

Default

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

Design Specification

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

Designated Public Area

An area that is available to the public during normal business hours and is the area designated by the CSB for the posting of procurement solicitations and notices.

Drug Free Workplace

A site for the performance of work done in connection with a specific contract awarded to a contractor in accordance with the Virginia Public Procurement Act, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during performance of a 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; professionally right or befitting; conforming to professional standards of conduct. The *Virginia Public Procurement Act* covers "Ethics in Public Contracting" in Sections 2.2-4367 through 2.2-4377.

Evaluation of Bids

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

Expedite

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

Fair Market Value

Lowest purchase price paid by public bodies for like items or services purchased in a similar quantity within the last six months. If this information is not available, telephone requests for non-binding quotes may be utilized.

Follow-Up

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

Force Majeure

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

General Terms and Conditions

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

Goods

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

Grant (Grant-in-Aid)

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

Hazardous Material

A substance or material which has been determined by the U. S. Secretary of Transportation to be capable of posing an unreasonable risk to health, safety, and property when transported in commerce.

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 or services being procured. (See Section 2.2-4301 of the *Code of Virginia*.)

Inspection

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

Invitation for Bids (IFB)

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

Late Bid or Proposal

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

Latent Defect

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

Life Cycle Costing

A cost-analysis tool which incorporates not only the purchase price of a piece of equipment, but all operating and related costs over the life of the item, including maintenance, down time, energy costs, etc., as well as salvage value.

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 CSB, and not be calculated simply to impose a penalty on the contractor.

Minority-owned/controlled Business

Defined as a business enterprise that is owned or controlled by one of the following ethnic groups: Blacks, Hispanics, Asian Americans, American Indians, Eskimos, and Aleuts.

Multiple Award

The award of contracts to more than one bidder. When an Invitation for Bids, in its terms and conditions so provides, awards may be made to more than one bidder. (See Section 2.2-4301 of the *Code of Virginia*.) This is appropriate in situations where the award of a single contract would be impractical and awards are limited to the least number of suppliers necessary for a workable contract.

Negotiation

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

Non-Competitive Negotiation

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

Nonprofessional Services

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

Notice of Award

A written notification to a vendor stating that the vendor has received an award of a contract.

Notice of Intent to Award

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. The decision may be changed prior to the actual award of a contract of purchase order.

Offeror

A vendor who makes an offer in response to a Request for Proposal.

Order/Ship Time

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

Payment Bond, for Labor and Material

A bond required of a contractor to assure fulfillment of the contractor'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 public body 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 to be necessary for the item involved to perform and last as required.

Potential Bidder or Offeror

A vendor who, at the time a public body 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 such contract, and who at such time is eligible and qualified in all respects to perform that contract, and who would have been eligible and qualified to submit a bid or proposal had the contract been procured through competitive bidding or competitive negotiation. (See Section 2.2-4301 of the *Code of Virginia*.)

Pre-bid or Pre-proposal Conference

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

Prequalification

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

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

Printing

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

Procurement

The procedures for obtaining goods or services, including all activities from the planning steps and preparation and processing of a requisition or purchase request, 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, dentistry, law, medicine, optometry, pharmacy, or professional engineering. (See Section 2.2-4301 of the *Code of Virginia*.)

Proposal

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

Proprietary Specification

One that restricts the acceptable products or services to that 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 are available from several distributors through competitive bidding.

Protest

A complaint about a governmental 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 Body

Includes any agency, institution or political subdivision (including Community Services Boards) created by law to perform some governmental duty. (See Section 11-37 of the *Code of Virginia*.)

Public Posting

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

Purchase Order

A document which 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.

Qualified Contractors List (QCO)

A list of contractors whose capability to provide a service has been evaluated and approved based on written prequalification procedures.

Qualified Products List (QPL)

A list of products that have been tested and approved based on written prequalification procedures.

Regular Dealer

A person or firm 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 Information (RFI)

An informal document issued when a public body is not aware of the products or services available in the market which may satisfy its requirements. An RFI requests information which can be used either to determine that a competitive solicitation (IFB or RFP) is practical or that competition is not available. An RFI cannot be made into an agreement; however, in the event that competition is not available, the results of an RFI can be used in writing a justification of sole source.

Request for Proposals (RFP)

All documents, whether attached or incorporated by reference, utilized for soliciting proposals; the RFP procedure permits negotiation with offerors (to include prices) as distinguished from competitive bidding when using an Invitation for Bids.

Responsible Bidder or Offeror

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

Responsive Bidder

A person or firm who has submitted a bid which conforms in all material respects (signature, submitting required information, etc.) to the Invitation for Bids. (See Section 2.2-4301 of the *Code of Virginia*.)

Restocking Charge

Charges incurred by a purchasing agency for any material goods that are returned to a vendor or seller and are associated with the normal cost and expense that must be incurred by the vendor for accepting the return of any item to inventory.

Reverse Auctioning

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

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

Any work performed by an independent contractor wherein the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials and supplies. (See Section 2.2-4301 of the *Code of Virginia*.) As a "rule of thumb", if the amount of equipment, materials or supplies amounts to less than 50% of the total value of the contract, the equipment, materials or

supplies are considered incident to the performance of the contract and the contract is considered to be for services rather than goods.

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. (See Section 2.2-4301 of the *Code of Virginia*.)

Single Response

A single response to a competitive solicitation. Prior to establishing a contract or issuing a purchase order based upon a single response, a determination should be made, in writing, that the price(s) quoted are reasonable and in line with the market.

Small Business

Corporation, partnership, sole proprietorship, or other legal entity formed for the purpose of making a profit, which is independently owned and operated, has either fewer than 100 employees or less than $1,000,000 in annual gross receipts.

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 a procurement office 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.

Specification

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

Spot Purchase

A one-time purchase made in the open market. If it is under $50,000, it may be made in accordance with the applicable small purchase procedures. If it is $50,000 or more, it must be made by competitive sealed bidding or by an exception thereto (RFP, sole source, etc.) authorized by law.

Surplus Property

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

Suspension

Action taken to temporarily disqualify a vendor for cause from doing business with the CSB.

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 to time. Term contracts characteristically are established through competitive sealed bidding and usually are 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 public body, at its discretion, of the performance of work in whole or in part and makes settlement of the contractor's claims in accordance with appropriate policy and procedures. In order to exercise Termination for Convenience, this right must be reserved in the policy of the CSB of the terms and conditions of the solicitation.

Termination for Default

The cessation or cancellation by the purchasing office, in whole or in part, of a contract because of the contractor's failure to perform in accordance with the contract’s terms and conditions.

Unsealed Bid

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

Used Equipment

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

Value Analysis

A systematic and objective evaluation of the value of a good or service, focusing on an analysis of function relative to the cost of manufacturing or providing the item or service. Value analysis provides insight into the inherent worth of the final good or service, possibly altering specification and quality requirements that could reduce costs without impairing functional suitability.

Vendor

One who sells goods or services.

Virginia Public Procurement Act

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

Will

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

Women-owned/controlled Business

Business enterprise that is at least 51 percent owned by a woman or women who also control and operate it. In this context, "control" means exercising the power to make policy decisions, and "operate" means being actively involved in the day-to-day management.

APPENDIX B

(NOTE: The purpose of this Vendors' Guide to CSB Procurement Regulations is to instruct current and potential vendors and other providers on how they may market their goods and services to the CSB and provide them with the rules and regulations pertaining thereto. Portions of this Guide that are written in italics should be deleted prior to publishing as a guide for vendors. This Guide may also be used as the basis for a CSB's written procurement policies and procedures. It is suggested that this Guide be revised to include those procurement regulations and procedures that are peculiar to your CSB and made available to current and potential vendors and other providers. It should be referenced in your written procurement solicitations and, if possible, posted on your CSB web site. If it is used as your internal policies and procedures, it must be approved by the CSB Board.)

VENDORS' GUIDE TO CSB PROCUREMENT REGULATIONS

Community Services Board

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CHAPTER 1

Authority and Responsibility

1.1 Introduction

The purpose of this manual is to provide vendors (suppliers and providers) with information on:

- The general rules and regulations governing procurements made by the _____ Community Services Board.
- How to sell goods and services to this Community Services Board.
- Methods of resolving disputes regarding procurements.

1.2 Authority

The _____ Community Services Board (CSB) is a political subdivision of the Commonwealth of Virginia under the provisions of Sections 198 and 199 of Title 37.1 of the Code of Virginia.

Procurements by this CSB are conducted in accordance with the provisions of:

- The Virginia Public Procurement Act as contained in Sections 2.2-4300 through 2.2-4377 of the Code of Virginia (except those sections or portions of sections that apply only to State agencies).
- The purchasing procedures contained in this Vendor's Guide.

1.3 Responsibility

The responsibility for purchasing goods and services for this CSB is vested in the position of the Executive Director. This responsibility is delegated as follows:

NOTE: The following are examples. Actual delegation should be determined by the Executive Director and/or the Board.

- *Purchases of goods and services not exceeding $100 may be made by program directors or their designees.*

- *Purchases of goods and services of $100 but not exceeding $15,000 must be approved in writing by the Purchasing Specialist or the Executive Director.*

- *Purchases of goods and services amounting to $15,000 or more must be approved in writing by the Executive Director or the Chairperson of the Board.*

CHAPTER 2

Procurement Methods

2.1 Policy

In the solicitation and award of contracts, the CSB will not discriminate because of race, religion, color, sex, or national origin of the bidder or offeror. (Code of Virginia, Section 2.2-4310A)

2.2 Exceptions to Competitive Procurements

Competition is not required, by the Virginia Public Procurement Act, for the following procurements:

Small Purchases

Small purchases are low dollar purchases where obtaining competition is considered impractical. This CSB has defined small purchase as goods and services not exceeding $_____ in value. *NOTE: This amount should be approved by the Board and may be lower but it is recommended that it not exceed $2,000 (or $5,000 is the procurement process is handled by a certified purchasing agent.).*

Emergency Purchases

Emergency purchases are defined as those procurements that are necessary to correct occurrences of a serious and urgent nature that

demand immediate attention. These situations often endanger life or property.

Sole Source

Sole source procurements are those in which the goods or service is not practicably available from any other source.

Used Equipment

Used equipment is identified as equipment that has been previously owned and used. It is offered "as is" and amounts to less than $50,000. If the cost is $50,000 or more, the requirements must either be competitively procured or determined to be sole source. Demonstration or factory rebuilt or remanufactured equipment is not considered used since it must meet a specified standard.

Term Contracts

Goods or services available from an existing term contract such as State or Local Government or CSB contracts. Since these contracts were established through a competitive process, they can be used without the necessity for further competition. The CSB may also participate in cooperative procurements with other CSBs or governmental entities.

Other governmental entities

Goods or services procured from other state agencies and political subdivisions. These purchases may include:

- Surplus property.
- Products and services produced by the Virginia Department of Corrections and the Virginia Department for the Visually Handicapped.
- Products sold through the Virginia Distribution Center.
- Products and services sold by other state and counties.

Sheltered Workshops

Goods or services may be purchased from sheltered or supported employment workshops.

Real Estate

The purchase or rental of real property is not covered under the Virginia Public Procurement Act. The CSB will make every effort to procure real property in a competitive manner; however, there may often be only one piece of property available that meets the CSB's requirements in the areas of location, space and accessibility.

Other Acquisitions

Competitive methods are not required for the procurement of:

- Equipment and supplies amounting to less than $50,000 for testing or evaluation.

- Services of the following providers where the total amount of expenditures per year is less than $50,000:

  - Academic/research consultants.
  - Honoraria and entertainment.
  - Royalties and film rentals when only available from the producer or protected distributors.
  - Membership dues.
  - Writers.
  - Artists and photographers.

- Equipment, supplies or services that are offered on a no cost basis to the CSB. The CSB has the right, however, to either accept or reject such donations.

2.3 Preferences

Preferences are allowed by the Virginia Public Procurement Act only in procurements involving:

- Tie bids in which the one of the tied bids is from a Virginia vendor or is for Virginia-produced goods while the other bid(s) is from out-of-state. The award will be made to the Virginia vendor or to the Virginia-produced product. Otherwise, the tie will be broken by drawing or a flip of the coin.

- The low bidder is from a state with an in-state preference. In this case, the amount of that state's preference may be subtracted from the next highest Virginia vendor's price. If the Virginia vendor's price is then lower than the out-of-state vendor's price, the award may be made to the Virginia vendor.

  EXAMPLE: If out-of-state Bidder "A" (from a state having an in-state preference of 4%) bid $1.00 each and a Virginia bidder bid $1.03 on an equal product, the award could be made to the Virginia bidder because his/her price of $1.03 is within 4% of Bidder A's price.

- Recycled Content. If a tie bid is not decided by one of the above two circumstances, the award shall be made to the bidder whose goods contain the greatest amount of recycled content.

2.4 Specifications or Scopes of Work

The Virginia Public Procurement Act requires specifications, scopes of work or statements of need to be expressed in a manner that is:

- Sufficiently complete and specific to ensure users needs are adequately met,
- Broad enough to ensure competition and
- "Reflect the procurement needs of the purchasing body rather than being drawn to favor a particular vendor." (Section 2.2-4300 of the Code of Virginia)

The following types of specifications may be used to describe the needs of this CSB:

Generic Specification

Generic specifications describe requirements without reference to a brand name or model number. Generic specifications include:

- Performance-type specifications which describe what the product or service must do rather than how the product or service must be designed.

- Life Cycle Costing (LCC) is a variation of a performance-type specification. A contract award, based upon LCC, takes into account all known cost factors associated with the procurement, installation, maintenance and ultimate disposal of the item purchased.

- Design-type specifications describe how the product or service is to be designed and usually:

  - Includes those requirements that are necessary to provide the level of quality and performance needed by the user.

  - Is brand neutral.

  - Does not include any requirements which are unnecessary and might restrict other acceptable brands from competition.

- Qualified Products Lists (QPL) are used when the time necessary to

evaluate competing brands is too lengthy to be conducted during the procurement process. The award of a solicitation which includes a QPL will be made only to a bidder or offeror quoting on a product listed on the QPL. Bidders or offerors wishing to offer another product on future solicitations must apply to the CSB to have that product evaluated.

- Qualified Contractors List (QCL) are used when it is necessary to pre-qualify contractors to perform a particular service prior to issuing a solicitation. The award of a solicitation which includes a QCL will be made only to a bidder or offeror listed on the QCL. Bidders or offerors wishing to participate in future solicitations must apply to be CSB to be evaluated.

Brand Name or Equal

Unless otherwise stated in the solicitation, "the name of a certain brand make or manufacturer does not restrict bidders to the specific brand, make or manufacturer named". Rather, the use of a brand name "conveys the general style, type, character, and quality of the article desired. Any article that the public body in its sole discretion determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted". (Section 2.2-4315 of the Code of Virginia)

Proprietary

A proprietary specification restricts the acceptable product to that of one manufacturer or a particular brand or model. Competition may be available from several distributors of the specified product; however, only one brand may be acceptable due to reasons such as:

- The required product is to be a component of a system already in use, or

- The use of another brand would require considerable reorientation and training.

EXAMPLE: A sheltered workshop may have eight sewing machines of the same brand and model. The purchase of an additional sewing machine of a different brand with different features and controls may not be practical for this environment where extensive training is necessary in order for a worker to become proficient on a particular machine.

2.5 Competitive Procurement Procedures

Procurements that are not exempt from competition (see section 2.2) will be handled as follows:

Small Purchases

Small purchases are defined by the Virginia Public Procurement Act as those under $50,000. Based upon the estimated value of the procurement, this CSB will utilize the following procedures:

NOTE: The dollar amounts shown below are examples. Each CSB may wish to establish their own procedures for purchases of less than $50,000.

- Up to $2,000 - Verbal (telephone) or written quotations may be used. Competition may be obtained but is not required. Competion may not be required for purchases valued at up to $5,000 if the procurement is made by a certified purchasing agent.

- $2,000 ($5,000 for a certified purchasing agent) to $14,999 - Verbal (telephone) or written quotations will be solicited from at least three (3) potential suppliers or providers. A record will be kept of each quotation, indicating the name of the individual giving the quotation, the date, the price and the product or service offered.

- $15,000 to $49,999 - Unsealed written bids or proposals will be solicited from at least four (4) potential sources. When written bids or proposals are solicited:

  - The solicitation (invitation for bids or request for proposals) will contain:

    - The specifications or scope of work (needs).
    - The date, time and place the bids or proposals are due.
    - The terms and conditions applicable to the solicitation.

  - Bids or proposals may be delivered in person, mailed, or sent via telefax; however, they must reach the office and/or person designated in the solicitation by the date and time indicated.

  - Clarifications may be obtained by telephone; however, no change is made in the solicitation except by a written addendum.

  - Bids or proposals are not opened publicly.

Sealed or Formal Bids

Invitations for Bids (IFB) are issued to request sealed or formal bids. Sealed or formal bids are primarily used for procurements of goods or services where the estimated value is $50,000 or more. The sealed or

formal bid procedures include:

- Public posting for at least ten (10) days.
- Written sealed bids submitted by bidders.
- Public bid opening where bidders' names, prices, discount terms and brand names and model numbers are read aloud.
- Bid evaluation based upon the requirements as set forth in the IFB.
- Award made to the lowest responsive and responsible bidder(s).
- Late bids will be returned unopened.

Two-step Sealed Bidding

The two-step bid procedure is used where there are inadequate specifications or where the CSB wishes to obtain the latest technology or to take advantage of vendor innovation.

Step One: Solicitations are issued to request an unpriced technical proposal. The technical proposals are evaluated in accordance with the evaluation criteria indicated in the IFB.

Step Two: Invitations for Bids (IFB) are issued to those bidders who responded to Step One and whose technical proposals were determined to be acceptable. Award is made to the lowest responsive and responsible bidder(s).

Combination of Steps One and Two: Both the technical proposal and the bid prices may be requested at the same time but in separate sealed envelopes. Only those price envelopes from bidders submitting acceptable technical proposals will be opened.

Competitive Negotiation (RFP)

Competitive Negotiation is used to procure goods or services upon determination in writing that competitive sealed bidding is:

- Not practicable or,
- Not fiscally advantageous to the CSB.

(Section 2.2-4303-C of the Code of Virginia)

EXAMPLE: Providers of the required service have different

approaches to achieve the end result. Also, the CSB wishes to consider the varying levels of experience and expertise of the potential offerors; therefore, an award cannot be based upon the lowest responsive and responsible bidder.

The competitive negotiation procedures includes:

- Request for Proposals (RFP) issued by the CSB. Stated in the RFP will be:

  - The due date and time for the proposals.
  - The evaluation criteria.
  - Terms and conditions pertaining to the procurement.
  - Any special requirements.

- Public posting for at least ten (10) days.

- Publication in a newspaper of general circulation in the area in which the contract is to be performed.

- The selection of two or more of the best suited offerors, based upon the evaluation criteria.

- Question and answer clarification conference with one or more offerors may be scheduled if the CSB deems it advisable. This conference:

  - May be conducted either in person or via the telephone.
  - Is limited to a clarification or verification of the offeror's written proposal.
  - Will not include negotiations.
  - May require the offeror to document an answer if a written clarification is deemed, by the CSB, to be advisable.

- Negotiations conducted with the two or more best suited offerors unless only one offeror is determined by the CSB to be fully or most highly qualified.

- Award to the offeror which, in the CSB's opinion, has made the best proposal or is the most highly qualified.

Professional Services

Definition - Professional services are defined, in Section 2.2-4301 of the Code of Virginia, as "work performed by an independent contractor within the scope of the practice of accounting, actuarial services, architecture, land surveying, landscape architecture, law, dentistry,

medicine, optometry, pharmacy or professional engineering".

Procedure - The procedures for Competitive Negotiation are used in the procurement of professional services with the following exceptions:

- The RFP will not request estimates of man-hours or cost for services.
- Repetitive informal interviews may be conducted in which non-binding estimates of total project cost and methods utilized in arriving at that cost may be discussed.
- Offers will be ranked in order of preference.
- Negotiations are conducted beginning with the first-ranked offeror.
- If agreement cannot be reached with the first-ranked offeror, negotiations are formally terminated with that offeror and negotiations are conducted with the second-ranked and so on until an agreement is reached.

At any time during the negotiations, the CSB may terminate all negotiations and readvertise the requirement.

2.6 Procurement of Conference Facilities

The cost of renting conference facilities is comprised of:

- Rental of guest rooms.
- Rental of meeting rooms.
- Purchase of food.
- Rented items (such as audio-visual equipment, etc.)

The rental of guest rooms and meeting rooms is considered rental of real estate and may be purchased without competition. The purchase of food and the rental of equipment is considered a procurement and, if these costs are expected to exceed *$5,000*, they will added to the anticipated cost of the rooms and the entire package will be purchased competitively. A formal Invitation for Bids will be issued if the total requirement, including room rental, equipment rental and purchase of food is anticipated to exceed $50,000.

2.7 General Rules Pertaining to Bids and Contracts

The following rules are applicable to all solicitation (IFBs or RFPs) and contracts issued by this CSB.

Bid Evaluation

The CSB reserves the right to reject any and all bids in whole or in part and to waive any informality in the bid. In the case of errors in the

extension of prices, the unit price will govern.

Multiple Awards

Unless otherwise specifically indicated in the solicitation, the CSB may award a multi-line program in whole, in part, or on an individual line item basis.

Assignment of Contract

A contract shall not be assignable by the vendor in whole or in part without the written consent of the CSB office issuing the contract.

Contract Renewal or Extension

A contract may contain a renewal clause describing the conditions under which a term contract may be renewed. A contract not containing a renewal clause may be extended by mutual consent for a limited period of time, not to exceed six (6) months. The CSB may extend the term of an existing contract for services to allow completion of any work undertaken but not completed during the original term of the contract.

Negotiations with Bidders

Sealed bid (IFB) programs may be canceled or rejected by the CSB. If not canceled or rejected, a contract will be awarded to the lowest responsive and responsible bidder based upon the bid submitted except that if the bid exceeds available funds, the CSB may negotiate with the apparent low bidder to obtain a contract price within available funds.

Contract Modification

A contract may include provisions for renewal, extension, or modification; however, no additional consideration may be paid to the contractor because of renewal or extension unless specifically authorized under the original contract. A public contract may include provisions for modification of the contract during performance, but no fixed price contract may be increased by more than 25 percent of the original amount of the contract or $50,000, whichever is greater, without the written approval of the Board.

CHAPTER 3

Responsibilities of Vendors and Providers

3.1 Application and Registration

Vendors or providers wishing to provide products or services to the CSB must submit a written request to the office of the Executive Director *(or his/her designee)* indicating the products or services being offered. The CSB may require additional information pertaining to the organization, financial condition and capabilities of the vendor or provider prior to the inclusion of that firm on the CSB vendor list.

In addition the CSB may:

- Require the submission of a vendor application form by the vendor or provider.
- Make on-site inspections to verify the capability of the vendor or provider prior to begin placed on the list.
- Remove a vendor or provider from the mailing list for failure to respond to *two* consecutive solicitations.

NOTE: Approval of a vendor or provider to be placed on the CSB vendor mailing list does not constitute any commitment on the part of the CSB to include that vendor or provider on the mailing list for all solicitations for the goods or services offered. The CSB will attempt to provide all vendors and providers an opportunity to respond to solicitations on a rotational basis; however, the mailing list for each solicitation will, of necessity, include responsible vendors or providers who consistently offer responsive bids and proposals.

Prospective vendors and providers may check the solicitations posted on the procurement bulletin board to learn of IFBs or RFPs for which they may not have been on the mailing list. Copies of these solicitations will be provided upon request.

The CSB may elect, as an alternative to maintaining a vendor mailing list, to participate in the Commonwealth of Virginia's e-procurement program, known as eVA. If this option is used, the CSB may obtain some or all of its potential bidders and offerors from the eVA vendor list. Vendors may register with eVA at: www.eVA.state.va.us.

3.2 Responsible Bidder or Offeror

In determining a responsible bidder or offeror, a number of factors including but not limited to the following are considered. The vendor should:

- Be a regular dealer, supplier or, when required in the solicitation, an authorized dealer of the goods or services offered.

- Have the ability to comply with the required delivery or performance schedule, taking into consideration other business commitments.

- Have a satisfactory record or performance.

- Have a satisfactory record of integrity.

- Have the necessary facilities, organization, experience, technical skills, and financial resources to fulfill the terms of the purchase order or contract.

3.3 Debarment

Debarment is action taken by the Board of the CSB to exclude individuals or firms from contracting with the CSB for particular goods or services for specified periods of time. (Section 2.2-4321 of the Code of Virginia). Debarment does not relieve the vendor or provider of responsibility for existing obligations.

Individuals or firms may be debarred for up to one (1) year for improper conduct including:

- Breach (including anticipatory breach) of a contract with the CSB.

- Stating an unwillingness or inability to honor a binding bid. (A mere request to withdraw a bid, which does not otherwise state an unwillingness or inability to perform, is not a cause for debarment.)

- Falsifying or misrepresenting manufacturer's specifications in order to appear responsive to a solicitation.

- Conferring or offering to confer any gift, gratuity, favor, or advantage, present or future, upon any employee of the CSB who exercises any "official responsibility" for a "procurement transaction" as those terms are defined in Section 2.2-4368 of the *Code of Virginia*. It is not necessary that the offer be accepted by the employee, or that the offer be made with intent to influence the employee in an official act. Extending to any CSB employee exercising official responsibility for a procurement transaction any discount or privilege not available to all CSB employees is considered to be offering an advantage.

- Any cause indicating that the individual or firm is not a responsible vendor.

- A determination by the Executive Director that a vendor has used abusive or obscene language or a threatening manner toward a CSB employee exercising official responsibility for a procurement transaction during the performance of their duties as a result of the performance of their duties.

- Sale, under non-emergency conditions, of building materials, supplies or equipment for any building or structure contracted by or for the CSB by a person or independent contractor employed to provide architectural, engineering or design services, but not construction for such building or structure or from any partnership, association or corporation in which the architect or engineer who has provided or is providing the services has a personal interest. *Code of Virginia, Section 2.2-4374.*

- Consent of the firm or individual being debarred.

- Failure to pay re-procurement cost pursuant to a contract termination for default.

Individual or firms may be debarred for up to three (3) years for any of the following reasons:

- Conviction of any criminal offense involving public contracting.

- Court judgment finding a violation of either federal or state antitrust laws.

- Conviction of any offenses indicating a lack of moral or business integrity.

NOTE: The CSB board or your locality (if you are a single jurisdictional CSB) may determine different policies related to debarment. Changes to the above section may be necessary.

Debarment does not relieve the contractor of responsibility for existing obligations.

3.4 Debarment Notification

An individual or firm being debarred from contracting with the CSB will be notified in writing. The notice shall state the reasons for the action taken and the length of the debarment. This decision shall be final unless that action is overturned upon an appeal.

3.5 Debarment Period

Debarment shall be for a period of one (1) year except that debarment for court judgment finding a violation of either federal or state antitrust laws or conviction of any offenses indicating a lack of moral or business integrity shall be for a period of three (3) years. Debarment shall commence upon notification of debarment, or if later, upon expiration of any existing debarments.

Notwithstanding the prescribed duration of the debarment, at the discretion of the CSB Executive Director, a debarment may be lifted or suspended at any time if it is in the best interest of the CSB. A debarred individual or firm can apply for reinstatement in writing at any time to the debarring official. This request should:

- Cite actions taken to remedy the reason for debarment or,
- Cite actions taken to prevent recurrence of the situation that caused the debarment action to be taken.
- Cite evidence indicating that lifting or suspension of the debarment would be in the best interests of the CSB.

Examples of actions that the Executive Director may take into consideration include, but are not limited to:

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

3.6 Vendor Assistance to the CSB

Vendor sales efforts of a consultative or advisory nature are encouraged. These efforts provide information to keep the CSB up-to-date. The furnishing of product or service information by a vendor is considered to be normal sales effort and does not entitle the vendor to preferential treatment in the awarding of contracts.

3.7 Personal Interest and Gifts

No vendor shall offer any gift, gratuity, favor, or advantage to any CSB employee who exercises official procurement responsibility, develops procurement requirements, or otherwise influences procurement decisions. CSB employees may attend vendor-sponsored seminars or trade shows where the buying staffs will benefit from receiving product information and learning of new techniques and trends. Food, drinks, and give-away items offered to all participants at such functions may be accepted by CSB employees attending.

3.8 Copyright

No vendor may copyright any work contracted for by the CSB and produced for the CSB without the written consent of the CSB.

3.9 Ownership of Artwork, Negatives, etc. for Printing

All artwork, negatives, dies, overlays, or similar materials used to print a job shall be the property of the CSB and must be returned the CSB upon completion.

3.10 Overruns, Underruns for Printing Jobs

The CSB is not required to accept overruns unless so stated in the solicitation. The CSB may, at its discretion, accept up to a ten percent overrun. Prices for overruns shall not exceed the quoted base price per unit, or the quoted price for additional copies run at the same time. Whichever price is less will prevail. The CSB, at its discretion, accept an underrun, provided that credit is allowed the CSB at the full base price per unit for the quantity of the underrun.

CHAPTER 4

Solicitations - General Rules

4.1 Selection of Bidders and Offerors

All qualified vendors have access to CSB business unless they have been officially suspended or disbarred. (See Sections 3.3 and 5.11) It may not be practical, due to a large number of qualified vendors, for the CSB to mail solicitations to every known vendor for a particular goods or service;

however all solicitations with an estimated value of $15,000 or more will be posted on the CSB Procurement Bulletin Board and any vendor may request a copy.

On occasion, a competitive procurement may be restricted to:

- Manufacturers.
- Vendors whose products or services have been pre-approved and are listed on a Qualified Products List (QPL) or a Qualified Contractors' List (QCL).
- Vendors who possess certain licenses or other qualifications.

When vendor restrictions are applicable to a solicitation, the restriction(s) will be so stated in the IFB or RFP.

The CSB also reserves the right to purchase through the Commonwealth of Virginia's electronic procurement program, known as eVA.

4.2 Response Time

Normally, the time set for return of sealed bids or proposals is fourteen to seventeen days after publication of the IFB or RFP. The minimum time will not be less than ten calendar days and, if time is not critical, as much as thirty calendar days may be allowed.

4.3 Pre-Bid or Pre-Proposal Conference

Pre-Bid or Pre-Proposal conferences may be scheduled for certain solicitations, especially when the product or service being purchased is complex or contains critical elements. The date, time and place of the conference will be noted in the solicitation. Attendance at some conferences may be mandatory and, if so, this fact will also be noted in the solicitation. When attendance is mandatory, only bids or proposals submitted by vendors who were represented at the conference will be considered.

4.4 Receipt of Bids or Proposals

The solicitation will state where the bids or proposals are to be delivered and the due date and time. Bids or proposals not received in the designated place by the due date and time are automatically disqualified and will not be considered. The official time used in the receipt of responses is that time on the clock or automatic time stamp machine in the office that receives the bids or proposals.

The outside of the envelope containing a sealed bid or proposal must be marked with the name, number and due date of the solicitation. Sealed bids or proposals not marked may be inadvertently opened and the information compromised which may cause the bid or offer to be disqualified.

Vendors should not combine two or more responses to separate IFBs or RFPs into one envelope since they may have different due dates.

4.5 Canceling or Amending a Solicitation

The CSB may cancel or withdraw a solicitation in whole or in part and reject any and all bid or proposals at any time prior to an award.

Amendments may be made by the issuance of an addendum prior to the time set for receipt of response.

4.6 Facsimile Bids or Proposals

Facsimile responses will be accepted for unsealed (or informal) solicitations.

Facsimile responses will not be accepted for sealed or formal solicitations.

4.7 Signature on Bid or Proposal

Proposals, bids, and all addenda returned by the vendor must be signed in ink as instructed in the solicitation documents. The person signing the bid or proposal must be a person authorized by the vendor to sign bids or proposals. Facsimile or typewritten signatures are not acceptable responses to a formal IFB or RFP in which sealed responses are required. The person signing must include his or her title, and if requested, must verify his or her authority to bind his or her company in contract. **Failure to sign the face of the bid or proposal in the space provided will result in rejection of the bid or proposal unless the unsigned bid or proposal is accompanied by other signed documents indicating the bidder's or offeror's intent to be bound.**

4.8 Bonds

Bid bonds, a performance and a payment bond may be required in a solicitation. When a bid bond is required, the amount required will not exceed 5% of the amount of the bid. A bid bond, when specified, must

accompany the bid. (Section 2.2-4336 of the *Code of Virginia*) Performance bonds and payment bonds, if requested, must be in an amount at least equal to 100% of the accepted bid or proposal unless otherwise specified. (Section 2.2-4337 of the *Code of Virginia*)

The CSB (upon approval of its legal advisor) may accept, in lieu of a bid, payment or performance bond:

- Certified check.
- Cash escrow.
- Personal bond.
- Property bond.
- Bank or savings and loan association's letter of credit on certain designated funds in the face amount required for the bid, payment or performance bond.
  (Section 2.2-4338 of the *Code of Virginia*)

4.9 Specifications - Questions and Comments

The CSB intends to use specifications that encourage competition. Vendors are encouraged to inform the responsible purchasing office in writing whenever they have comments or questions concerning specifications or solicitation requirements. Suggestions concerning new products or services are also encouraged. This information should be provided to the responsible purchasing office as early as possible in order to provide time to consider the suggestion and take any necessary action before the scheduled receipt date.

4.10 Contractor Registration (License)

All vendors bidding on construction, demolition, repair, or improvements to facilities which are estimated to be $7,500 (1,000 for electrical, plumbing and HVAC work) or more, must be registered contractors with the Department of Professional and Occupational Registration, Virginia Board for Contractors, in accordance with Title 54, Chapter 7 of the Code of Virginia. In addition, all nonresident contractors and subcontractors submitting bids on the above work who are not registered with the Department of Commerce shall register with the Department of Labor and Industry under the provisions of Subsection 40.1-30 of the *Code of Virginia*.

4.11 Terms and Conditions

Solicitations contain general terms and conditions which incorporate the procedures and provisions of this manual as well as all statutory provisions. Special terms and conditions may change or rescind the procedures and provisions of this manual, and the solicitation should be read with care prior

to submission of a bid or proposal. Modification of or additions to any portion of an IFB made by a bidder which affects quality, quantity, price or delivery may cause rejection of the bid as being nonresponsive. In the case of modifications or additions to IFBs which do not affect quality, quantity, price and delivery, the CSB may, in its sole discretion, on a case-by-case basis, reject them as nonresponsive, or waive them as informalities in appropriate situations or require the bidder to withdraw the nonresponsive language within a specified period of time as a condition to not being declared nonresponsive. Modifications or additions to any portion of an RFP, including but not limited to contractual terms and conditions and the requirements for that which is to be procured, are adequate grounds for rejecting the proposal unless undesired modifications or additions are amended or withdrawn to the satisfaction of the CSB during the course of any discussions and negotiations that may be held. No modification of or addition to any provisions of a solicitation shall be effective unless reduced to writing and signed by the parties to the contract.

4.12 Pricing and Discounts

Solicitations normally request net price FOB destination for the unit, item or service specified. Cash discounts offered for prompt payment must be clearly shown and will be taken if payment is made within the specified time frame, i.e., 2%-20 days. Cash discounts will not be used as a factor in award unless the CSB so specifies in the solicitation.

4.13 Samples

Samples of items, when called for in a solicitation, must be furnished free of charge or expense. Samples submitted by the successful bidder or offeror may be held for comparison with merchandise furnished. All samples submitted may be subjected to tests and evaluation by either a qualified laboratory or test panel, and the results may be a factor in making the award. Samples not destroyed in testing will, if requested, be returned to the bidder or offeror at his or her own expense. Requests for the return of samples must be made within thirty (30) days following the due date for the solicitation. Requests for return of samples will be honored upon the completion of testing and evaluation. Samples not claimed within 60 days will be disposed of.

4.14 Alternate Bids

An alternate bid is a bid submitted in response to an IFB which is in knowing variance from the specifications. The CSB cannot accept an alternate bid, however, if it does not meet the requirements of the specifications or scope of work. If the CSB believes the alternate specification better meets its needs, it may reject all bids and rebid the requirement with a revised

specification using the features of the alternate. Information on products or services with alternate specifications or scopes of work should be submitted to the CSB as early as possible in order for an evaluation to be made prior to issuing the solicitation.

4.15 Taxes

The CSB is exempt from Federal Excise Taxes and Virginia State Sales Tax. The State Sales Tax does not apply to most sales made to the CSB. Contractors doing business with the CSB are not exempt from sales tax on materials and supplies that are installed and become part of real property. The sales taxes paid by a contractor on such material or supplies are a cost of doing business and should be considered in pricing when preparing a solicitation response. (See Virginia Retail Sales and Use Tax Regulations, Sections 630-10-27 and 630-10-45 D and E.)

4.16 Amending or Withdrawing Bids or Proposals

The conditions under which bids or proposals may or may not be amended or withdrawn by a bidder or offeror are as follows:

Amend a bid or proposal prior to opening date and hour.	This action is permitted if a written request if received by the office which issued the solicitation.
Alter or amend a bid or proposal prior to opening date and hour	The person authorized to submit bids or proposals may request the return of the bid or proposal. He or she should then: • Draw a single line through the information to be changed. • Insert the desired information. • Initial the change. • Refrain from erasing or opaqueing information on bid or proposal. **OR** The person authorized to submit bids or proposals may submit a letter outlining the changes to be made in the bid or proposal.

Correct an informality discovered in a bid after the opening date and hour

An informality is a minor defect or variation of a bid or proposal that may be waived or corrected without prejudice to other bidders. It does not affect:

- Price,
- Quality,
- Quantity,
- Delivery schedule, or
- Contractual conditions.

The CSB may, in its sole discretion, waive such informalities or permit the bidder to correct them, whichever procedure is in the best interests of the CSB. Examples of informalities that may be corrected in this manner are:

- Return of less than the number of signed bids required by the IFB.
- Failure to sign the face of the bid in the space provided, but only if the unsigned bid is accompanied by other signed documents indicating the bidder's intent to be bound.
- Failure to acknowledge receipt of an addendum to the IFB, but only if it is clear from the bid that the bidder received the addendum and intends to be bound by its terms, or the addendum involved had a negligible effect on price, quantity, quality, or delivery.

Errors of judgment in a bid.

Bids may not be withdrawn or corrected due to mistakes which are attributable to errors in judgment and the fact that an error was made is not obvious to the person with the procurement responsibility.

Non-Judgmental errors in a bid.

Errors in bids may be corrected or withdrawn if the following conditions are present:

- Mistakes are present but the intended quotation is evident to the person with the procurement responsibility. The CSB may correct the bid or allow the bidder to withdraw the bid.

EXAMPLES: Typographical errors, errors in

extending unit prices, transposition errors, and arithmetical errors.

- Mistakes that are evident to the person with the procurement responsibility; however, the intended quotation is not evident. The bid cannot be corrected; however, the CSB may permit the bidder to withdraw the bid.

  EXAMPLES: A price that is significantly lower than the other bids received or a quote on an item that the bidder obviously does not supply.

Mistakes discovered in a bid or contract after award.

Mistakes may not be corrected or withdrawn after the award of a contract.

Construction bids.

A bidder for a construction contract may withdraw his or her bid from consideration if the:

- Price was substantially lower than other bids due solely to a mistake therein.
- Bid was submitted in good faith.
- Mistake was a clerical mistake as opposed to a judgmental mistake.
- Mistake was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn.
- Bidder submits to the CSB or designated official his or her original work papers, document and materials used in the preparation of the bid within one day after the dated fixed for submission of bids.
- Work papers are delivered by the bidder in person or by registered mail at or prior to the time fixed for the opening of bids. The bids shall be opened one day following the time fixed by the public body for the submission of bids.
- Bidder shall claim in writing, within two hours after

Construction Bids
(Continued)

the opening of bids, any mistake as defined herein and withdraw his or her bid.

The contract shall not be awarded by the public body until the two-hour period has elapsed. Such mistake shall be proved only from the original work papers, documents and materials delivered as required herein. (See Section 2.2-4330 of the *Code of Virginia*.)

4.17 Open Records

Procurement records are open to the inspection of any citizen or any interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act. The following exceptions apply:

- Cost estimates relating to a proposed procurement transaction prepared by or for the CSB are not open to public inspection (Section 2.2-4342-B, *Code of Virginia*).

- Bid and proposal records are not available to the public for inspection until after the award except that any bidder or offeror, upon request, shall be afforded the opportunity to inspect bid or proposal records within a reasonable time after the opening, evaluation, and negotiation (if applicable) of the bids or proposals but prior to award, except in the event that the CSB decides not to accept any of the bids or proposals and to resolicit. (Section 2.2-4342-C & D of the *Code of Virginia*.)

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

- The CSB may make reasonable charges for the copying, search time and computer time expended in the supplying information requested under the Virginia Freedom of Information Act. The charge shall not exceed the actual cost of supplying such records. Upon request, the CSB will furnish in advance an estimate of the charges for supplying procurement records.

- Trade secrets or proprietary information submitted by a bidder or offeror in connection with a procurement transaction or prequalification application submitted pursuant to Subsection B of 2.2-4317 of the *Code of Virginia*, are not subject to public disclosure under the *Virginia Freedom of Information Act*; however, the bidder or offeror must invoke the protection of Section 2.2-3700 of the *Code of Virginia* "prior to or upon submission of the data or

other materials", and must identify the data or other materials to be protected and state the reasons why protection is necessary.

4.18 Prohibited Purchases

Section 2.2-4374 of the *Code of Virginia* prohibits the procurement of building materials to be used in the construction of a building or structure from the architect or engineer (or a sub-contractor thereof) who designed the building unless that architect or engineer has a design-build contract with the public body (CSB).

CHAPTER 5

Vendor Performance

5.1 Purchase Order or Contract Document, Authority and Shipment

The execution of a contract may take several different forms:

- A verbal contract or order may be issued by the CSB for items or services that do not exceed *$500* in value. The only form required in this instance would be the invoice submitted by the contractor after completion of the contract.

- A purchase order form may be used by the CSB to execute a purchase transaction or establish a contract. A purchase order may also be used to order out goods or services contracted for under the terms of a single signature or two-party contract form.

- A single signature contract form may also be used to establish a contract. This document will refer to the contractor's bid, proposal, memorandum of understanding, and/or best and final offer. The contractor's signature on these documents and the authorized CSB official's signature on the contract document will constitute mutual acceptance of the contract provisions. This contract document may authorize immediate shipment of product or the beginning of the performance of services or it may merely establish the period of the contract. In this instance, a purchase order may be used to authorize action by the contractor.

- A two-party contract form, signed by the contractor and the authorized CSB official may be used to establish a contract. This document will contain, either by

inclusion or by reference, all of the provisions of the contract. As with the single signature contract form, this document may either authorize immediate provision of service or shipment of goods or it may provide for the issuance of a purchase order to authorize action by the contractor.

5.2 New/Used/Altered

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

5.3 Packaging

Shipping containers shall be legibly marked or labeled on the outside with the commodity description and number, size and quantity. A packing slip or invoice must accompany all shipments and must reference the purchase order number.

5.4 Substitutions

Substitution is defined as delivery of any item or provision of a service that does not conform to the specifications or scope of work of the purchase order or contract. Substitutions on purchase orders or contracts require the approval of the CSB official who signed the purchase order or contract. Any items or services that do not meet specifications may be rejected or returned to the contractor at the contractor's expense. When a shipment, item or service is returned or rejected, the contractor must make immediate replacement with acceptable merchandise or service or be considered in default.

5.5 Loss or Damage in Transit

Delivery by a vendor to a common carrier does not constitute delivery to the CSB. Any claim for loss or damage incurred during delivery shall be between the vendor and the carrier. The CSB accepts title only when goods are received regardless of the FOB point. The CSB will note all apparent damages in transit on the freight bill and notify the vendor. Discovery of concealed damage or loss will be reported by the CSB to the carrier and the vendor within seven days of receipt and prior to removal from the point of delivery. The vendor shall make immediate replacement of the damaged or lost merchandise or be in default of the contract. It shall be the vendor's responsibility to file a claim against the carrier. If damage is to a small

quantity, the vendor may, with the approval of the CSB, deduct the amount of damage or loss from his or her invoice to the CSB in lieu of replacement.

5.6 Freight

By signing a bid or proposal, bidders or offerors certify that the prices offered for FOB destination include only the actual freight rate costs at the lowest and best rate and are based upon the actual weight of the goods shipped. Freight charges are, therefore, established for each individual purchase. If a requirement is offered FOB origin, the vendor shall prepay the charges and add the amount to the invoice. A copy of the freight bill should be attached to all invoices that include freight charges. In a solicitation specifying FOB origin, the CSB will consider freight cost in the evaluation of bids and proposals.

5.7 Delivery Time

Delivery or performance of goods or service must be made by the date or period specified in the purchase order or contract or the vendor will be considered to be in default. If a vendor cannot make delivery or perform a service as specified under any existing purchase order or contract, the vendor must immediately notify the CSB. The vendor may offer a new delivery date; however, if it is not acceptable to the CSB and delivery cannot be made as originally specified, the vendor will be considered in default

5.8 Receipt of Goods

Shipments will be checked against a copy of the purchase order or contract. Quantities, units, etc., must match the purchase order or contract. Overshipments may be rejected and returned at the vendor's expense. Vendors should ensure that they have been given a specific delivery location and receive a signed receipt for goods delivered.

5.9 Inspection

All materials, equipment , supplies, and services are subject to inspection and testing. Failure to reject upon receipt, however, does not relieve the vendor for liability for latent or hidden defects subsequently revealed when goods are put to use or tested. If latent defects are found, the vendor is responsible for replacing the defective goods and is liable for any resulting expenses incurred by the CSB.

5.10 Failure to Deliver

Vendors unable to deliver goods or services when specified must notify the CSB. The vendor may offer a new delivery date; however, if it is not acceptable to the CSB and delivery cannot be made as originally specified, the vendor will be considered in default.

5.11 Termination for Default

In case of default by the vendor for failure to deliver or perform in accordance with specifications or scope of work, the CSB may procure the articles or services from other sources and hold the defaulting vendor responsible for any excess cost incurred. The CSB will normally repurchase from the next low bidder or the next highest rated offeror or purchase competitively by resolicitation; however, if this is not practical because of restraints of time or availability, the CSB may procure the goods or service from a vendor based solely on that vendor's capacity to deliver the required goods or services in the time frame required. If the repurchase results in increased cost to the CSB, a letter will be sent to the defaulted contractor requiring payment for additional costs. When repayment is requested, the Contractor will be suspended from the mailing list for purchase solicitations for a specified period of time or until the repayment has occurred, whichever occurs first. The vendor shall not be liable for any excess cost if the failure to perform arises out of any act of war, order of legal authority, strikes, act of God, or other unavoidable causes not attributed to the fault of negligence of the vendor. The burden of proof rests with the vendor.

5.12 Termination for Convenience of the CSB

A purchase order or contract may be terminated for the convenience of the CSB by delivering to the contractor a notice of termination specifying the extent to which performance under the purchase order or contract is terminated, and the date of termination. After receipt of a notice of termination, the contractor must stop all work or deliveries under the purchase order or contract on the date and to the extent specified.

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

If the purchase order or contract is for items being produced exclusively for the use of the CSB, and raw materials or services must be secured by the contractor from other sources, the contractor shall order no additional materials or services except as may be necessary for completion of any portion of the work which was not terminated. The CSB may direct the delivery of fabricated or non-fabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of the work, or direct the contractor

to sell the same, subject to the CSB's approval as to price. The contractor may, with the approval of the CSB, retain the same, and apply a credit to the claim. The contractor must complete performance on any part of the purchase order or contract not terminated.

The contractor must submit any termination claim within 120 days after receipt of the notice of termination, or such longer period as the CSB for good cause may allow. This claim will be in a form and with certifications prescribed by the purchasing office that issued the purchase order. The claim will be reviewed and resolved in accordance with Section 5.14 of this Manual.

5.13 Cancellation of Purchase Order and Contracts

No cancellation of purchase orders or contracts may be made except in writing by the office that issued the purchase order or contract. Orders or contracts may be canceled without the consent of the vendor in cases of default. A vendor may request cancellation , and the CSB will grant relief if the vendor is prevented from specific performance, including timely delivery, by an act of war, order of legal authority, act of God, or other unavoidable causes not attributed to the fault or negligence of the vendor. The burden of proof for need of such relief rests with the vendor. The CSB reserves the right to cancel all contracts with any vendor who fails to perform for any one contract.

5.14 Purchase Order or Contract Changes

A purchase order change or contract change is used to correct errors, to add or delete small quantities of goods, or to make other minor adjustments in the original contract. They may also be used to cancel orders. Vendors who deviate from the requirements of a purchase order or contract prior to the receipt of any authorized change order do so at their own risk.

5.15 Claims

Contractual claims whether for money or other relief shall be submitted in writing no later than sixty days after final payment; however, written notice of the contractor's intention to file such claim must 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.

A contractor may not institute legal action prior to receipt of the Community Services Board's decision on the claim unless the CSB fails to render such decision within thirty days. The decision of the CSB shall be final and conclusive unless the

contractor, within six months of the date of the final decision on the claim, institutes legal action as provided in Section 2.2-4364 of the *Code of Virginia*.

5.16 Billings and Invoices

Invoices should reference the purchase order or contract number and be in accordance with the terms of such. Prompt payment discounts will be taken if offered and payment is made within the prescribed time frame. Time will be computed from the date of delivery or performance or from the date a valid invoice is received, whichever is later. The CSB may initiate partial payments when portions of the goods have been received in good condition and have been properly invoiced by the contractor and partial payment is authorized by the governing contract.

5.17 Prompt Payment of Bills

The CSB will promptly pay for completed delivered goods or services by the required payment date. The required payment date shall be either: (i) the date on which payment is due under the terms of the contract for the provision of the goods or services; or (ii) if a date is not established by contract, not more than forty-five (45) days after goods or services are received or not more than forty-five (45) days after the invoice is rendered, whichever is later.

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

Within twenty (20) days after the receipt of the invoice or of the goods or services, the CSB shall notify the supplier of any defect or impropriety that would prevent payment by the payment date.

If the CSB fails to pay by the payment date, unless otherwise provided under the terms of the contract for the provision of goods or services, the CSB shall pay any finance charges assessed by the supplier that shall not exceed one percent (1%) per month.

These provisions do not apply to the late payment provisions in any public utility tariffs or public utility negotiated contracts.

(Section 2.2-4352 of the *Code of Virginia*)

CHAPTER 6

Protests and Appeals

6.1 Protests

Any bidder of offeror submitting a bid or proposal in response to a solicitation may protest the award or decision to award a contract by submitting such protest in writing to the Executive Director of the Community Services Board no later than ten calendar days after the public notice of 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 will be given by the CSB in the manner prescribed in the terms and conditions of the Invitation for Bids or the Request for Proposals.

Any potential bidder or offeror on a contract negotiated on a sole source or emergency basis who desires to protest the award or decision to award such contract shall submit such protest in the same manner no later than ten calendar days after posting or publication of the notice of such contract.

The rules governing the filing of a protest are as follows:

- The written protest must be received in the Executive Director's office not later than 5:00 p.m. on the tenth day. If the tenth day falls on a weekend or an official CSB holiday, the ten day period expires at 5:00 p.m. on the next regular work day.

- The protest shall include the specific basis for the protest and the relief sought.

- The Executive Director shall issue a decision in writing with ten days stating the reason for the action taken. The decision shall be final unless the bidder or offeror appeals within ten days of the written decision by invoking the APPEALS PROCEDURE (if available) or institutes legal action as provided in Section 2.2-4364 of the *Code of Virginia*.

- If the protest of any actual of potential bidder or offeror depends in whole or in part upon information contained in public records pertaining to the procurement transaction which are subject to inspection, then the time within which the protest must be submitted shall expire ten days after those records are available for inspection by such bidder or offeror, or at such later time as provided in Section 2.2-4360 of the *Code of Virginia*.

- No protest shall lie for a claim that the selected bidder or offeror is not a responsible bidder or offeror.

6.2 Appeals Procedure

The rules regulating the reasons and procedure for appeals are contained in Chapter 43, Article 1 of the Virginia Public Procurement Act (Sections 2.2-4357 through 2.2-4366 of the *Code of Virginia*). 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 for in Section 2.2-4303 of the *Code of Virginia,* whose protest of an award or decision to award under Section 2.2-4360 of the *Code of Virginia* is denied, may bring an action in the appropriate circuit court challenging a proposed award or the award of an 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 for Bids of the Request for Proposals. (Section 2.2-4364.C of the *Code of Virginia.*

The CSB may establish an administrative appeals procedure. If such administrative appeals procedure is made available, the Executive Director of the CSB will appoint a disinterested person or panel which shall conform to the requirements of Section 2.2-4365 and hear appeals of the following actions of the CSB:

- Decision to award or an award.
- Refusal to allow withdrawal of bids.
- Disqualifications and determinations of non-responsibility.
- Decisions on disputes arising during the performance of a contract.

6.3 Exhaustion of Administrative Procedures

A bidder, offeror or contractor need not utilize the appeals procedure of the CSB if such procedure is available; however, if the he or she initiates this procedure, it must be exhausted prior to instituting legal action concerning the same procurement transaction unless the CSB agrees otherwise. (Section 2.2-4364.F of the *Code of Virginia*).

6.4 Effect of the Appeal on Procurement Proceedings

Pending final determination of a protest or appeal, the validity of a contract awarded and accepted in good faith shall not be affected by the fact that a protest or appeal has been filed. (Section 2.2-4361 of the *Code of Virginia*).

An award need not be delayed for the period allowed a bidder or offeror to protest or appeal, but in the event of a timely protest as provided in Section 2.2-4360 of the *Code of Virginia*, or the filing of a timely legal action as

provided for in Section 2.2-4364 of the *Code of Virginia*, no further action to award the contract will be taken unless there is a written determination by the CSB that award of the contract is necessary to protect the public interest or unless the bid or offer would expire. (Section 2.2-4362 of the *Code of Virginia*).

6.5 Time and Place of Hearings

If an administrative appeals process is available, the parties will be given at least ten days' notice of the time and place of the appeal hearing. Appeals may be heard earlier upon the consent of all parties.

Hearings will be held at a site selected by the CSB.

6.6 Hearing Procedures

If an administrative appeals process is available, hearings before an individual or panel appointed by the Executive Director of the CSB are subject to the following provisions:

- Hearings are not trials and will not be conducted as such.
- Hearings will be informal and each party will be given a reasonable period of time to state their position.
- Any party may be represented by legal counsel at the hearing.
- Rules of evidence do not apply, except that the individual or panel hearing the appeal may exclude evidence which is irrelevant or redundant and may limit testimony and argument as necessary to reasonably expedite the proceedings.
- Witnesses may be called to testify; but the individual or panel hearing the appeal does not have subpoena power and an oath will not be administered.
- The individual or panel hearing the appeal may:
  - Ask questions at any time but may not question any of the parties in closed session.
  - Limit the number of witnesses.
  - Control the discussion to the extent that he/she/they, in their opinion, feel will contribute to the identification and resolution of the issues.

- Hearings will be open to the public; however, the individual or panel hearing the appeal will adjourn the hearing to deliberate and reach a decision in private.

The manner of proceedings will be determined by the individual or panel hearing the appeal. Normally, the hearing will be conducted as follows:

- The appealing party will state its reasons for appealing and the desired relief. Points of contention between the vendor and the CSB will be limited to those points raised to the CSB by the vendor in its letter of protest.

- The appealing party will present its witnesses and evidence. The individual or panel hearing the appeal will be able to ask questions of each witness.

- Other parties may present their responses, the relief they desire, if any, and their witnesses and other evidence in the order determined by the individual or panel hearing the appeal. Questions may be asked of their witnesses by the individual or panel hearing the appeal or by other parties to the appeal.

- The CSB will provide for the taking of notes or electronic recording of the appeal hearing. The following rules apply to these recordings:
  - These records will be retained for sixty days. If judicial review of the Board's decision is instituted, the recording will be retained until the judicial review has been completed.
  - Any party may provide a court reporter at its own expense. If a court reporter is used, transcripts of the hearing shall be given to the individual or panel hearing the appeal at no expense, upon its request, and will be made part of the appeal hearing's records. If the individual or panel hearing the appeal determines the transcript to be inaccurate or incomplete, he/she/they shall note for the record any inaccuracies or incomplete transcription of the hearing.

6.7 Appeal Decision

The individual or panel hearing the appeal will issue a written decision within seven days of the hearing date except when it is necessary to await a transcript of the hearing, in which case a written decision will be issued

within seven days of receiving the transcript. This decision will include a brief statement of the relevant facts on which the decision was made. This will be called the "Findings of Fact". The individual or panel hearing the appeal will then state its decision, providing such detail as considered necessary. The decision will be signed by that individual or, if a panel, by the chairperson of the panel.

Copies of the decision will be mailed to all parties and will be available to other interested persons upon request.

6.8 Judicial Review

Any party to an appeal hearing will be entitled to institute judicial review if such action is brought within thirty days after receipt of the written appeal decision or within thirty days of attempted postal delivery of the written appeal decision to the last mailing address provided by the party to the individual or panel hearing the appeal.

The findings of fact by the individual or person hearing the appeal will be final and conclusive and will not be set aside by a Court unless fraudulent, arbitrary, or capricious, or so grossly erroneous as to imply bad faith. No determination on an issue of law will be final if appropriate legal action is instituted in a timely manner (Section 2.2-4365 of the *Code of Virginia*).

CHAPTER 7

Disposal of Surplus Property

7.1 Policy

Property no longer needed by the Community Services Board will be reported to the *Fiscal Officer (or other position)* as surplus property. Surplus property is generally defined as that which has been designated as

excess, obsolete or used beyond economic repair. It will be disposed of in accordance with one of the disposal methods noted in Section 7.2.

7.2 Disposal Methods

The methods authorized for disposal of surplus property include:

- Trade-in - Surplus property may be traded in on the purchase of other similar type of equipment; i.e., surplus office equipment traded in for new office equipment or a van traded in on a new vehicle. The items to be traded in will be fully described in an Invitation for Bids for new equipment and the low bidder will be determined by subtracting the price offered on the trade in from the price quoted on the new item.

- Sale to Another Public Agency - Surplus property may be sold to another public agency (CSB, county, etc.) at a fair market value.

- Public Auction - Surplus property may be sold to the general public at public auction on an "as is, where is" basis to the highest bidder(s). Auction notices will be placed in area newspapers.

- Sealed Bid - Surplus property may be listed in an Invitation for Bids. This procedure is handled similar to the purchase of goods except the items are sold to the highest bidder(s) on an "as is, where is" basis.

- Negotiated Sale - If competitive methods (public auctions or sealed bid) have been attempted with no success and no other public agency desires the property, it may be sold at a negotiated price.

- Set Price - If other methods are not practicable, surplus property may be priced at a fair market value and offered for sale to the public on a first come, first served basis. Notice of these sales will be placed in area newspapers.

- Donations - Occasionally, the Board may approve the donation of CSB property to a not for profit organization. Also, property that is deemed to have rare or historical value may be donated to an appropriate organization.

- Destruction of Abandonment - Property which is unusable, beyond economic repair and determined to have no commercial value, or the cost of sale would exceed the expected returns, may be destroyed or abandoned.

VENDORS' GUIDE TO CSB PROCUREMENT EGULATIONS

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APPENDIX C – IFB FORMATS

C–1 – Standard IFB Form

C-2 – Special IFB Format for Insurance

APPENDIX C-1 - Model Invitation for Bids (IFB)

INVITATION FOR BIDS
IFB

Issue Date: (Date) IFB #(Number)

Title: (Commodity or Service)

Issuing Agency: _____ Community Services Board
(Mailing Address)

Delivery Points: (Address of delivery point(s) or city/town to which deliveries may be made under any resulting contract.

Period of Contract: (Date) through (Date) *If the purpose of the IFB is not to establish a term contract, this section may be replaced by the required delivery date or the section may be deleted.*

Sealed Bids will be received until (Date and Time) for furnishing the goods described herein and then opened in public.
Indicate IFB number and opening date and hour on envelope.

All inquiries for information should be directed to:
(Procurement Office and Phone Number)

IF BIDS ARE MAILED, SEND DIRECTLY TO ISSUING AGENCY SHOWN ABOVE. IF BIDS ARE HAND DELIVERED, DELIVER TO: (Location or Street Address)

PRE-BID CONFERENCE: A (mandatory) (optional) pre-bid conference will be held on _____ at the ___(location)___. Refer to Paragraph 3.0 herein.

In compliance with this Invitation for Bids and to all the conditions imposed herein, the undersigned offers and agrees to furnish the goods at the price indicated in the Quotation Section 7.0.

Name and Address of Firm:

_____ Date: _____

_____ By: _____
Signature in Ink
_____ Title: _____
_____Zip Code_____ Telephone Number: (___)_____
FEI/FIN No. _____ FAX Number: (___)_____

* Contractor ____ DOES ____ DOES NOT consider his firm to be a minority owned business.
Contractor ____ IS ____ IS NOT certified as a minority business by the Virginia Department of Minority Business Enterprise.

* Optional Information: Minority contractors are encouraged to submit bids; however, minority status does not influence award.

1.0. **PURPOSE:** The intent and purpose of this Invitation for Bids is to establish a contract with one qualified firm to provide (Commodity) to the _____ Community Services Board.

(NOTE: A purpose statement is not necessary for routine purchases of goods or services where it is readily apparent from the product or service what is wanted.)

2.0 **SCOPE OF WORK** or **DESCRIPTION OF ITEM:** *(Describe in complete detail the service to be performed, or that which is to be purchased, including quantity, as applicable. Specifications or drawings, if applicable, may be referenced and attached. This is the section on which bidders base their quotations; therefore it must be complete and accurate.)*

EXAMPLES OF WORDING THAT MAY BE USED TO BEGIN THIS SECTION:

A. GOODS (FURNISH ONLY): The Contractor shall furnish and deliver each of the following described item(s):

1. *(The purchase description(s) must be complete and specify the minimum needs of the CSB. Specifications may allow for bidding on a brand name or equal basis, if applicable.)*

2. *(Other items that should be addressed in the purchase description or in the Special Terms and Conditions, as appropriate, include but are not limited to: inside delivery; set up and assembly; removal of trash; warranty; maintenance; packaging; etc.)*

B. GOODS (FURNISH AND INSTALL): The Contractor shall provide all labor, supervision, equipment, tools, materials and incidentals necessary to furnish and install (state product). All equipment, materials and installation work shall comply with this specification, the Virginia OSHA Standards, and the Virginia Uniform Statewide Building Codes.

C. SERVICES: The Contractor shall furnish all labor, supervision, equipment, tools, parts and materials, as necessary, to maintain the type of equipment listed in accordance with manufacturer's service manuals (or other).

1. *(Ensure that the scope of work is complete. The Contractor cannot be required to perform omitted work items.)*

2. *(Other items that should be addressed, as appropriate, include but are not limited to: repair response time; contractor certification-license requirement; workmanship; repair and maintenance records; working hours; response time; overtime; agency furnished materials; etc.*

3.0 **PRE-BID CONFERENCE:** *(If a pre-bid conference is desired, indicate date, time, place and whether attendance is mandatory or optional. See Appendix E, Section II for pre-bid clause.)*

4.0 **GENERAL TERMS AND CONDITIONS:** *(General Terms and Conditions must be used for every solicitation. These are those terms and conditions that are applicable to all IFBs or RFPs issued by the CSB. Those that are generally required are listed in Appendix E, Section I and can be entered into the CSB word processing system or printed separately and attached to the IFB. If attached, they should be referenced in this section of the IFB. Note that for some General Terms and Conditions, there are one or more optional clauses. You should choose those that best meet your requirements.)*

5.0 **SPECIAL TERMS AND CONDITIONS:** *(These are terms and conditions which are specific to the particular IFB. Therefore, different Special Terms and Conditions may be selected for each solicitation. They may be selected from Appendix E, Section II and III.)*

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6.0 **METHOD OF PAYMENT:** *(Specify when payment will be made, i.e., upon delivery, monthly, quarterly, completion of project, etc. In addition, specify when and where invoices are to be submitted, i.e., by the 10th of the month following the month services were rendered, upon shipment, completion of project, etc.)*

7.0 **PRICING SCHEDULE:** *(Provide space for and specify how price is to be submitted, i.e., lump sum, hourly rate, unit price, etc. For example: Lump Sum $_____; Each $_____. Quantities may also be included in this section. In addition, optional quotes may also be requested. For example, one quote if the award is made on a lump sum basis and another if it is split between one or more providers.)*

8.0 **ATTACHMENTS:** *(List all applicable attachments with a brief statement of their purpose. For example: Contractor Data Sheet asks for the bidder's number of years in business and a specified number of references.)*

APPENDIX C-2 – MODEL INSURANCE IFB

The following IFB format may be used when the buyer knows the specific type and amount of insurance needed. Prior to soliciting bids, however, CSBs should review the coverage available through the Division of Risk Management. See Section 35.300 of this Manual.

The General Terms and Conditions, as well as any Special Terms and Conditions that may be needed, must be added to this IFB.

(Insert IFB Cover Page – See Appendix C-1)

1.0 **PURPOSE:** The purpose for this Invitation for Bids (IFB) is to solicit sealed bids to from qualified insurance agents to provide the insurance coverages listed in Section 2.0 – Scope of Services.

2.0 **SCOPE OF SERVICES:** The Contractor shall provide insurance coverage based on the following requirements:

2.1 Property insurance is to be provided on items listed in Exhibit B. Coverage is to protect against risks of direct physical loss. Property coverage will also protect against the need for additional expenses or the loss or reduction of income resulting from loss to property. This coverage is to include electronic data processing equipment. Coverage is to be blanket on all real and personal property with an agreed amount endorsement. The per occurrence deductible is to be $1,000. The values on Exhibit B represent at least 90% of the insurable replacement cost values unless otherwise stated.

(For CSB use: It will be necessary to provide a valuation of the real and personal property. This should reflect the cost to replace the damaged property with that of like, kind and quality. A separate valuation should be show for electronic data processing equipment and the additional expense or loss of income.)

2.2 Liability coverage for both Commercial General Liability and various Professional Liability/Errors and Omissions/Directors and Officers Liability.

(For CSB use: The nature of the organization, operations and staffing will dictate the type of insurance needed. If the CSB does not use the DRM program, this will necessitate several coverages.

2.3 Fidelity coverage on Coverage B with a limit of $_____.

(For CSB use: This amount will need to be determined by the CSB. It may be necessary to contact the current insurance agent to determine the appropriate amount.)

2.4 Money and Securities coverage with a limit of $_____ for losses inside the premises and $_____ for losses outside the premises.

(For CSB use: The CSB will need to determine its average amount of money and negotiable securities on hand and carried by messenger.)

2.5 Workers' compensation to comply with the statutory provisions of the Commonwealth of Virginia.

2.6 Valuable papers and records coverage to pay for the cost to restore and reconstruct important documents.

(The CSB will need to determine if it has such records. Then determine the cost to restore the records.)

2.7 Power equipment and machinery coverage to protect against physical damages to and loss of equipment, which generates, transmits or uses energy. The deductible for this coverage should be concurrent with the property deductible.

(This limit should be at least the same as the largest location listed in Exhibit A.)

2.8 Automobile coverage to protect against liability imposed by law for losses resulting from the operation of owned, leased or rented vehicles. If employees use their vehicles for CSB business, automobile coverage should include non-0wned and hired automobile coverage. If physical damage coverage is desired, this should also be covered.

EXHIBIT A

Coverage History

This exhibit should contain at least three years history of insurance coverage. Items to be listed are insurance companies providing coverage, policy limits, deductibles, premiums and losses. If there have been no losses, this should be stated. Loss history should include the date of occurrence, amount of loss, location of occurrence, cause and extent of injury or damage. Information on current litigation may not be available and this should be so stated.

Often coverages are arranged as a “package policy”. As much as possible, loss experience of the different elements of the “package” should be broken out. The should be arranged by:

- Property
- General Liability
- Professional Liability
- Fidelity/crime
- Workers’ Compensation
- Valuable papers and records
- Power equipment and machinery (boiler and machinery coverage)
- Automobile coverage
- Others as purchased

EXHIBIT B

Property Exposures

This should be a list of the buildings owned or occupied by the CSB. This allows evaluation of the property, power equipment and some liability exposures. Items to be included:

- Building name (if any)
- Street address (not P. O. Box)
- Values of owned buildings to be insured. Do not include land costs.
- Contents values. This should provide a breakout of IT equipment.
- Rental values received by CSB from tenants in any buildings or paid to any lessor in which CSB is a tenant. Also to be included are estimates of costs for CSB to operate from existing building use (office, apartment clinic, storage, etc.)
- Gross/external square feet if the building is owned by CSB. If only a tenant, then provide the square feet for the occupied area.
- Number of stories.
- Any loss detection or suppression in the building (smoke or heat alarms, burglar alarms, automatic sprinkler systems).
- Year building was constructed. If there has been significant renovation since construction, the year and extent of renovation should be described.
- If there are records essential to CSB operations, which would be difficult to reconstruct or replace, these should be identified and shown as a separate item from the contents. If these have been duplicated and copies stored elsewhere, this information should be included.

EXHIBIT C

Staffing

This shows the CSB organization, functions, job titles, and number of persons in each job and reporting relationships. Volunteers and part-time employees should be identified. This assists evaluation of liability, workers' compensation and fidelity exposures.

EXHIBIT D

Automobile Exposures

This is a list of all automobiles to be insured. Information needed is the year, make, model, vehicle identification number and approximate annual mileage of each vehicle. If employees use their own automobiles, coverage for hired and non-

owned automobiles should be included. If physical damage coverage is to be included, the original new cost new of the vehicles is needed.

APPENDIX D – RFP FORMATS

D-1 Model Request for Proposals (RFP)

D-2 Model RFP to Procure Insurance

D-3 Model RFP to Select an Insurance Agent

APPENDIX D-1 - Model Request for Proposals (RFP)

REQUEST FOR PROPOSALS

RFP#(Number)

Issue Date: (Date)

Issue Title: (Title)

Issuing Agency: _____ Community Services Board
(Address)

Location Where Work Will Be Performed: (Address or area)

Period of the Contract: (Date) through (Date) *If the purpose of the RFP is not to establish a term contract, this section may be replaced by the required or desired delivery or completion date or the section may be deleted.*

Renewals: (___) renewals of one year each. *This is used only for term contracts.*

Sealed proposals will be received for furnishing services described herein until:

(Date and time)

All inquiries for information should be directed to:

(Procurement Officer and Phone Number)

Pre-proposal Conference : *(Use if applicable)* A (mandatory) (optional) Pre-Proposal Conference to be held on (Date and Time) at (location) . (See Section 3.0 herein).

If Proposals are mailed**, send directly to the Procurement Office at the address shown above.** If Proposals are hand delivered**, deliver to (location or street address).** Envelopes should be marked with RFP number and opening date and time.

It is the contractor's responsibility to assure that proposals are received at the location indicated by the date and time above. This complete document with all attachments must accompany your proposal, with all information and signatures applied as required.

In compliance with this Request for Proposals and to all the conditions imposed herein and herein incorporated by reference, the undersigned offers and agrees to furnish the (goods) (services) in accordance with the attached signed proposal or as mutually agreed upon by subsequent negotiation.

Offeror Name and Address:

_____ Date_____

_____ By:_____
(Signature in ink)

_____ _____
Name (Printed/Typed)
Telephone No. _____
Title:_____
FEI/FIN Number: _____

* Offeror ____ DOES ____ DOES NOT consider his/her firm to be a minority owned business.
Offeror ____ IS ____ IS NOT certified as a minority business by the Virginia Department of Minority Business Enterprise.

* Optional Information: Minority contractors are encouraged to subnmit proposals; however, minority status does not influence award.

NOTE: For lengthy RFPs, consideration should be given to including an index on the following page. In addition, a check list of items that must be submitted by the offeror is also recommended.

1.0 **PURPOSE**: (Example) The purpose of this Request for Proposals (RFP) is to solicit sealed proposals from authorized dealers to establish a contract through competitive negotiations with one or more qualified contractors to provide for the (purchase, lease-purchase, lease-rental) of (type of goods or service) by the _____ Community Services Board.

2.0 **BACKGROUND**: *(Include a brief statement concerning the current or historical conditions leading up to this procurement.)*

3.0 STATEMENT OF NEEDS or SCOPE OF WORK: *(Indicate, in general terms, the service to be performed or the goods to be purchased. Include the specific tasks that must be accomplished and considered by the Contractor or included in the final product as well as any reports, office space, etc. that will be furnished by the CSB. Do not use the words "must" or "shall" for any activity unless that is absolutely mandatory. If certain activities or actions are desired but not absolutely necessary or if it is possible these needs could be met in some alternative manner, the words "should" or "may" should be used to allow the offeror maximum flexibility in preparing his/her offer.)*

4.0 QUALIFICATIONS OF THE PROVIDER: *(This section may be Included to specify any specific requirements that the Offeror must possess in order to be considered for an award. The following two paragraphs are examples that may be used.)*

The Community Services Board (CSB) may make such reasonable investigations as deemed proper and necessary to determine the ability of the offeror to perform the work. The CSB reserves the right to inspect the facilities of the Contractor at any time during the contract period. The Offeror shall furnish the CSB all such information and data for this purpose as may be requested. The CSB further reserves the right to reject any proposal if the evidence submitted by, or investigation of, such offeror fails to satisfy the CSB that such offeror is properly qualified to carry out the obligations of the contract and to complete the work contemplated.

The Offeror must have an acceptable credit rating. Financial statement (assets and liabilities) should be listed in Dunn and Bradstreet.

5.0 PROPOSAL PREPARATION AND SUBMISSION REQUIREMENTS:

5.1 GENERAL REQUIREMENTS: *This section is used to inform the potential Offerors of how many copies of the proposal must be submitted, how the proposal is to be prepared, the possibility of oral presentations by the Offerors, etc. The following are sample paragraphs normally used in this section:*

1. RFP Response: In order to be considered for selection, Offerors must submit a complete response to this RFP. One (1) original and (__) copies of each proposal must be submitted to the CSB. No other distribution of the proposal shall be made by the Offeror.

(NOTE: The number of copies requested should be sufficient for each evaluator to have one.)

2. Proposal Preparation:

   a. Proposals shall be signed by an authorized representative of the Offeror. All information requested should be submitted. Failure to submit all information requested may result in the purchasing agency requiring prompt submission of missing information and/or giving a lowered evaluation of the proposal. Proposals which are substantially incomplete or lack key information may be rejected by the CSB. Mandatory requirements are those required by law or regulation or are such that they cannot be waived and are not subject to negotiation.

   b. Proposals should be prepared simply and economically, providing a straightforward, concise description of capabilities to satisfy the requirements of the RFP. Emphasis should be placed on completeness and clarity of content.

   c. Ownership of all data, materials and documentation originated and prepared for the CSB pursuant to the RFP shall belong exclusively to the CSB and be subject to public inspection in accordance with the Virginia Freedom of Information Act. Trade secrets or proprietary information submitted by an Offeror shall not be subject to public disclosure under the Virginia Freedom of Information Act; however, the Offeror must invoke the protection of Section 2.2-4342.F of the *Code of Virginia*, in writing, either before or at the time the data is submitted. The written notice must specifically identify the data or materials to be protected and state the reasons why protection is necessary. The proprietary or trade secret material submitted must be identified by some distinct method such as highlighting or underlining and must indicated only the specific words, figures, or paragraphs that constitute trade secret or proprietary information. The classification of an entire proposal document, line item prices and/or total proposal prices as proprietary or trade secrets is not acceptable and will result in rejection and return of the proposal.

3. Oral Presentation: Offerors who submit a proposal in response to this RFP may be required to give an oral presentation of their proposal to the CSB. This provides an opportunity for the Offeror to clarify or elaborate on the proposal. This is a fact finding and explanation session only and does not include negotiation. The CSB will schedule the time and location of these presentations. Oral presentations are an option of the CSB and may or may not be conducted.

5.2 SPECIFIC PROPOSAL REQUIREMENTS: *(Use this section to inform the potential Offerors of the information that must be submitted with their proposals. Any information needed to properly evaluate the proposal evaluation criteria must be requested in this section. The following is a sample of the beginning language and examples of typical specific requirements):*

1. Proposals should be as thorough and detailed as possible so that the CSB may properly evaluate your capabilities to provide the required goods/services. Offerors are required to submit the following items as a complete proposal:

   a. The return of the RFP cover sheet and addenda, if any, signed and filled out as required.

   b. Complete Data Sheet, included as an attachment to the RFP, and other specific items or data requested in the RFP.

   c. A written narrative statement to include:

      (1) Experience in providing the goods/service described herein.

      (2) Names, qualification and experience of personnel to be assigned to the project.

      (3) Resumes of staff to be assigned to the project.

   d. Specific plans for providing the proposed goods/services including:

      (1) List of proposed equipment/goods/etc. including operating parameters, illustrations, etc.

      (2) What, when and how the service will be performed.

      (3) Time frame for completion (if not otherwise specified by the CSB in the Statement of Needs).

   e. Proposed Price. Indicate in the pricing schedule, Section 11 of the RFP (if provided).

6.0 EVALUATION AND AWARD CRITERIA

6.1 EVALUATION CRITERIA: Proposals will be evaluated by the Community Services Board using the following criteria: (Include the criteria that will be used to evaluate the proposals. These criteria should be developed from the items asked for the "Specific Requirements" section. Weights or percentages must be assigned to

each criteria but should not be made public until the due date and hour when they are posted in the location used for public posting. The following are examples of criteria.)

(FOR SERVICES):

6.1.1 Qualifications and experience of Offeror in providing the services.

6.1.2 Specific plans or methodology to be use to perform the services.

6.1.3 Project cost: Indicate the pricing and discount structure.

(FOR GOODS):

6.1.1 Experience in providing the goods.

6.1.2 Quality of equipment offered and their suitability for the intended purposes.

6.1.3 Scope and suitability of training offered to CSB personnel.

6.1.4 Maintenance Support.

6.1.5 Price.

6.2 AWARD: 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 evaluation factors above. Negotiations shall be conducted with the Offerors so selected. Price shall be considered, but need not be the sole determining factor. After negotiations have been conducted with each Offeror so selected, the agency shall select the Offeror which, in its sole opinion, has made the best proposal, and shall award the contract to that Offeror. The agency may cancel this Request for Proposals or reject proposals at any time prior to an award, and is not required to furnish a statement of the reason why a particular proposal was not deemed to be the most advantageous. (Section 11-65D, Code of Virginia.) Should the Community Services Board determine in writing and in its sole discretion that only one Offeror is fully qualified, or that one Offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that Offeror. The award document will be a contract incorporating by reference all the requirements, terms, and conditions of the solicitation and the Contractor's proposal as negotiated.

(NOTE: For professional services, use clause 6-F under the "Special Terms and Conditions" section of Appendix E, Section II and do not include "Price" as one of the "Evaluation Criteria".

7.0 **REPORTING AND DELIVERY REQUIREMENTS:** *(Use this section to identify all documentation, reports, etc, and the specific delivery date for each deliverable item that the Contractor must furnish during the contract period. The following clauses are examples of the type of reporting that may be required.):*

D) The Contractor shall provide the following documentation to _____ for approval.

E) The Contractor shall provide a (weekly/monthly) progress report to _____ outlining (tasks completed, specific accomplishments, etc.).

F) Within thirty (30) calendar days after the award date of the contract, the Contractor shall furnish a preliminary outline of the organizational structure of the final report to _____.

8.0 **PRE-PROPOSAL CONFERENCE:** *(If a pre-proposal conference is desired, indicate date, time, place and whether attendance is mandatory or optional. See Appendix E, Section II, Paragrapg 45 for correct wording.)*

9.0 **GENERAL TERMS AND CONDITIONS:** *(General terms and conditions must be used for every solication. Those are the terms and conditions that are applicable to all IFB s or RFPs issued by the CSB. Those that are generally required are listed in Appendix E, Section I and can be entered into the word processing system or printed separately and attached to the RFP. If attached, they should be referenced in this section of the RFP. Note that for some General Terms and Conditions, there are one or more optional clauses. You should choose those that best meet your requirements.)*

7.0 **SPECIAL TERMS AND CONDITIONS:** *(These are terms and conditions which are specific to the particular RFP. Therefore, different Special Terms and Conditions may be selected for each solicitation. They may be selected from Appendix E, Section II and III.)*

8.0 **METHOD OF PAYMENT:** *(Specify when payment will be made, i.e., monthly, quarterly, completion of project, etc. In addition, you may specify when invoices are to be submitted, i.e., by the 10th of the month following the month services were rendered, upon shipment, upon completion of project, etc.)*

9.0 **PRICING SCHEDULE:** *(Provide space and specify how price is to be submitted, i.e., lump sum, hourly rate, unit price, etc. For example: Lump Sum $_____.)*

10.0 ATTACHMENTS: *(List any attachments including their purpose.)*

(This form is optional.)

ATTACHMENT A
CONTRACTOR DATA SHEET
To Be Completed By Offeror
RFP #_____

1. QUALIFICATIONS OF OFFEROR: The Offeror must have the capability and capacity in all respects in order to fully satisfy all of the contractual requirements.

2. YEARS IN BUSINESS: Indicate the length of time you have been in business providing this type of service: ____years____months.

3. REFERENCES: Indicate below a listing of at least four (4) recent references for whom you have provided this type of service. Include the date service was furnished and the name and address of the person the agency has your permission to contact.

PERSON TO CONTACT
CLIENT DATE ADDRESS AND PHONE NUMBER

_____
_____
_____
_____
_____

4. Offeror name, phone number and State and date of incorporation. If not a corporation, state the type of business organization, names and addresses of owners, address and phone number of principal place of business, date business began and State in which organized:
_____
_____

5. Are you a subsidiary firm: ___YES ___NO. If yes, list the name and location of your parent affiliation:
_____

6. Name and title of firm's official to whom further communication should be directed:
_____

I certify the accuracy of this information.
Signed: _____
Title: _____

APPENDIX D-2
MODEL RFP TO PROCURE INSURANCE

The following RFP format may be used when the buyer does not know the specific type and amount of insurance needed. Prior to soliciting bids, however, CSBs should review the coverage available through the Division of Risk Management. See Section 35.300 of this Manual.

The General Terms and Conditions, as well as any Special Terms and Conditions that may be needed, must be added to this IFB.

(Insert IFB Cover Page – See Appendix C-1)

3.0 **PURPOSE:** The purpose of this Request for Proposals (RFP) is to contract with one insurance agent (Contractor) to obtain the insurance coverages outlined herein. Additionally, the Contractor is to arrange for loss control services and other support as part of the insurance coverage. Agent of record letters will be provided after the contract has been awarded.

4.0 **BACKGROUND:** _____ Community Services Board (CSB) provides mental health services to _____ persons in the _____ city/county area.

The current and previous insurance coverages are outlined in Exhibit A. The current insurance agent is _____.

Exhibit B is a listing of the property currently owned or occupied.

Exhibit C is a list of the staff employed or under contract.

Exhibit D is a list of the automobiles owned or leased.

5.0 **STATEMENT OF NEEDS:** It is desired that the Contractor provide insurance coverage and related services based on the information in this RFP.

5.1 Insurance Requirements:

5.1.1 Property insurance on items listed in Exhibit A. Coverage is to protect against risk of direct physical loss. Property coverage will also protect against the need for additional expense in the event of loss or the loss of income resulting from direct physical loss. This coverage is to include electronic data processing equipment.

Coverage is to be blanket on all real and personal property with an agreed amount endorsement. The per occurrence

deductible is to be $1,000. Higher deductibles may be considered if justified.

5.1.2 Fidelity and crime coverage to protect against loss caused by employee infidelity. The limit is to be determined following receipt of Offeror's recommendations.

5.1.3 Workers' compensation to comply with the statutory requirements of the Commonwealth of Virginia.

5.1.4 Valuable papers and records coverage to pay for the cost of restoration and reconstruction of important documents.

5.1.5 Power equipment and machinery coverage to protect against physical damages to and loss of use of equipment which generates, transmits or uses energy. The deductible for this coverage should be concurrent with the property deductible.

5.1.6 Automobile coverage to protect against liability imposed by law for losses resulting from the operation of owned, leased or rented vehicles. Additionally, physical damage to the vehicles should be included.

5.2 Claims Adjustment Services: The agent must represent CSB interest in resolving disputed claims. If adjusters other than company adjusters are to be used on claims this should be disclosed in the proposal.

5.3 Loss Control and Related Services: These include:

5.3.1 Technical assistance for new construction or renovation of existing facilities. This may include plans review as well as on-site surveys.

5.3.2 Periodic loss control surveys, including development of recommendations to prevent the frequency and/or reduce the severity of losses.

5.3.3 Assistance in developing crises management and contingency plans.

5.3.4 Assistance in determining the insurable replacement cost value of buildings.

5.3.5 Provide loss control training as the needs are determined for CSB staff to receive such.

4.0 REPORTING AND DELIVERY REQUIREMENTS:

4.1 Coverage Recommendations: No less than sixty days prior to the expiration or anniversary of any existing coverage, the Contractor will present recommendations concerning the renewal or anniversary.

4.2 Binders and Policies: It is desired that the Contractor provide binders or other evidence of insurance with five working days of the effective date of any insurance policies. These should outline coverages, including limits and deductibles. One copy of the policy shall be delivered by the CSB no later that thirty days after the initial or anniversary date of any coverage. Endorsements to any policy should be delivered within thirty days of agreement on the endorsement.

4.3 Review Requirements: The Contractor shall meet with the CSB when each policy is delivered and no less than 120 days prior to the renewals/anniversary of any policy. These meetings are to review exposures, coverge, premiums, losses and other items to verify the adequacy of insurance in anticipation of policy renewal or anniversary.

4.4 Loss Control Reports: Reports should be submitted to the CSB within thirty days of the completion of any survey unless otherwise agreed upon.

5.0 PROPOSAL PREPARATION AND SUBMISSION REQUIREMENTS

5.1 General Instructions: *(Refer to Model RFP, Appendix D-1)*

5.2 Specific Requirements: Proposals should be as thorough and detailed as possible so that the CSB may properly evaluate the services. Offerors are required to submit the following items as a complete proposal:

5.2.1 The return of the RFP cover sheet and all addenda acknowledgements, signed and completed as required.

5.2.2 A narrative statement as to the offeror's qualifications to perform the work listed in the Statement of Needs. In addition, if the offeror anticipates using a subcontractor(s), the same information must be submitted concerning the proposed subcontractor(s). This narrative must address the following:

5.2.2.1 Description of the background and experience of the offeror and any proposed subcontractor(s). This should include the number of years performing this service. Current annual reports should be included.

5.2.2.2 Names, addresses, telephone numbers and individual contacts of at least three current accounts of similar size and complexity handled by the offeror and subcontractor(s) servicing office.

5.2.2.3 Resumes of staff personnel to be assigned to this contract. This should describe their anticipated roles in serving the account. Include an organizational chart showing internal relations as well as relations with any subcontractors or insurers.

5.2.2.4 If more than one program of coverages is being submitted by one offeror, the advantages and disadvantages of the different approaches as well as the offeror's recommendations and related justifications must be included.

5.2.3 Proposed scope of work of the offeror's implementation and performance of the contract. Proposal should include:

5.2.3.1 Proposed insurance coverage forms with justification for each.

5.2.3.2 Claims handling procedures and guidelines, including claim reporting thresholds.

5.2.3.3 Proposed outline and schedule for any training.

5.2.3.4 Proposed outline and schedule of loss control support and services to be provided. This should include projected time frames to initiate surveys, hours of service to be provided, education and training time, assistance required from ____ and related items.

5.2.4 Cost of insurance and related services for each coverage. All charges must incorporate routine office and administrative charges including, but not limited to postage, travel,

photographic, office supplies, telephone charges, issuing certificates of insurance, report preparation and typing, etc.

6.0 **EVALUATION AND AWARD CRITERIA:** Proposals will be evaluated using the following criteria:

6.1 Qualifications of offeror and proposed subcontractor(s).

6.1.1 Experience in providing the desired insurance and related services.

6.1.2 Personnel qualifications and experience of the offeror and subcontractor(s)'s staffs.

6.1.3 References.

6.2 Proposed scope of coverage and work.

6.2.1 Proposed insurance coverages.

6.2.2 Proposed claims handling procedures and support

6.2.3 Proposed loss control support.

6.3 Proposed costs.

6.3.1 Proposed insurance coverage costs.

6.3.2 Other charges (if any).

7.0 **MANDATORY PROPOSAL CONFERENCE:** A mandatory preproposal conference will be held at _(time and date)_ at the __(place)_. The purpose of this conference is to allow potential offerors an opportunity to present questions and obtain clarification relative to any facet of this solicitation.

Due to the importance of all offerors having a clear understanding of the scope of work and requirements of this solicitation, attendance at this conference will be a prerequisite for submitting a proposal. Proposals will only be accepted from those offerors who are represented at this preproposal conference. Attendance at the conference will be evidenced by

the representative's signature on the attendance roster. No one will be admitted after _(time)_.

Bring a copy of the solicitation with you. Any changes resulting from this conference will be issued in a written addendum to the solicitation.

7.0**METHOD OF PAYMENT:** Compensation to the Contractor for insurance and other services will be in the form of commissions for placement of insurance.

Invoices for all insurance coverages provided will be delivered with the policies or endorcements. Payment frequency on other than an annual basis will be considered.

EXHIBIT A

Coverage History

This exhibit should contain at least three years history of insurance coverage. Items to be listed are insurance companies providing coverage, policy limits, deductibles, premiums and losses. If there have been no losses, this should be stated. Loss history should include the date of occurrence, amount of loss, location of occurrence, cause and extent of injury or damage. Information on current litigation may not be available and this should be so stated.

Often coverages are arranged as a "package policy". As much as possible, loss experience of the different elements of the "package" should be broken out. The should be arranged by:

- Property
- General Liability
- Professional Liability
- Fidelity/crime
- Workers' Compensation
- Valuable papers and records
- Power equipment and machinery (boiler and machinery coverage)
- Automobile coverage
- Others as purchased

EXHIBIT B

Property Exposures

This should be a list of the buildings owned or occupied by the CSB. This allows evaluation of the property, power equipment and some liability exposures. Items to be included:

- Building name (if any)
- Street address (not P. O. Box)
- Values of owned buildings to be insured. Do not include land costs.
- Contents values. This should provide a breakout of IT equipment.
- Rental values received by the CSB from tenants in any buildings or paid to any leasor in which the CSB is a tenant. Also to be included are estimates of costs for CSB to operate from existing building use (office, apartment, clinic, storage, etc.)
- Number of stories.
- Any loss detection or suppression in the building (smoke or heat alarms, burglar alarms, automatic sprinkler systems).
- Year building was constructed. If there has been significant renovation since construction, the year and extent of renovation should be described.
- Rental values received by the CSB from tenants in any buildings or paid to any leasor in which CSB is a tenant. Also to be included are estimates of costs for CSB to operate from existing facilities in the event those facilities cannot be occupied.
- If there are records essential to CSB operations, which would be difficult to reconstruct or replace, these should be identified and shown as a separate item from the contents. If these have been duplicated and copies stored elsewhere, this information should be included.

EXHIBIT C

Staffing

This shows the CSB organization, functions, job titles, and number of persons in each job and reporting relationships. Volunteers and part-time employees should be identified. This assists evaluation of liability, workers' compensation and fidelity exposures.

EXHIBIT D

Automobile Exposures

This is a list of all automobiles to be insured. Information needed is the year, make, model, vehicle identification number and approximate annual mileage of each vehicle. If employees use their own automobiles, coverage for hired and non-owned automobiles should be included. If physical damage coverage is to be included, the original new cost new of the vehicles is needed.

APPENDIX D-3
MODEL RFP TO SELECT AN INSURANCE AGENT

The following RFP format may be used to select an agent who, in turn, will obtain the proper insurance coverages. Prior to soliciting bids, however, CSBs should review the coverage available through the Division of Risk Management. See Section 35.300 of this Manual.

The General Terms and Conditions, as well as any Special Terms and Conditions that may be needed, must be added to this IFB.

(Insert IFB Cover Page – See Appendix C-1)

6.0 **PURPOSE:** The purpose of this Request for Proposals (RFP) is to contract with one insurance agent (Contractor) to obtain the insurance coverages outlined herein. Additionally, the Contractor is to arrange for loss control services and other support as part of the insurance coverage.

At no time during this solicitation are insurance agents or their representatives to contact any insurance companies or underwriters with the intent of obtaining quotations or proposals. Contact with companies or underwriters may be made with the intent to obtain information or guidance with respect to acceptability or underwriting requirements.

The Offeror to whom the contract is awarded will have full access to the insurance market at that time. Agent or broker of record letters will be provided after the contract has been awarded.

7.0 **BACKGROUND:** _____ Community Services Board (CSB) provides mental health services to _____ persons in the _____ city/county area.

The current and previous insurance coverages are outlined in Exhibit A. The current insurance agent is _____.

Exhibit B is a listing of the property currently owned or occupied.

Exhibit C is a list of the staff employed or under contract.

Exhibit D is a list of the automobiles owned or leased.

8.0 **STATEMENT OF NEEDS:** It is desired that the Contractor provide insurance coverage and related services based on the information in this RFP.

8.1 Insurance Requirements:

8.1.1 Property insurance on items listed in Exhibit A. Coverage is to protect against risk of direct physical loss. Property coverage will also protect against the need for additional expense in the event of loss or the loss of income resulting from direct physical loss. This coverage is to include electronic data processing equipment.

The deductible is to be $1,000. Higher deductibles may be considered if justified.

8.1.2 Fidelity and crime coverage to protect against loss caused by employee infidelity. The limit is to be determined following receipt of Offeror's recommendations.

8.1.3 Workers' compensation to comply with the statutory requirements of the Commonwealth of Virginia.

8.1.4 Valuable papers and records coverage to pay for the cost of restoration and reconstruction of important documents.

8.1.5 Power equipment and machinery coverage to protect against physical damages to and loss of use of equipment which generates, transmits or uses energy. The deductible for this coverage should be concurrent with the property deductible.

8.1.6 Automobile coverage to protect against liability imposed by law for losses resulting from the operation of owned, leased or rented vehicles. Additionally, physical damage to the vehicles should be included.

8.1.7 Other insurance requirements are to be arranged as their needs develop.

8.2 Claims Adjustment Services: The agent must represent CSB interest in resolving disputed claims.

8.3 Loss Control and Related Services: These include:

8.3.1 Technical assistance for new construction or renovation of existing facilities. This may include plans review as well as on-site surveys.

8.3.2 Periodic loss control surveys, including development of recommendations to prevent the frequency and/or reduce the severity of losses.

8.3.3 Assistance in developing crises management and contingency plans.

8.3.4 Assistance in determining the insurable replacement cost value of buildings.

8.3.5 Provide loss control training as the needs are determined for CSB staff to receive such.

4.0 REPORTING AND DELIVERY REQUIREMENTS:

4.5 Coverage Recommendations: No less than sixty days prior to the expiration or anniversary of any existing coverage, the Contractor will presnt recommendations concerning the renewal or anniversary. The Contractor shall present at least two quotations from different insurance companies for each expiring policies. The Contractor shall provide an analysis of each quotation, the advantages and disadvantages of each and make a recommendation as to which should be accepted.

4.6 Binders and Policies: It is desired that the Contractor provide binders or other evidence of insurance with five working days of the effective date of any insurance policies. These should outline coverages, including limits and deductibles. One copy of the policy shall be delivered by the CSB no later that thirty days after the initial or anniversary date of any coverage. Endorsements to any policy should be delivered within thirty days of agreement on the endorsement.

4.7 Review Requirements: The Contractor shall meet with the CSB when each policy is delivered and no less than 120 days prior to the renewals/anniversary of any policy. These meetings are to review exposures, coverge, premiums, losses and other items to verify the adequacy of insurance in anticipation of policy renewal or anniversary.

4.8 Loss Control Reports: Reports should be submitted to the CSB within thirty days of the completion of any survey unless otherwise scheduled.

5.0 PROPOSAL PREPARATION AND SUBMISSION REQUIREMENTS

5.1 General Instructions: *(Refer to Model RFP, Appendix D-1)*

5.2 Specific Requirements: Proposals should be as thorough and detailed as possible so that the CSB may properly evaluate the services. Offerors are required to submit the following items as a complete proposal:

5.2.5 The return of the RFP cover sheet and all addenda acknowledgements, signed and completed as required.

5.2.6 A narrative statement as to the offeror's qualifications to perform the work listed in the Statement of Needs. In addition, if the offeror anticipates using a subcontractor(s), the same information must be submitted concerning the proposed subcontractor(s). This narrative must address the following:

5.2.6.1 Description of the background and experience of the offeror and any proposed subcontractor(s). This should include the number of years performing this service. Current annual reports should be included.

5.2.6.2 Names, addresses, telephone numbers and individual contacts of at least three current accounts of similar size and complexity handled by the offeror and subcontractor(s) servicing office.

5.2.6.3 Resumes of staff personnel to be assigned to this contract. This should describe their anticipated roles in serving the account. Include an organizational chart showing internal relations as well as relations with any subcontractors or insurers.

5.2.6.4 If more than one program of coverages is being submitted by one offeror, the advantages and disadvantages of the different approaches as well as

the offeror's recommendations and related justifications must be included.

5.2.7 Proposed scope of work of the offeror's implementation and performance of the contract. Proposal should include:

5.2.7.1 Proposed insurance coverage forms with justification for each.

5.2.7.2 Claims handling procedures and guidelines, including claim reporting thresholds.

5.2.7.3 Proposed outline and schedule for any training.

5.2.7.4 Proposed outline and schedule of loss control support and services to be provided. This should include projected time frames to initiate surveys, hours of service to be provided, education and training time, assistance required from ____ and related items.

5.2.8 Probable price ranges for each coverage. All charges must incorporate routine office and administrative charges including, but not limited to postage, travel, photographic, office supplies, telephone charges, issuing certificates of insurance, report preparation and typing, etc.

5.2.9 A listing of the five companies which will be approached to provide each of the insurance coverages requested. An approximation of the premium volume for the coverages from each company will be given. The companies should be listed in priority order. The offeror shall provide a narrative as to why each company is selected.

8.0 **EVALUATION AND AWARD CRITERIA:** Proposals will be evaluated using the following criteria:

8.1 Qualifications of offeror and proposed subcontractor(s).

8.1.1 Experience in providing the desired insurance and related services.

8.1.2 Market access and availability.

8.1.3 Personnel qualifications and experience of the offeror and subcontractor(s)'s staffs.

8.1.4 References.

8.2 Proposed scope of coverage and work.

8.2.1 Proposed insurance coverages.

8.2.2 Proposed claims handling procedures and support

8.2.3 Proposed loss control support.

8.3 Proposed costs.

8.3.1 Proposed insurance coverage costs.

8.3.2 Other charges (if any).

7.0 **MANDATORY PROPOSAL CONFERENCE:** A mandatory preproposal conference will be held at _(time and date)_ at the __(place)_. The purpose of this conference is to allow potential offerors an opportunity to present questions and obtain clarification relative to any facet of this solicitation.

Due to the importance of all offerors having a clear understanding of the scope of work and requirements of this solicitation, attendance at this conference will be a prerequisite for submitting a proposal. Proposals will only be accepted from those offerors who are represented at this preproposal conference. Attendance at the conference will be evidenced by the representative's signature on the attendance roster. No one will be admitted after _(time)_.

Bring a copy of the solicitation with you. Any changes resulting from this conference will be issued in a written addendum to the solicitation.

9.0 **METHOD OF PAYMENT:** Compensation to the Contractor for insurance and other services will be in the form of commissions for placement of insurance.

Invoices for all insurance coverages provided will be delivered with the policies or endorcements. Payment frequency on other than an annual basis will be considered.

EXHIBIT A

Coverage History

This exhibit should contain at least three years history of insurance coverage. Items to be listed are insurance companies (not agent or broker), policy limits, deductibles, premiums and losses. If there have been no losses, this should be stated. Loss history should include the date of occurrence, amount of loss, location of occurrence, cause and extent of injury or damage. Information on current litigation may not be available and this should be so stated.

Often coverages are arranged as a “package policy”. As much as possible, loss experience of the different elements of the “package” should be broken out. The should be arranged by:

- Property
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EXHIBIT B

Property Exposures

This should be a list of the buildings owned or occupied by the CSB. This allows evaluation of the property, power equipment and some liability exposures. Items to be included:

- Building name (if any)
- Street address (not P. O. Box)
- Building use (office, apartment, clinic, storage, etc.)
- Gross/external square feet if the building is owned by the CSB. If only a tenant, then provide the square feet for the occupied area.
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- Number of stories.
- Any loss detection or suppression in the building (smoke or heat alarms, burglar alarms, automatic sprinkler systems).
- Year building was constructed. If there has been significant renovation since construction, the year and extent of renovation should be described.

- Values of owned buildings to be insured. Do not include land costs.
- Contents values. This should provide a breakout of IT equipment.
- Rental values received by the CSB from tenants in any buildings or paid to any leasor in which CSB is a tenant. Also to be included are estimates of costs for CSB to operate from existing facilities in the event those facilities cannot be occupied.
- If there are records essential to CSB operations, which would be difficult to reconstruct or replace, these should be identified and shown as a separate item from the contents. If these have been duplicated and copies stored elsewhere, this information should be included.

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Staffing

This shows the CSB organization, functions, job titles, and number of persons in each job and reporting relationships. Volunteers and part-time employees should be identified. This assists evaluation of liability, workers' compensation and fidelity exposures.

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Automobile Exposures

This is a list of all automobiles to be insured. Information needed is the year, make, model, vehicle identification number and approximate annual mileage of each vehicle. If employees use their own automobiles, coverage for hired and non-owned automobiles should be included. If physical damage coverage is to be included, the original new cost new of the vehicles is needed.

APPENDIX E

TERMS AND CONDITIONS

SECTION I **GENERAL TERMS AND CONDITIONS E-2 TO E-11**

SECTION II **SPECIAL TERMS AND CONDITIONS: E-12 TO E-44**
GOODS & NONPROFESSIONAL SERVICES

SECTION III **ADDITIONAL CONDITIONS:** **E-45 TO E-61**
NON-CAPITAL OUTLAY CONSTRUCTION PROJECTS

SECTION IV **SPECIAL CONDITIONS:** **E-62 TO E-72**
INFORMATION TECHNOLOGY GOODS & SERVICES

APPENDIX E - Model Terms and Conditions

SECTION I

GENERAL TERMS AND CONDITIONS
GOODS AND NONPROFESSIONAL SERVICES

These General Terms and Conditions are recommended for use in written solicitations issued by Community Services Boards unless changed, deleted or revised by your legal advisor. For service contracts the last three clauses R, S and T are normally not applicable and can be omitted.

A. PROCUREMENT REGULATIONS E-3
B. APPLICABLE LAWS AND COURTS E-3
C. COMPLIANCE E-3
1. GENERAL COMPLIANCE PROVISION E-3
2. ANTI-DISCRIMINATION E-4
3. IMMIGRATION REFORM AND CONTROL ACT OF 1986 E-4
4. ANTITRUST E-5
D. DRUG FREE WORKPLACE E-5
E. ETHICS IN PUBLIC CONTRACTING E-5
F. DEBARMENT STATUS E-6
G. MANDATORY USE OF CSB FORM AND TERMS AND CONDITIONS E-6
H. CLARIFICATION OF TERMS E-6
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GENERAL TERMS AND CONDITIONS
GOODS AND NONPROFESSIONAL SERVICES

A. PROCUREMENT REGULATIONS: This solicitation is subject to the provisions of the purchasing regulations of the _____ Community Services Board and any revisions thereto, which are hereby incorporated into this contract in their entirety. A copy of these regulations are available for review at the purchasing office and, in addition, a copy can be obtained from the CSB web site or by calling _____.

(NOTE: CSBs must adopt rules and regulations regarding procurement. A sample "Vendors' Guide to CSB Procurement Regulations" is found in Appendix B of this manual and may be revised in accordance with the regulations adopted by your CSB.)

B. APPLICABLE LAWS AND COURTS: This solicitation and any resulting contract shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth. The Contractor shall comply with applicable federal, state and local laws and regulations.

C. COMPLIANCE:

1. GENERAL COMPLIANCE PROVISION: By signing this (Bid/Proposal), the (Bidder/Offeror) certifies that it is and will remain in full compliance with:

The Federal Civil Rights Act of 1964, as amended.
The Federal Immigration Reform and Control Act of 1986.
The Virginia Fair Employment Act of 1975, as amended, where applicable.
The Virginia Conflict of Interest Act.
The Virginians With Disabilities Act.
The Americans With Disabilities Act.
Section 2.2-4311 (Employment Discrimination Act) of the Virginia Public Procurement Act.
Section 2.2-4354 (Payment to Subcontractor) of the Virginia Public Procurement Act.
Sections 2.2-4367 and 2.2-4377 (Ethics in Public Contracting) of the Virginia Public Procurement Act.
The Antitrust laws of the United States and the Commonwealth of Virginia.

NOTE: The above Compliance clause is intended to be used in lieu of specific clauses addressing each requirement individually; however, if you or your legal advisor feels these requirements need to be addressed in more detail, clauses 2 through 4 may be used in place of clause 1.

2. ANTI-DISCRIMINATION: By submitting their bids or proposals bidders or offerors certify to the Community Services Board that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and Section 2.2-4311 of the *Virginia Public Procurement Act*. If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. *(Code of Virginia,* § 2.2-4343.10).

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

a. During the performance of this contract, the Contractor agrees as follows:

- The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

- The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.

- Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this Section.

b. The Contractor will include the provisions of 1. above in every subcontract or purchase order over $10,000, so that the provisions will be binding upon each subcontractor or vendor.

3. IMMIGRATION REFORM AND CONTROL ACT OF 1986: By submitting their bids or proposals, the bidders or offerors certify that they do not and will not during the performance of this contract employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986.

4. ANTITRUST: By entering into a contract, the Contractor conveys, sells, assigns, and transfers to the Community Services Board all rights, title and interest in and to all causes of the action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Community Services Board under said contract.

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

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

E. ETHICS IN PUBLIC CONTRACTING: By submitting their bids or proposals, Bidders or Offerors certify that their bids or proposals are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other Bidder/Offeror, supplier, manufacturer or subcontractor in connection with their bid or proposal, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised unless consideration of substantially equal or greater value was exchanged.

F. DEBARMENT STATUS: By submitting their bids or proposals, Bidders or Offerors certify that they are not currently debarred from submitting bids or proposals on contracts by any agency of the Commonwealth of Virginia, nor are they an agent of any person or entity that is currently debarred from submitting bids or proposals on contracts by any agency of the Commonwealth of Virginia.

G. MANDATORY USE OF CSB FORM AND TERMS AND CONDITIONS:

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

(2) Request For Proposals: Failure to submit a proposal on the official form provided for that purpose may be a cause for rejection of the proposal. Return of the complete document is required. Modification of or additions to any portion the solicitation may be cause for rejection of the proposal; however, the Community Services Board reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a proposal.

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

I. PAYMENT:

2. To Prime Contractor:

f) Invoices for items ordered, delivered and accepted shall be submitted by the contractor directly to the payment address shown on the purchase order/contract. All invoices shall show the state contract number and/or purchase order number; social security number (for individual contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations).

g) Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however. Invoices must show the contract or purchase order number assigned by the Community Services Board and shall be submitted by the contractor to the attention of (the fiscal office) and mailed to (address).

h) All goods or services provided under this contract or purchase order, that are to be paid for with public funds, shall be billed by the contractor at the contract price, regardless of which public agency is being billed.

i) The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or the date of offset when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act.

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

2. <u>To Subcontractors</u>:

b) A contractor awarded a contract under this solicitation is hereby obligated:

3) To pay the subcontractor(s) within seven (7) days of the contractor's receipt of payment from the CSB for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or

4) To notify the CSB and the subcontractor(s), in writing, of the contractor's intention to withhold payment and the reason.

c) The contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all amounts owed by the contractor that remain unpaid seven (7) days following receipt of payment from the CSB, except for amounts withheld as stated in (2) above. The date of mailing of any payment by U.S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier contractor performing under the primary contract. A contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the CSB.

J. PRECEDENCE OF TERMS: Except for Paragraphs titled Procurement Regulations, Applicable Law and Courts, Compliance, Debarment Status, Mandatory Use of CSB Forms and Terms and Conditions, and Precedence of Terms herein, which shall apply in all instances, in the event there is a conflict between the other General Terms and Conditions and any Special Terms and Conditions in this solicitation, the Special Terms and Conditions shall apply.

K. DELIVERY POINT: Except when otherwise specified herein, all items shall be F.O.B. delivery point.

L. QUALIFICATIONS OF BIDDERS OR OFFERORS: The Community Services Board may make such reasonable investigations as deemed proper and necessary to determine the ability of the Bidder or Offeror to perform the work/furnish the item(s) and the Bidder or Offeror shall furnish to the Community Services Board all such information and data for this purpose as may be requested. The Community Services Board reserves the right to inspect Bidder's or Offeror's physical facilities prior to award to satisfy questions regarding the Bidder's or Offeror's capabilities. The Community Services Board further reserves the right to reject any bid or proposal if the evidence submitted by, or investigations of, such Bidder or Offeror fails to satisfy the Community Services Board that such Bidder or Offeror is properly qualified to carry out the obligations of the contract and to complete the work/furnish the item(s) contemplated therein.

M. ADDITIONAL INFORMATION: The Community Services Board reserves the right to ask any bidder to submit information missing from its bid, to clarify its bid, and to submit additional information which the Community Services Board deems desirable.

NOTE: The above clause is used with Invitations for Bids only.

N. ASSIGNMENT OF CONTRACT: A contract shall not be assignable by the Contractor in whole or in part without the written consent of the Community Services Board.

O. CHANGES TO THE CONTRACT - Use either the long version (O-1) or the short version (O-2):

O-1. CHANGES TO THE CONTRACT:

Changes can be made to the Contract in any one of the following ways:

1. The Community Services Board may order changes within the general scope of the contract at any time by written notice to the Contractor. Changes within the scope of the contract include, but are not limited to things such as the method of packing or shipment and the place of delivery or installation. The Contractor shall comply with the notice upon receipt. The Contractor shall be compensated for any additional costs incurred as the result of such order and shall give the

Purchasing Agency a credit for any savings. Said compensation shall be determined by one of the following methods:

a. By mutual agreement between the parties in writing; or

b. By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the Contractor accounts for the number of units of work performed, subject to the Community Services Board's right to audit the Contractors records and/or to determine the correct number of units independently; or

c. By ordering the Contractor to proceed with the work and to keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The Contractor shall present the Purchasing Agency with all vouchers and records of expenses incurred and savings realized. The Community Services Board shall have the right to audit the records of the Contractor as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the Purchasing Agency within thirty (30) days from the date of receipt of the written order from the Community Services Board. If the parties fail to agree on an amount of adjustment, the question of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the procedures for resolving disputes provided by the Disputes Clause of this contract or, if there is none, in accordance with the disputes provisions of the Community Services Board's Procurement Policy. Neither the existence of a claim or a dispute resolution process, litigation or any other provision of this contract shall excuse the Contractor from promptly complying with the changes ordered by the Purchasing Agency or with the performance of the contract generally.

2. The parties may agree in writing to modify the scope of the contract. An increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.

O-2. <u>CHANGES TO THE CONTRACT</u>:

By written notice to the Contractor, the Community Services Board may from time to time make changes, within the general scope of the contract, in the services provided by the Contractor. The Contractor shall promptly comply with the notice and shall perform services in conformity to the notice. If any such change causes an increase or decrease in the Contractor's cost of performance, an equitable adjustment in the payment rate shall be negotiated and the contract modified accordingly by written supplemental agreement.

P. TESTING AND INSPECTION: The Community Services Board reserves the right to conduct any test/inspection it may deem advisable to assure supplies and services conform to the specification.

Q. DEFAULT: In case of failure to deliver goods or services in accordance with the contract terms and conditions, the Community Services Board, after due oral or written notice, may procure them from other sources and hold the Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the Community Services Board may have.

R. NON-DISCRIMINATION OF CONTRACTORS: A bidder, offeror, or contractor shall not be discriminated against in the solicitation or award of this contract because of race, religion, color, sex, national origin, age, or disability or against faith-based organizations. If the award of this contract is made to a faith-based organization and an individual, who applies for or receives goods, services, or disbursements provided pursuant to this contract objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the public body shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursements from an alternative provider.

(This clause is required, under Section 2.2-4343.1 of the Code of Virginia, to be included in all solicitations using an Invitation for Bids or Request for Proposals.)

S. TAXES: Sales to the Community Services Board are normally exempt from State sales tax. State sales and use tax certificates of exemption, Form ST-12, will be issued upon request. Deliveries against this contract shall be free of Federal excise and transportation taxes.

(TAXES - NOT NORMALLY REQUIRED FOR SERVICE CONTRACTS)

T. USE OF BRAND NAMES: Unless otherwise provided in this solicitation, the name of a certain brand, make or manufacturer does not restrict Bidders or Offerors to the specific brand, make or manufacturer named, but conveys the general style, type, character, and quality of the article desired. Any article which the public body in its sole discretion determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. The Bidder or Offeror is responsible to clearly and specifically indicate the product being offered and to provide sufficient descriptive literature, catalog cuts and technical detail to enable the Community Services Board to determine if the product offered meets the requirements of the solicitation. This is required even if offering the exact brand, make or manufacturer specified. Normally in competitive sealed bidding only the information furnished with the bid will be considered in the evaluation. Failure to furnish adequate data for evaluation purposes may result in declaring a bid

nonresponsive. Unless the Bidder/Offeror clearly indicates in its bid/proposal that the product offered is an "equal" product, such bid/proposal will be considered to offer the brand name product referenced in the solicitation.

(NOT NORMALLY REQUIRED FOR SERVICE CONTRACTS)

U. TRANSPORTATION AND PACKAGING: By submitting their bids or proposals, all Bidders or Offerors certify and warrant that the price offered for FOB destination includes only the actual freight rate costs at the lowest and best rate and is based upon the actual weight of the goods to be shipped. Except as otherwise specified herein, standard commercial packaging, packing and shipping containers shall be used. All shipping containers shall be legibly marked or labeled on the outside with purchase order number, commodity description, and quantity.

(NOT NORMALLY REQUIRED FOR SERVICE CONTRACTS)

V. ANNOUNCEMENT OF AWARD: Upon the award or the announcement of the decision to award a contract as a result of this solicitation, the Community Services Board will publicly post such notice on _____ for a minimum of 10 days.

APPENDIX E - TERMS AND CONDITIONS

SECTION II

SPECIAL TERMS AND CONDITIONS
GOODS AND NONPROFESSIONAL SERVICES

The following is an index of special terms and conditions clauses that may to be used at the buyer's discretion in IFBs and RFPs as the individual procurement may dictate. These clauses cover a broad spectrum of goods, printing and services and are followed by a brief explanation (indicated by an asterisk *) of when each should be used. Other special terms and conditions may be developed and included in the solicitation when appropriate.

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1. ADVERTISING: In the event a contract is awarded for supplies, equipment, or services resulting from this bid/proposal, no indication of such sales or services to the (name of CSB) will be used in product literature or advertising. The Contractor shall not state in any of the advertising or product literature that the Community Services Board has purchased or uses its products or services.

   *** When used: This provision is for use in solicitations for goods or services when the CSB wants to ensure that the use of the goods or services by the CSB is not used in advertising or product literature.**

2. ASBESTOS: Whenever and wherever during the course of performing any work under this contract, the Contractor discovers the presence of asbestos or suspects that asbestos is present, he shall stop the work immediately, secure the area, notify the Building Owner and await positive identification of the suspect material. During the downtime in such a case, the Contractor shall not disturb any surrounding surfaces but shall protect the area with suitable dust covers. In the event the Contractor is delayed due to the discovery of asbestos or suspected asbestos, then a mutually agreed extension of time to perform the work shall be allowed the Contractor but without additional compensation due to the time extension.

   *** When used: For use in service contracts or furnish and install goods contracts when it is possible that the contractor may encounter asbestos during performance of the contract.**

3. AS-BUILT DRAWINGS: The Contractor shall provide the Community Services Board a clean set of reproducible "as built" drawings and wiring diagrams, marked to record all changes made during installation or construction. The Contractor shall also provide the Community Services Board with maintenance manuals, parts lists and a copy of all warranties for all equipment. All "as built" drawings and wiring diagrams, maintenance manuals, parts lists and warranties shall be delivered to the Community Services Board upon completion of the work and prior to final payment.

   *** When used: For furnish and install and construction and renovation projects; i.e., fire alarm systems, heating and air conditioning systems, refrigeration rooms, building modifications, major equipment installations, etc.**

4. AUDIT: The Contractor hereby agrees to retain all books, records, and other documents relative to this contract for five (5) years after final payment, or until audited by the Community Services Board, whichever is sooner. The agency, its authorized agents, and/or State auditors shall have full access to and the right to examine any of said materials during said period.

   - **When used: Should be included in all term contracts for goods or services. Do not use in spot purchases.**

5. AUTHORIZED USERS: Additional Community Services Boards, state or local government agencies, institutions and/or other public bodies may be added or deleted to receive the goods or services resulting from this solicitation. The addition or deletion of authorized users shall be made only by written modification to the contract. Such modification shall name the specific agency added or deleted and the effective date.

- **When used: If it is determined that other public agencies (public bodies) may benefit from participating in a cooperative purchasing agreement. To obtain maximum pricing advantage, every effort should be made to identify participating agencies and their expected usage in the solicitation.**

7. AUTHORIZED USERS: _____ CSB is issuing this solicitation in cooperation with other public bodies. Requirements of _(other public bodies)_ have been combined, and the total estimated usage is shown within this solicitation. _____ CSB is responsible for administering the program; therefore, correspondence should be directed to the _____ CSB. The contractor shall provide a volume purchase report prior to contract expiration or renewal action.

*** When used: Used in cooperative purchasing solicitations where requirements of two or more public bodies have been combined to increase efficiency or reduce administrative expenses.**

7. AVAILABILITY OF FUNDS: It is understood and agreed between the parties herein that the agency shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this agreement.

*** When used: Term contracts only or if the contract performance will overlap fiscal years.**

8. AWARD OF CONTRACT: (Note: All solicitations must specify the method of award. Select one of the following clauses, as appropriate, for the type of procurement:)

A. AWARD: An award will be made to the lowest responsive and responsible Bidder. Evaluation will be based on net prices. Unit prices, extensions and grand total must be shown. In case of arithmetic errors, the unit price will govern. If cash discount for prompt payment is offered, it must be clearly shown in the space provided. Discounts for prompt payment will not be considered in making awards. The Community Services Board reserves the right to reject any and all bids in whole or in part, to waive any informality, and to delete items prior to making an award.

*** When used: This award clause can be used in invitation for bids for goods or services.**

B. Award: The Community Services Board will make the award(s) on

basis to the lowest responsive and responsible Bidder. The purchasing office reserves the right to conduct any test it may deem advisable and to make all evaluations. The Community Services Board also reserves the right to reject any or all bids, in whole or in part, to waive informalities and to delete items prior to making the award, whenever it is deemed in the sole opinion of the procuring public body to be in its best interest.

*** When used: For goods or nonprofessional services by filling in the blank, i.e., line item, total sum, lot, etc. <u>This clause shall not be used in a Request for Proposals</u>.**

C. <u>Award</u>: The right is reserved to make a separate award of each item, a group of items or all items, and to make an award either in whole or in part, whichever is deemed in the best interest of the Community Services Board. The award or awards will be made to the lowest responsible Bidder or Bidders as applicable.

*** When used: For goods only when multiple line items are involved, provided a prior written determination has been made that multiple awards may result in a savings to the Community Services Board. <u>This clause shall not be used in a Request for Proposals</u>.**

D. <u>Award To Multiple Bidders</u>: The Community Services Board will make awards on a _____ basis to the lowest responsive and responsible Bidders, provided that the next lowest Bidders are within __% of the lowest Bidder and provided that different brands are offered. Due consideration will be given to price, quality as judged by tests and previous experience, and of the ability of the Bidder to render required services. The Community Services Board reserves the right to conduct any tests it may deem advisable and to make all evaluations. The Community Services Board also reserves the right to reject any or all bids, in whole or in part, to waive informalities and to delete items prior to making the award, whenever it is deemed in the sole opinion of the procuring public body to be in its best interest.

*** When used: For goods term contracts only when multiple awards will be made based on different brands being offered. Specify how the award will be made, i.e., line item, total sum, lot, etc. plus the number of awards and the percentage figure. <u>This clause shall not be used in a Request for Proposals</u>.**

E. <u>Award to Multiple Bidders</u>: The Community Services Board reserves the right to make multiple awards as a result of this solicitation. The award(s) will be made to the lowest responsive and responsible bidder(s) meeting the requirement of the solicitation. The Community Services Board reserves the right to conduct any tests it may deem advisable and to make all evaluations. The Community Services Board also reserves the right to reject any or all bids, in whole or in part, to waive

informalities and to delete items prior to making the award, whenever it is deemed in the sole opinion of the procuring public body to be in its best interest.

* When used: For goods and nonprofessional services when multiple awards may be made in order to meet the requirements of the purchasing entity. This clause cannot be used for construction or for a procurement of professional services that exceeds $30,000.

F. Award: 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 evaluation factors included in the Request for Proposals, including price, if so stated in the Request for Proposals. Negotiations shall be conducted with the Offerors so selected. Price shall be considered, but need not be the sole determining factor. After negotiations have been conducted with each Offeror so selected, the agency shall select the Offeror which, in its opinion, has made the best proposal, and shall award the contract to that Offeror. The Community Services Board may cancel this Request for Proposals or reject proposals at any time prior to an award, and is not required to furnish a statement of the reason why a particular proposal was not deemed to be the most advantageous. (Section 2.2-4359.D, Code of Virginia.) Should the Community Services Board determine in writing and in its sole discretion that only one Offeror is fully qualified, or that one Offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that Offeror. The award document will be a contract incorporating by reference all the requirements, terms and conditions of the solicitation and the contractor's proposal as negotiated.

*** When used: For goods and nonprofessional services when competitive negotiation will be used. This clause shall not be used in an Invitation for Bids nor a professional services Request for Proposal (over $30,000).**

G. Award: The Community Services Board shall engage in individual discussions with two or more Offerors deemed fully qualified, responsible and suitable on the basis of initial responses and with emphasis on professional competence, to provide the required services. Repetitive informal interviews shall be permissible. Such 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. At the discussion stage the public body may discuss nonbinding estimates of total project costs, including, but not limited to, life-cycle costing, and, where appropriate, nonbinding estimates of price for services. Proprietary information from competing Offerors shall not be disclosed to the public or to competitors. At the conclusion of the informal interviews, on the basis of evaluation factors published in the Request for Proposals and all information developed in the selection process to this point, the purchasing agency shall select, in the order of preference, two or more Offerors whose professional qualifications and proposed services are deemed most meritorious. Negotiations

shall then be conducted, beginning with the Offeror ranked first. If a contract satisfactory and advantageous to the purchasing agency 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 fair and reasonable price. Should the Community Services Board 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.

- **When used: Professional services only. <u>This clause shall not be used in an Invitation for Bids</u>.**

I. <u>Award to Multiple Offerors</u>: 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 evaluation factors included in the Request for Proposals, including price, if so stated in the Request for Proposals. Negotiations shall be conducted with the offerors so selected. Price shall be considered, but need not be the sole determining factor. After negotiations have been conducted with each offeror so selected, the purchasing agency shall select the offeror which, in its opinion, has made the best proposal, and shall award the contract to that offeror. The Commonwealth reserves the right to make multiple awards as a result of this solicitation. The Commonwealth may cancel this Request for Proposals or reject proposals at any time prior to an award, and is not required to furnish a statement of the reasons why a particular proposal was not deemed to be most advantageous *(Code of Virginia, Section 2.2-4359.D)*. Should the Community Services Board determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified that the others under consideration, a contract may be negotiated and awarded to that offeror. The award document will be a contract incorporating by reference all the requirements, terms and conditions of the solicitation and the contractor's proposal as negotiated.

* When Used: For goods and nonprofessional services when competitive negotiation will be used and multiple awards are desired to meet the requirements of the CSB. This clause cannot be used in an Invitation for Bids or a professional services Request for Proposals (over $30,000).

11. <u>BEST AND FINAL OFFER</u>: At the conclusion of negotiations the offeror(s) may be asked to submit in writing, a best and final offer (BAFO). After the BAFO is submitted, no further negotiations shall be conducted with the offeror(s). The offeror's proposal will be rescored to combine and include the information contained in the BAFO. The decision to award will be based on the final evaluation including the BAFO

*** When used: Used only in Request for Proposals. This clause should not be used as a matter of routine. If it is anticipated that because of the nature of the requirement, the negotiations could linger, this provision should be used to show clearly when negotiations would end or to cut off negotiations at a particular point called for by the contract officer.**

12. BID ACCEPTANCE PERIOD: Any bid in response to this solicitation shall be valid for ( ) days. At the end of the ( ) days the bid may be withdrawn at the written request of the Bidder. If the bid is not withdrawn at that time it remains in effect until an award is made or the solicitation is canceled.

    *** When used: Procurement Regulations normally state that unless otherwise provided a bid is valid for 30 days. If it is anticipated that it will take longer than 30 days to evaluate and make an award then the above clause should be used and the appropriate number of days inserted in the blanks.**

11. BID BOND OR GUARANTEE: Each bid shall be accompanied by a bid bond or guarantee of five percent (5%) of the amount of the bid, which shall be a certified check, cashier's check, or a bid bond payable to the _____ Community Services Board. The sureties of all bonds shall be of such surety company or companies as are approved by the State and are authorized to transact business in the Commonwealth of Virginia. Such bid bond or check shall be submitted with the understanding that it shall guarantee that the Bidder will not withdraw such bid during the period of _____ days following the opening of bids; that if such bid is accepted, the Bidder will accept and perform under the terms of the Invitation for Bid and purchase order or contract. The bid guarantee will be returned upon award of contract.

    *** When used: Must be used in all solicitations for construction type contracts over $100,000. Insert the same number of days in the space provided as entered in the Bid Acceptance Period Clause. This clause may also be used for construction type services under $100,000, as well as for goods or services of any dollar amount.**

12. BID PRICES: Bid shall be in the form of a firm unit price for each item during the contract period.

    *** When used: In annual goods contracts without a price escalation/de-escalation clause. A different version of this clause, specifically worded to fit the situation, should be used in solicitations for various types of services, and in solicitations for the lease or rental of equipment.**

13. BLANKET FIDELITY BOND: Contractor shall maintain a blanket fidelity bond obtained from an insurance company licensed to conduct fidelity business in the home state of the Contractor and which has earned an A.M. Best Company, Inc. rating of A or better, as reflected in their most current publication, covering all personnel under

contract to the _____ Community Services Board, with a penalty amount of not less than $_____, naming the _____ Community Services Board as co-obligee. Certificate of such protection must be presented to the purchasing agency prior to the start of the service showing name of surety, limit and type of coverage, term of coverage, co-obligee provision and name and address of licensed Virginia insurance agent. The Contractor agrees to maintain such bond until one year after the completion of the contract.

*** When used: Debt collection type services. The amount to be inserted in the blank space should be based on the total value of accounts expected to be turned over to the contractor at any one time for collection and not the entire amount of the CSB's outstanding accounts.**

14. Breach: In the event of breach by the Contractor, the Community Services Board shall have the right to immediately, or thereafter, terminate the contract. In the alternative, the Community Services Board may give written notice to the Contractor specifying the breach and providing a period of time in which such breach must be corrected. Should the Community Services Board find that the Contractor has failed to properly cure any breach after being provided with appropriate notification then the Community Services Board can cause the contractual agreement between the Contractor and the Community Services Board to be terminated for breach. All remedies provided by law will then apply to those orders or the agreement as a whole. The Community Services Board's failure to exercise its right to terminate for breach under this provision shall not e construed as a waiver of its right to terminate, rescind or revoke a contract in the event of any subsequent breach of any provisions of this Agreement.

15. CANCELLATION OF CONTRACT: The Community Services Board reserves the right to cancel and terminate any resulting contract, in part or in whole, without penalty, upon 60 days written notice to the Contractor. Any contract cancellation notice shall not relieve the Contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation.

    *** When used: May be included in contracts for goods or services. This clause is not appropriate for use in spot purchases.**

16. CERTIFICATION OF MEAT PRODUCTS: By my signature on this solicitation, I hereby certify and warrant that all products offered for delivery meet or exceed the requirements of the Federal Institutional Meat Purchase Specifications (IMPS), Virginia Department of Agriculture Regulations, Federal Food, Drug and Cosmetic Act, and the Federal Wholesome Meat Act. All products awarded and delivered against this solicitation shall be subject to inspection at destination for specification compliance.

    *** When used: All solicitations for meat products.**

17. CERTIFIED TEST REPORT: Each Bidder shall provide a copy of a certified test report with their bid. The certified test report shall be from a recognized independent testing laboratory or manufacturer's quality control laboratory showing all test results and full compliance with the appropriate specifications indicated herein. However, the Community Services Board reserves the right to perform any tests or inspections when and as deemed necessary to verify the certified test report.

    *** When used: For solicitation of goods where a certified test report may be the only method of determining an item offered would meet specifications.**

18. CONFIDENTIALITY AND RECORDS: The Contractor assures that information and data obtained, to include personal facts and circumstances related to clients, shall be considered confidential, during and following the term of this agreement, and will not be divulged without the Community Services Board's written consent and then only in strict accordance with prevailing laws. The Contractor shall hold all information provided by the Community Services Board as proprietary and confidential, and shall make no unauthorized reproduction or distribution of such material. Upon termination of this agreement and/or within 30 days of receipt of final payment for services, all materials, data and information in the possession of the Contractor, provided to or obtained by the Contractor during the performance of this agreement and to satisfy the requirements of this agreement, shall be provided to the Purchasing Agency in hardcopy and/or electronic form. Except where law allows, the Contractor shall not retain hard copies of the material, data and information and all electronic stored material, data and information shall be expunged from equipment and systems retained by the Contractor.

    *** When used: For solicitation of services where the contractor may have access to records of or contact with clients.**

19. CONTRACT MANAGEMENT AND ADMINISTRATION: A contract manager will be appointed by the Community Services Board who will be responsible for monitoring contractor performance, resolving contractual issues, and interpreting contractual terms and conditions. Further, the Contract Manager may pursue any issue(s), relating to the contract agreement that results from this solicitation, that are in the best interest of the Community Services Board. The Contract Manager is not authorized to make or authorize changes to the contract, to approve additional work or expenditures, or to change deliverables or timeframes. Requests for such changes shall be directed to the Purchasing Officer.

20. CONTRACTOR/SUBCONTRACTOR LICENSE REQUIREMENT: By my signature on this solicitation, I certify that this firm/individual and/or subcontractor is properly licensed for providing the goods/services specified.

    Contractor Name: _____ Subcontractor Name: _____

License # _____ Type

*** When used: Include in all solicitations for specific types of services for which State statutes or regulatory agencies require contractors to be properly registered, licensed or hold a permit prior to performing such work. See 2.9.**

21. CONTRACTOR REGISTRATION: If a contract for construction, removal, repair or improvement of a building or other real property is for seventy thousand dollars ($70,000) or more, or if the total value of all such contracts undertaken by Bidder/Offeror within any twelve-month period is five hundred thousand dollars ($500,000) or more, the Bidder/Offeror is required under Title 54.1-1100, Code of Virginia (1950), as amended, to be licensed by the State Board of Contractors as a "CLASS A CONTRACTOR". If such a contract is for seventy five hundred dollars ($7,500) or more but less than seventy thousand dollars ($70,000), (one thousand dollars [$1,000] for electrical, plumbing and HVAC work) the Bidder/Offeror is required to be licensed as a "CLASS B CONTRACTOR". If such a contract is for one thousand dollars ($1,000) or more but less than seventy five hundred dollars ($7,500) and is not for electrical, plumbing and HVAC work, the bidder is required to be licenses as a "CLASS C CONTRACTOR" The Bidder/Offeror shall place on the outside of the envelope containing the bid/proposal and shall place in the bid/proposal over his signature whichever of the following notations is appropriate, inserting his contractor license number:

Licensed Class A Virginia Contractor No. _____
Specialty _____

Licensed Class B Virginia Contractor No. _____
Specialty _____

Licensed Class C Virginia Contractor No. _____
Specialty _____

If the Bidder/Offeror shall fail to provide this information on his bid/proposal or on the envelope containing the bid/proposal and shall fail to promptly provide said Contractor license number to the Community Services Board in writing when requested to do so before or after the opening of Bids/Proposals, he shall be deemed to be in violation of Section 54-1115 of the Code of Virginia (1950), as amended, and his bid/proposal will not be considered.

If a Bidder/Offeror shall fail to obtain the required license prior to submission of his bid/proposal, the bid/proposal shall not be considered.

*** When used: Required to be used in all solicitations by the Code of Virginia for all construction, removal, repair or improvements to facilities. This includes almost all specialty trades, i.e., glue down carpet, painting, fencing, roofing, plumbing, electrical, carpentry, etc. When in doubt as to whether or not this**

clause should be included in the solicitation, contact the Department of Commerce, State Board for Contractors, telephone, (804) 367-2785.

22. CONTRACTOR'S TITLE TO MATERIALS: No materials or supplies for the work shall be purchased by the Contractor or by any Subcontractor subject to any chattel mortgage or under a conditional sales or other agreement by which an interest is retained by the seller. The Contractor warrants that he has clear title to all materials and supplies for which he invoices for payment.

    *** When used: For use in solicitations for construction and for furnish and install equipment.**

23. CRIMINAL HISTORY: The Community Services Board reserves the right to restrict activities required to provide the services herein to only those persons who are without criminal conviction. This restriction shall not relieve the contractor of any requirements herein. Upon request of the Community Services Board, the contractor shall obtain a criminal history background check on any person, employee or subcontractor used for the delivery of services herein. The Community Services Board may, in its sole decision, determine that an individual possessing a criminal conviction poses no risk or threat to the Community Services Board, its employees or clients, and may waive this restriction on a case by case basis.

    *** When used: When the Contractor may have direct contact with clients or with financial records.**

24. DELIVERY: State your earliest firm delivery or performance date: _____ 20 __. This date may be a factor in making the award.

    *** When used: When delivery time is critical for either goods or services.**

25. DELIVERY AND STORAGE: It shall be the responsibility of the Contractor to make all arrangements for delivery, unloading, receiving and storing materials in the building during installation. The Owner will not assume any responsibility for receiving these shipments. Contractor shall check with the Owner and make necessary arrangements for security and storage space in the building during installation.

    *** When used: For furnish and install solicitations, if applicable.**

26. DELIVERY NOTIFICATION: The Community Services Board shall be notified hours prior to delivery of any items so that personnel may be available to allow access to the building and verify items received. Notification shall be made to :

    _____.
    Name Phone

*** When used: Use in solicitations for goods if the receiving facility is not staffed at all times during normal working hours.**

27. DISCOUNTS: A prompt payment discount offered for prompt payment within ( ) calendar days or longer will be considered in determining net low bid.

    *** When used: When the CSB knows payments can be made within the time frame specified.**

28. DISCOUNTS - SPECIAL OR PROMOTIONAL DISCOUNTS: The Contractor shall extend any special promotional sale prices or discounts immediately to the Community Services Board during the term of the contract. Such notice shall also advise the duration of the specific sale or discount price.

    *** When used: This clause should be considered for use when soliciting bids for products where it is known that vendors or manufacturers have promotional sales opportunities.**

29. DISPUTES: Disputes shall be communicated between Contractor's assigned coordinator and assigned CSB official, who will negotiate resolution of dispute. If the condition is not corrected, the coordinator and official shall meet with the CSB's Contract Officer who will negotiate resolution of the dispute. If the condition is not corrected at the above level, a meeting shall be scheduled with the CSB Executive Director or his/her designee by the CSB Contract Officer, including all interested parties. The decision of the CSB Executive Director/designee shall be final.

    *** When used: In contracts or solicitations where the CSB's procurement regulations are not referenced. If the procurement regulations contain a disputes resolution clause and these regulations are referenced, this clause may not be needed.**

30 DRAWINGS: The Contractor shall provide the Community Services Board a clean set of reproducible "as built" drawings and wiring diagrams, marked to record all changes made during installation or construction. The Contractor shall also provide the Community Services Board with maintenance manuals and parts lists for all equipment. All "as built" drawings and wiring diagrams, maintenance manuals, and parts lists shall be delivered to the Community Services Board upon completion of the work and prior to final payment.

    *** When used: For furnish and install and construction and renovation projects; i.e., fire alarm systems, heating and air conditioning systems, refrigeration rooms, building modifications, major equipment installations, etc.)**

31. DRUG FREE WORKPLACE: During the performance of this contract, the contractor agrees to (I) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicant for employment, a

statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over $10,000, so that the provisions will be binding upon each subcontractor or vendor.

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

* When used: **Required under Section 11-51.1 of the <u>Code of Virginia</u>** to be included in every contract over $10,000. If procuring by unsealed solicitation, the Community Services General Terms and Conditions may be incorporated by reference.

32. <u>EXTRA CHARGES NOT ALLOWED</u>: The bid price shall be for complete installation ready for the Community Services Board's use, and shall include all applicable freight and installation charges; extra charges will not be allowed.

    *** When used: For furnish and install solicitations. Also may be used for inside delivery by changing the wording.**

33. <u>FINAL INSPECTION</u>: At the conclusion of the work, the Contractor shall demonstrate to the authorized owners representative that the work is fully operational and in compliance with contract specifications and codes. Any deficiencies shall be promptly and permanently corrected by the Contractor at the Contractor's sole expense prior to final acceptance of the work.

    *** When used: For furnish and install solicitations.**

34. <u>FLAME RETARDANT CERTIFICATE</u>: Each Bidder/Offeror shall submit a certification in writing <u>with their bid/proposal</u> that all materials used in fabricating draperies or curtains are inherently flame retardant or have been treated to meet NFPA Standard 701, large and small scale test.

    *** When used: Must be used in solicitations for draperies or curtains that will be installed in office spaces and dormitories, but not state-owned housing.**

35. <u>HUMAN RIGHTS</u>: The Contractor shall comply with and adopt the Board's Human Rights Policy. This policy complies with the Community Human Rights Regulations promulgated in 1986 and has been approved by the State Human rights Committee.

*** When used: When a contractor is to provide direct care services to CSB clients and where these protections are not elsewhere covered in the contract. This clause may need to be revised to comply with the individual CSB's situation.**

36. IDENTIFICATION OF BID/PROPOSAL ENVELOPE: If a special envelope is not furnished, or if return in the special envelope is not possible, the signed bid/proposal should be returned in a separate envelope or package, sealed and identified as follows:

From:_____
Name of Bidder/Offeror Due Date Time

_____
Street or Box Number IFB No./RFP No.

_____
City, State, Zip Code IFB/RFP Title

Name of Contract/Purchase Officer or Buyer: _____

The envelope should be addressed as directed on Page 1 of the solicitation.

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

*** When used: For use in solicitations for which the purchasing agency has not furnished a special bid/proposal return envelope or the envelope furnished is not adequate.**

37. INDEMNIFICATION: Contractor agrees to indemnify, defend and hold harmless the Community Services Board, its officers, agents, and employees from any claims, damages and actions of any kind or nature, whether at law or in equity, arising from or caused by the use of any materials, goods, or equipment of any kind or nature furnished by the Contractor/any services of any kind or nature furnished by the Contractor, provided that such liability is not attributable to the sole negligence of the using agency or to failure of the using agency to use the materials, goods, or equipment in the manner already and permanently described by the Contractor on the materials, goods or equipment delivered.

*** When used: For contracts involving substantial risk of third party injuries/claims. Use of this clause requires prior approval of your legal counsel.**

38. INSPECTION OF JOB SITE: My signature on this solicitation constitutes certification that I have inspected the job site and am aware of the conditions under which the work must be accomplished. Claims, as a result of failure to inspect the job site, will not be considered by the Community Services Board.

    *** When used: Should be used in furnish and install, services and non-capital outlay construction projects.**

39. INSTALLATION: All items must be assembled and set in place, ready for use. All crating and other debris must be removed from the premises.

    *** When used: For inside delivery of goods which require unpacking and assembly.**

40. INSURANCE, MONEY AND SECURITIES : Contractor shall maintain a Broad Form Money and Securities Insurance Policy obtained from an insurance company licensed to conduct crime insurance business in the home state of the contractor and which has earned an A.M. Best Company, Inc. rating of A or better, as reflected in their most current publication, covering all money and property entrusted to the contractor by the Community Services Board, with limits of coverage of not less than $_____ for Loss Inside the Premises Coverage and not less than $_____ for Loss Outside the Premises Coverage, naming the Commonwealth of Virginia as additional named insured as respects this contract. Certificate of such protection must be presented to the purchasing agency prior to the start of the service showing name of insurance company, limits and type of coverage, term of coverage, additional insured provision and name and address of licensed insurance agent. The contractor agrees to maintain such policy until the completion of the contract and all money and property of the Community Services Board is remitted to the Community Services Board.

    *** When used: Required for contracts covering the collection, handling, safekeeping, and/or transporting CSB monies or securities. The amounts to be entered by the agency should be equal to the estimated maximum amount of monies or securities that would be in the contractor's possession at any one time.**

41. INSURANCE:

    By signing and submitting a bid or proposal under this solicitation, the Bidder or Offeror certifies that if awarded the contract, it will have the following insurance coverages at the time the work commences. For construction contracts, if any subcontractors are involved, the subcontractor will have workers' compensation

insurance in accordance with Sections 2.2-4332 and 65.2-800 et seq. Of the *Code of Virginia*.

The bidder or offeror further certifies that the contractor and any subcontractors will maintain these during the entire term of the contract and that all insurance coverages will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

INSURANCE COVERAGES AND LIMITS REQUIRED:

A. Worker's Compensation - Statutory requirements and benefits.

B. Employers Liability - $100,000.

C. General Liability - $500,000 combined single limit. The Community Services Board is to be named as an additional insured with respect to the services being procured. These coverages are to include Premises/Operations Liability, Products and Completed Operations Coverage, Independent Contractor's Liability, Owner's and Contractor's Protective Liability and Personal Injury Liability.

D. Automobile Liability - $500,000. Combined single limit.

NOTE: In addition, various Professional Liability/Errors and Omissions coverages are required when soliciting those services shown below:

Profession/ Service	Limits
Accounting	$1,000,000 occurrence, $3,000,000 aggregate
Architecture	$2,000,000 occurrence, $6,000,000 aggregate
Asbestos Design, Inspection or Abatement Contractors	$1,000,000 occurrence, $3,000,000 aggregate
Health Care Practitioner **	Must be covered by Health Care Practitioner liability insurance which meets the minimum level required under Section 8.01-581.15 of the Code of Virginia.
Insurance/ Risk Management	$1,000,000 per occurrence, $3,000,000 aggregate

Landscape/ Architecture	$500,000 occurrence, $1,000,000 aggregate
Legal	$1,000,000 occurrence, $5,000,000 aggregate
Professional Engineer	$2,000,000 occurrence, $6,000,000 aggregate
Surveying	$100,000 occurrence, $300,000 aggregate

Garagekeeper's Liability and Garagekeeper's Legal Liability - $500,000. This coverage shall include those specified in c. above. These are needed when automobile or unlicensed motor vehicle maintenance contracts are procured.

- **When used: Required in all solicitations where a contractor will perform work or services in or on the CSB site. The limits are minimums and may be increased. Your insurance agent or advisor should be contacted when other types of coverage may be required or when in doubt as to the need for other limits.**

** Includes, dentists, optometrists, nurses, pharmacists, doctors, etc. The amount of coverage required was increased to $1,500,000 effective 8/1/99. Effective July 1 of each year thereafter, the required coverage will increase by $50,000 until it reaches $2,000,000 by 7/1/08. (It will increase by $75,000 in 2007 and 2008.)

42. INTEGRATION AND MODIFICATION: This contract constitutes the entire agreement between the Contractor and the Purchaser. No alteration, amendment or modification in the provisions of this agreement shall be effective unless reduced to writing, signed by the parties and attached hereto.

43. LABELING OF HAZARDOUS SUBSTANCES: If the items or products requested by this solicitation are "Hazardous Substances" as defined by the § 3.1-250 of the Code of Virginia (1950), as amended, or § 1261 of Title 15 of the United States Code, then the Bidder/Offeror, by submitting his bid/proposal, certifies and warrants that the items or products to be delivered under this contract shall be properly labeled as required by the foregoing sections and that by delivering the items or products the Bidder/Offeror does not violate any of the prohibitions of § 3.1-252 of the Code of Virginia or Title 15 U.S.C. § 1263.

*** When used: Must be included in all solicitations for the purchase of chemicals or compounds which may contain toxic or hazardous substances, i.e., cleaning, janitorial supplies, chemicals of all types, etc. (See clause #32).**

44. LIMITATION OF LIABILITY:

A. To the maximum extent permitted by applicable law, the contractor will not be liable under this contract for any indirect, incidental, special or consequential damages, or damages from loss of profits, revenue, data or use of the supplies, equipment and/or services delivered under this contract. This limitation of liability will not apply, however, to liability arising from: (a) personal injury or death; (b) defect or deficiency caused by willful misconduct or negligence on the part of the contractor; or (c) circumstances where the contract expressly provides a right to damages, indemnification or reimbursement.

***Wnen Used: *<u>This clause should be used on an exception basis</u>* and only when it is anticipated that liability may be an issue and the risk and liability to the CSB is negligible. In such cases, the above clause should be included in written solicitations and contracts, as well as procurements made on a sole source or emergency basis. Examples are: office supplies and equipment, paper products, printing, furniture, audio/visual equipment, consultant services, media services, equipment maintenance, etc. Prior review by risk management and/or legal counsel is recommended before including in a solicitation or contract. Note: The clause may be modified, as applicable, depending on the intended use of the goods and/or services.**

B. LIMITATION OF LIABILITY: To the maximum extent permitted by applicable law, the contractor's liability under this contract for loss or damages to government property caused by use of any defective or deficient supplies, products, equipment and/or services delivered under this contract shall not exceed the greater of $_____ or _____ times the amount of money aid to the contractor under this contract during the twelve month period preceding the event or circumstance giving rise to such liability. The contractor will not be liable under this contract for any indirect, incidental, special or consequential damages, or damages from loss of profits, revenue, data or use of the supplies, equipment and/or services delivered under this contract. The above limitation of liability is per incident. The limitation and exclusion of damages in the foregoing sentences will not apply, however, to liability arising from: (a) personal injury or death; (b) defect or deficiency caused by willful misconduct or negligence on the part of the contractor; or (c) circumstances where the contract expressly provides a right to damages, indemnification or reimbursement.

*** When Used: *<u>This clause should be used on an exception basis</u>* and only when it is anticipated that liability will be an issue and the risk to the CSB may be extensive. In such cases, the above clause should be included in written solicitations and contracts, as well as procurements made on a sole source or emergency basis. Examples are: software; hardware; two-way communication devices; telephone equipment; medical, dental and laboratory equipment and supplies; elevator maintenance and inspection services; food service; medical service, etc. Caution: The potential risk must be calculated in dollars and indicated in the first blank. Delete the remaining part of the sentence. If the risk value cannot be determined within**

a reasonable amount and the contract is for indefinite quantity (e.g., annual contract), estimate the approximate annual value and fill in the dollar amount. Enter a multiplication factor in the second blank, such as two (2) or some other reasonable number. Prior review by risk management and/or legal counsel is recommended before including in a solicitation or contract. The clause may be modified, as applicable, depending on the intended use of the goods and/or services.

45. LIQUIDATED DAMAGES: **(Note: Review the guidance contained in the General Comments and Procedures below before deciding to include one of the following clauses in a solicitation.**

A. Liquidated Damages, Goods and Nonprofessional Services: Delivery is required not later than _____. It is understood and agreed by the Bidder/Offeror that time is of the essence in the delivery of supplies, services, materials or equipment of the character and quality specified in the bid/proposal document. In the event these specified supplies, services, materials or equipment are not delivered by the date specified there will be deducted, not as a penalty but as liquidated damages, the sum of $_____ per day for each and every calendar day of delay beyond the time specified; except that if the delivery be delayed by any act, negligence or default on the part of the Community Services Board, public enemy, war, embargo, fire or explosion not caused by the negligence or intentional act of the Contractor or his supplier(s), or by riot, sabotage or labor trouble that results from a cause or causes entirely beyond the control or fault of the contractor or his supplier(s), a reasonable extension of time as the procuring public body deems appropriate may be granted. Upon receipt of a written request and justification for any extension from the Contractor, the purchasing office may extend the time for performance of the contract or delivery of goods herein specified, at the purchasing office's sole discretion, for good cause shown.

*** When used: For critical delivery of goods or services. The required delivery date and the dollar amount must be filled in by the agency.**

B. LIQUIDATED DAMAGES, FURNISH AND INSTALL: Work shall begin calendar days after receipt of purchase order or contract and all work shall be completed in __ calendar days. It is hereby understood and agreed by the Bidder that time is of the essence in the delivery of supplies, services, materials or equipment of the character and quality specified in the bid document. In the event these specified supplies, services, materials or equipment are not delivered by the date specified, there will be deducted, not as a penalty but as liquidated damages, the sum of $_____per day for each and every calendar day of delay beyond the time specified; except that if the delivery be delayed by any act, negligence or default on the part of the Community Services Board, public enemy, war, embargo and fire or explosion not caused by the negligence or intentional act of the Contractor or his supplier(s), or by riot, sabotage or labor

trouble that results from a cause or causes entirely beyond the control or fault of the contractor or his supplier(s), a reasonable extension of time as the procuring public body deems appropriate may be granted. Upon receipt of a written request and justification for an extension from the Contractor, the purchasing office may extend the time for performance of the contract or delivery of goods herein specified at the purchasing office's sole discretion for good cause shown.

*** When used: For furnish and install contracts covering modifications, repair and other non-capital outlay construction-type contracts. The dollar amount must be filled in by the agency. The two blanks for the number of calendar days may be filled in by the agency prior to issuing the solicitation or the Bidder/Offeror may be required to fill in the number of days with the bid/proposal. The dollar amount must be reasonable.**

NOTE: GENERAL COMMENTS:

These clauses are not to be used as a penalty, but as a means to assess damages when both (1) the time of delivery or performance is such an important factor in the award of the contract that the Community Services Board may reasonably expect to suffer damage if the delivery or performance is delinquent, and (2) the extent or amount of such damage would be difficult or impossible to ascertain or prove. In deciding whether to include a liquidated damages clause in a contract, the purchase officer should consider the probable effect on such matters as pricing, competition, and the costs and difficulties of contract administration.

When a liquidated damages clause is to be used in a contract, the applicable clause and appropriate rate(s) of liquidated damages shall be included in the solicitation. The rate of liquidated damages used must be reasonable and considered on a case-by-case basis since liquidated damages fixed without any reference to probable actual damages may be held to be a penalty, and therefore unenforceable.

When a liquidated damages clause is used in a construction, modification or repair contract, the rate(s) of liquidated damages to be assessed against the contractor should be for each day of delay and the rate(s) should, as a minimum, cover the estimated cost of inspection and superintendence for each day of delay in completion. Whenever the Community Services Board will suffer other specific losses due to the failure of the Contractor to complete the work on time, the rate(s) should also include an amount for these items. Examples of specific losses are:

(1) The cost of substitute facilities;

(2) The rental of buildings and/or equipment.

ASSESSMENT PROCEDURES:

If a liquidated damages clause is included in a contract and the contractor is late or behind schedule and the delay is not an excusable one, the purchase officer should (1) issue a Notice of Contract Deficiency or "Cure Letter" to the Contractor (See Appendix M); and (2) in addition, if there is a performance bond, send a copy of the cure letter to the bonding company. If the Contractor does not comply with the cure letter, notify the bonding company that they are responsible to complete the contract and at the same time, terminate the contract for default. (See Appendix M).

If there is no performance bond with the contract, (1) send a cure letter to the contractor. If the Contractor does not correct the problem, issue a termination for default letter and re-bid the requirement. Assess liquidated damages against the Contractor from the date the project was to be completed, as stated in the liquidated damages clause, to the date of the termination of default letter. In addition, any excess costs encountered in the re-purchase action may also be held against the defaulted contractor.

46. MAINTENANCE MANUALS: The Contractor shall provide with each piece of equipment an operations and maintenance manual with wiring diagrams, parts list, and a copy of all warranties.

    *** When used: For solicitations to purchase or furnish and install major equipment or systems.)**

47. MATERIAL SAFETY DATA SHEETS: Material Safety Data Sheets and descriptive literature shall be provided with the bid/proposal for each chemical and/or compound offered. Failure on the part of the Bidder/Offeror to submit such data sheets may be cause for declaring the bid/proposal as nonresponsive.

    *** When used: Must be used for the purchase of all chemicals or compounds which may contain toxic or hazardous substances, i.e., cleaning, janitorial supplies, chemicals of all types. (See clause #43.)**

48. NAME OF MANUFACTURER AND SHIPPING POINT: Each Bidder/Offeror shall supply in the space below the name and address of the manufacturer of each item offered and the shipping point.

    ITEM NUMBER (S):
    MANUFACTURER:
    ADDRESS:

SHIPPING POINT:

*** When used: For spot purchases or annual contracts for goods if the agency desires this information.**

49. NEGOTIATION WITH THE LOWEST BIDDER: Unless all bids are canceled or rejected, the Community Services Board reserves the right granted by Section 2.2-4318 of the Code of Virginia to negotiate with the lowest responsive, responsible Bidder to obtain a contract price within the funds available to the State agency whenever such low bid exceeds the Community Services Board's available funds. For the purpose of determining when such negotiations may take place, the term "available funds" shall mean those funds which were budgeted by the Community Services Board agency for this contract prior to the issuance of the written Invitation for Bids. Negotiations with the low Bidder may include both modifications of the bid price and the Scope of Work/Specifications to be performed. The State agency shall initiate such negotiations by written notice to the lowest responsive, responsible Bidder that its bid exceeds the available funds and that the State agency wishes to negotiate a lower contract price. The times, places, and manner of negotiating shall be agreed to by the State agency and the lowest responsive, responsible Bidder.

    *** When used: For use only in an Invitation for Bids, for goods or services. This clause shall not be used as a matter of routine.**

50. ORDERING OPTION: The _____ Community Services Board may during the first 60 days after this contract is awarded, with the concurrence of the contractor, place additional orders under the contract at the original unit price through the issuance of separate purchase orders. The aggregate of such additional orders shall not exceed 100%of the quantity originally stated in the contract.

    *** When used: This can be used when purchasing goods on a spot basis and the purchaser anticipates that there might be an additional requirement for the same goods within the next sixty days. When it is used in a solicitation, a statement on the face of the invitation should direct the bidder's attention to this clause. It is not for use with term type contracts.**

51. OWNERSHIP OF MATERIAL: Ownership of all data, material, and documentation, including electronic data and media originated and prepared for the Community Services Board pursuant to the RFP shall belong exclusively to the Community Services Board and be subject to public inspection in accordance with the Virginia Freedom of Information Act; however, the Offeror must invoke the protection of this section prior to or upon submission of the data or other materials, and must identify the data or other materials to be protected and state the reasons why protection is necessary.

*** When used: Used in RFPs when Offerors will be required to submit various material and data to be used by the CSB in the evaluation process.**

52. PERFORMANCE AND PAYMENT BONDS: The successful Bidder shall deliver to the purchasing office executed Standard Performance and Labor and Material Payment Bonds, each in the sum of the contract amount, with the Community Service Board as obligee. The surety shall be a surety company or companies approved by the State Corporation Commission to transact business in the Commonwealth of Virginia. No payment shall be due and payable to the Contractor, even if the contract has been performed in whole or in part, until the bonds have been delivered to and approved by the purchasing office. Standard bond forms will be provided by the purchasing office prior to or at the time of award.

    *** When used: Must be used in all solicitations for construction which exceed $100,000, but may be for construction, goods and services for less than $100,000.**

53. PRE-BID/PRE-PROPOSAL CONFERENCE - MANDATORY/OPTIONAL: (Note: Select one of the following two clauses if a mandatory or optional pre-bid or pre-proposal conference is desired and include it in the solicitation.)

    A. MANDATORY PRE-BID/PRE-PROPOSAL CONFERENCE: A mandatory pre-bid/pre-proposal conference will be at _____(time) and (date)_____ at the (place)_____. The purpose of this conference is to allow potential Bidders/Offerors an opportunity to present questions and obtain clarification relative to any facet of this solicitation.

    Due to the importance of all Bidders/Offerors having a clear understanding of the specifications/scope of work and requirements for this solicitation, attendance at this conference will be a prerequisite for submitting a bid/proposal. Bids/Proposals will only be accepted from those Bidders/Offerors who are represented at this bid/proposal conference. Attendance at the conference will be evidenced by the representative's signature on the attendance roster.

    Bring a copy of the solicitation with you. Any changes resulting from this conference will be issued in a written addendum to the solicitation.

    *** When used: For use in complex procurements when clarification of the contents of the solicitation to potential Bidders/Offerors will greatly enhance understanding of what is sought to be procured. "CAUTION":, use of this clause may limit competition because only those that attend can submit a bid/proposal. Use wording appropriate to the type of**

solicitation, i.e., pre-bid, bid, Bidder in an IFB and pre-proposal, proposal, Offeror in an RFP.

B. OPTIONAL PRE-BID/PRE-PROPOSAL CONFERENCE: An optional pre-bid/pre-proposal conference will be held at ___(time) and (date)_____ at the (place)_____. The purpose of this conference is to allow potential Bidders/Offerors an opportunity to present questions and obtain clarification relative to any facet of this solicitation.

While attendance at this conference will not be a prerequisite to submitting a bid/proposal, Bidders/Offerors who intend to submit a bid/proposal are encouraged to attend. Any changes resulting from this conference will be issued in a written addendum to the solicitation.

*** When used: For use in less complex procurements when vendor input is desired. Bidders/Offerors that do not attend may still submit a bid/proposal. Use wording appropriate to the type of solicitation as described above.**

54. PREVENTIVE MAINTENANCE: The Contractor shall provide necessary preventive maintenance, required testing and inspection, calibration and/or other work necessary to maintain the equipment in complete operational condition during the warranty period.

    *** When used: For equipment purchases only in conjunction with a warranty clause which requires preventive maintenance during the warranty period.**

55. PRICE ESCALATION/DEESCALATION: Price adjustments may be permitted only for changes in the Contractor's cost of materials not to exceed the increase in the following index/indices:
    _____No price increases will be authorized for calendar days after the effective date of the contract. Price escalation may be permitted only at the end of this period and each ___ days thereafter and only where verified to the satisfaction of the purchasing office. However, "across the board" price decreases are subject to implementation at any time and shall be immediately conveyed to the Community Services Board.

    Contractor shall give not less than 30 days advance notice of any price increase to the purchasing office. Any approved price changes will be effective only at the beginning of the calendar month following the end of the full 30 day notification period. The Contractor shall document the amount and proposed effective date of any general change in the price of materials. Documentation shall be supplied with the Contractor's request for increase which will: (1) verify that the requested price increase is general in scope and not applicable just to the Community Services Board; and (2) verify the amount or percentage of increase which is being passed on to the Contractor by the Contractor's suppliers.

The purchasing office will notify Contractor in writing of the effective date of any increase which it approves. However, the Contractor shall fill all purchase orders received prior to the effective date of the price adjustment at the old contract prices. The Contractor is further advised that decreases which affect the cost of materials are required to be communicated immediately to the purchasing office.

*** When used: For annual goods contracts only where, because of rapidly changing market conditions, a firm fixed price cannot be secured for one (1) year or more. Depending on the commodity and how frequent costs change, the number of days that should be entered by the CSB in the blank space are 30, 60, 90 or 180 days.**

56. PRIME CONTRACTOR RESPONSIBILITIES: The Contractor shall be responsible for completely supervising and directing the work under this contract and all subcontractors that he may utilize, using his best skill and attention. Subcontractors who perform work under this contract shall be responsible to the prime Contractor. The Contractor agrees that he is as fully responsible for the acts and omissions of his subcontractors and of persons employed by them as he is for the acts and omissions of his own employees.

    *** When used: For use in solicitations to furnish and install goods or provide services when subcontracting will be permitted.**

57. PRINTING: (Note: Select any or all of the following clauses, as may be appropriate, and include in solicitations for printing.)

    A. PRINTING RAST: Bids for printing will be rejected when the additional per thousand cost, run at the same time (R.A.S.T.) equals or exceeds the base lot per thousand price quoted and/or incremental unit cost. On bids for multiple part forms and envelopes, the additional per thousand price (R.A.S.T.) shall not exceed the base lot per thousand price quoted and/or incremental unit cost.

    *** When used: USE IN ALL PRINTING BIDS.**

    B. ACCEPTABLE MILL BRANDS: Only those papers listed in the latest edition of The Competitive Grade Finder Directory fine paper directory book, will be considered as equal.

    *** When used: Whenever a specific paper is specified along with the phrase "or equal."**

    C. OWNERSHIP OF PRINTING MATERIALS: All artwork, camera-ready copy, negative, dies, photos, and similar materials used to produce a printing job shall become the property of the Community Services Board. Any furnished materials shall remain the property of the Community Services Board. All such

items and materials shall be delivered to the ordering agency in usable condition after completion of the work, and prior to submission of the invoice for payment.

*** When used: Must be included in all printing solicitations.**

D. PRINTING PICKUPS/DELIVERIES: Contractor shall be responsible for all pickups and deliveries of all materials.

*** When used: Include in all printing solicitations when the contractor will be required to pick up artwork, negatives, etc. for the job and deliver the finished product to the CSB.**

E. QUALITY COLOR PRINTING: Contractor shall analyze each four-color subject and make separations individually. Contractor shall allow for color correction, dot etching, etc., in order to achieve top-quality production from each separation made.

*** When used: Include in all printing solicitations involving four-color process of more than one picture.**

F. COPYRIGHT: No vendor may copyright any work contracted for by the CSB and produced for the CSB without the prior written consent of the CSB.

58. PRINTING DEFINITIONS: **(Note: Include the appropriate definition in the solicitation whenever any of the following terms are used to describe the quality of the printing requirement.)**

A. CLASS 1 - CRITICAL QUALITY PRINTING: This class shall be used for four-color process printing where critical color matches are necessary or where engraved and/or embossed invitations are required. Typical examples: matching artists' original paintings or sculptures, or product colors so that they represent true colors or materials used in creating the original are accurately represented, and reproduction of medical slides where true color may be critical. This is a step above "pleasing colors." Finishing and bindery operations shall be of this same critical quality.

B. CLASS 1 - EXCELLENT QUALITY PRINTING: This class shall be used when good clean, crisp reproduction is required. One color or multiple color jobs may be classified as "Class 1." Four-color process subjects shall have pleasing color matches with good skin tones; some color correction may be necessary. PMS color matches may be required. Very fine lines and drawings may be required. Normally half-tones or screen tints will require 133, 150, or 200 line screens. There is to be large reverse areas, and/or large solid areas where good even ink coverage is necessary. Because of the overall design, very accurate registration is required. Camera-ready copy is generally furnished.

Metallic inks may be used. Finishing and bindery operations shall be of the same excellent quality.

C. CLASS 2 - GOOD QUALITY PRINTING: This class shall be used for the majority of black and white or one color jobs where no critical registration is required or when no colors overprint. Multiple color jobs may be classified as "Class 2." Original copy is uniform and may have medium lines and drawings, medium-sized halftones and screens, medium-sized reverses and solid areas. Normally halftones and screentints would be produced with 120 or 133 line screens. Metallic inks and process work are not generally included in the class. Normally metal plates and negatives are required. No cut lines or spots are acceptable. Finishing and bindery operations shall be of the same good quality.

D. CLASS 3 - MEDIUM QUALITY PRINTING: This class denotes the least expensive kind of printing and shall be used for short-run, reproduction duplicator-type work where electrostatic or other direct plate methods are acceptable. Original copy is usually type written and may have coarse lines, drawings, and small reverses or solid areas. Evenness of ink coverage is not required. Coarse screen halftones or coarse screens may be used. No colors overprint each other and no metallic inks are used. Finishing and bindery operations would normally be simple stapling or punching.

59. PRODUCT INFORMATION: The Bidder/Offeror shall clearly and specifically identify the product being offered and enclose complete and detailed descriptive literature, catalog cuts and specifications with the bid/proposal to enable the Community Services Board to determine if the product offered meets the requirements of the solicitation. Failure to do so may cause the bid/proposal to be considered nonresponsive.

*** When used: For solicitations to furnish and install or deliver goods when detailed specifications are required to properly evaluate items offered.**

60. QUANTITIES: Quantities set forth in this solicitation are estimates only, and the Contractor shall supply at bid prices actual quantities as ordered, regardless of whether such total quantities are more or less than those shown.

*** When used: For solicitations for requirements type term contracts.**

61. RECYCLED PAPER: The (Name) Community Services Board in determining the award of any contract for paper and paper products, shall procure using competitive bidding and shall award to the lowest responsive and responsible bidder bidding recycled paper and paper products of a quality suitable for the purpose intended, and in accordance with current EPA procurement guidelines for paper and paper products, so long as the bid price is not more than ten percent (10%) greater than the bid price

of the lowest responsive and responsible bidder offering a product that does not contain recycled materials.

Bidder agrees to furnish upon request, a minimum of fifty (50) sheets of paper stock offered. Paper stock to be used for testing on CSB equipment (may specify equipment that paper will be tested on) to ensure compatibility. If requested, samples must be delivered within five (5) days.

*** When Used: Use in solicitations for paper and paper products.**

62. REFERENCES: Bidders shall provide a list of at least 3 references where similar goods and/or services have been provided. Each reference shall include the name of the organization, the complete mailing address, the name of the contact person and telephone number.

	ORGANIZATION	ADDRESS	CONTACT PERSON	TELEPHONE
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

*** When used: For any solicitation where the purchaser must evaluate offers based upon the offerors ability to provide certain services.**

63. RENEWAL OF CONTRACT: (NOTE: A term contract may not be renewed unless a renewal clause is included in the solicitation. Select one of the following clauses if an option to extend the contract beyond the original period of the contract is desired.)

A. RENEWAL OF CONTRACT: This contract may be renewed by the Community Services Board upon written agreement of both parties for (one year)/(successive one year periods), under the terms of the current contract, and at a reasonable time (approximately 90 days) prior to the expiration.

*** When used: For solicitations for term contracts to permit renewal of the contract for a specific period of time, i.e. one year, two successive one-year periods, etc. at the same price(s), terms and conditions as in the original contract. Renegotiation of the price(s), terms and conditions is not permitted. Unless market prices are expected to remain stable, however, the Price Escalation/Deescalation clause (No. 38) should be considered for use with this provision.**

C. RENEWAL OF CONTRACT: This contract may be renewed by the Community Services Board for a period of (one year)/(___ successive one year periods) under

the terms and conditions of the original contract except as stated in 1. and 2. below. Written notice of the Community Services Board's intention to renew shall be given approximately 90 days prior to the expiration date of each contract period.

1. If the Community Services Board elects to exercise the option to renew the contract for an additional one-year period, the contract price(s) for the additional one year shall not exceed the contract price(s) of the original contract increased/decreased by no more than the percentage increase/decrease of the _____ category of the CPI-W section of the Consumer Price Index of the United States Bureau of Labor Statistics for the latest twelve months for which statistics are available.

2. If during the first one-year renewal the Community Services Board elects to exercise the option to renew the contract for the second additional one-year period, the contract price(s) for the second additional one-year period shall not exceed the contract price(s) of the first one-year extension period increased/decreased by no more than the percentage increase/decrease of the _____category of the CPI-W section of the Consumer Price Index of the United States Bureau of Labor Statistics for the latest twelve months for which statistics are available.

*** When used. For service contracts, use of this clause permits renewal of a contract with an increase/decrease in the labor rate portion only of the original contract. This clause should only be used during periods of abnormal economic uncertainty where an extension of one or more additional years may be desired.**
Select the most appropriate category that would apply to the contract and fill in the blank. If only a one-year extension is desired, delete paragraph 2. of the clause.

64. REPRODUCTION RIGHTS: The Contractor shall provide the Community Services Board with free and unrestricted right of reproduction of any of the products developed pursuant to a resulting contract.

*** When used: For contracts in which the Contractor will be required to produce publications or other materials for the CSB.**

65. RESPONSIBILITIES OF PARTIES: Each party to this contract shall assume responsibility for any action or inaction resulting from its negligence, error or omission or that of its employees, agents or clients which results in any claim, damage or action of any kind or nature, whether at law or in equity. No claim or law suit shall be made against the Contracting Agency, its employees, agents or clients for any action or inaction by the Lessor, its employees, agents or clients. This provision shall in no way be construed as a waive of the Contracting Agency's sovereign immunity or other defenses.

*** When used: As alternate to Indemnification clause (#30, page E-22 of this manual) when both parties are held responsible for their own negligence. Legal counsel is recommended before including either this or the Indemnification clause in any contract.**

66. SERVICE AUTHORIZATION: All services delivered under the resulting contract must be authorized in writing by the Board's staff, to be designated upon execution of the contract. In no instance will the Contractor render services, in whole or in part using resources provided under the contract to any unauthorized individual, group, agency or organization.

    *** When used: When the CSB wants services rendered only at their direction.**

67. SEVERABILITY: Each paragraph and provision of this agreement is severable from the entire agreement, and if any provision is declared invalid, the remaining provisions shall nevertheless remain in effect.

68. SUBCONTRACTING ENCOURAGED: It is the policy of the Community Services Board to contribute to the establishment, preservation, and strengthening of disadvantaged minority, small and women-owned businesses and to encourage their participation in the CSB procurement activities. Toward that end, the CSB encourages contractors to provide for the participation of disadvantaged minority businesses, small, and women-owned businesses through partnerships, joint ventures, subcontracts, and other contractual opportunities.

    ***When used: To encourage participation by small, minority and women-owned businesses.**

69. SUBCONTRACTS: No portion of the work shall be subcontracted without prior written consent of the Community Services Board. In the event that the Contractor desires to subcontract some part of the work specified herein, the Contractor shall furnish the purchasing agency the names, qualifications and experience of their proposed subcontractors. The Contractor shall, however, remain fully liable and responsible for the work to be done by his subcontractor(s) and shall assure compliance with all requirements of the contract.

    *** When used: In solicitations for furnish and install or services when subcontracting will be permitted only upon prior approval of the purchasing agency.**

70. USE OF RECYCLED MATERIALS: Notwithstanding the prohibition against used, damaged or obsolete items, vendors are encouraged to use secondary or recycled materials in the manufacture of products to the maximum extent practicable without jeopardizing the performance or intended end use of the product unless such use is precluded due to health and welfare or safety requirements or product specifications contained herein. Please provide information in this regard:

1. Do any of the goods offered contain recycled materials? ____Yes ____ No.

2. If so, please qualify the recycled material content. _____

*** When Used: Include in solicitations for goods that have a high probability for the use of recycled materials.**

71. WARRANTY: All materials and equipment shall be fully guaranteed against defects in material and workmanship for a period of _____ days following date of delivery. Should any defect be noted by the owner, the Purchasing Office will notify the Contractor of such defect or nonconformance. Notification will state either (1) that the Contractor shall replace or correct, or (2) the owner does not require replacement or correction, but an equitable adjustment to the contract price will be negotiated. If the Contractor is required to correct or replace, it shall be at no cost to the Community Services Board and shall be subject to all provisions of this clause to the same extent as materials initially delivered. If the Contractor fails or refuses to replace or correct the deficiency, the office issuing the purchase order may have the materials corrected or replaced with similar items and charge the Contractor the costs occasioned thereby or obtain an equitable adjustment in the contract price.

    *** When used: Include in solicitations to furnish and install or deliver goods when the procuring agency wants to specify the length of time the warranty is to run; i.e., equipment 1 year, compressor 5 years, piano 10 years, etc.**

72. WARRANTY (COMMERCIAL): The Contractor agrees that the supplies or services furnished under any award resulting from this solicitation shall be covered by the most favorable commercial warranties the Contractor gives any customer for such supplies or services and that the rights and remedies provided therein are in addition to and do not limit those available to the Community Services Board by any other clause of this solicitation. A copy of this warranty must be furnished with the bid/proposal.

    *** When used: Include in solicitations for goods, furnish and install or services when commercial warranty provisions for a particular item or service are acceptable.**

73. WORK SITE DAMAGES: Any damage, including damage to finished surfaces, resulting from the performance of this contract shall be repaired to the Community Services Board's satisfaction at the Contractor's expense.

    *** When used: Include in solicitations to furnish and install equipment. May also be used in solicitations for services such as moving, maintenance, removal of equipment, non-capital outlay construction projects, etc.**

74. WORK ESTIMATES (TIME AND MATERIAL CONTRACTS): Under this time and material contract, the contractor shall furnish the CSB with a non-binding written

estimate of the total costs to complete the work required. The estimate must include the labor category(ies), the contractor's hourly rates specified in the contract, and the total material cost. Material costs shall be billed at contractor's actual invoice costs (contractor shall furnish copies of all invoices for materials) or discount off the list price, whichever is specified in the contract. If the agency determines that the estimated price is not fair and reasonable, the CSB has the right to ask the contractor to reevaluate the estimate. If the revised estimate is determined to be not fair and reasonable, the CSB reserves the right to obtain additional quotes from other vendors. A work order will be issued to the contractor, as the authority to proceed with the work, which will incorporate the contractor's estimate and the terms and conditions of the contract. The contractor and his/her personnel shall log in with the designated contract administrator each day before and after work to confirm labor hours.

*** When Used: This clause may be used for all time and material contracts where the contractor furnishes estimates prior to starting work for particular projects. A CSB should take the necessary steps to ensure that it is protected from those cases where a contractor submits a low estimate and the invoice is much higher. Use of this clause will provide that protection as long as the contractor is held to the terms of this clause.**

APPENDIX E - TERMS AND CONDITIONS

SECTION III

ADDITIONAL TERMS AND CONDITIONS FOR NON-CAPITAL OUTLAY CONSTRUCTION PROJECTS

The following Additional Terms and Conditions may be used in all solicitations for non-capital outlay projects that involve building, altering, repairing, improving or demolishing any structure, building or paving project (other than highways), and any draining, dredging, excavation, grading or similar work upon real property which do not require the use of capital outlay procedures. These Additional Terms and Conditions may be included in the IFB in addition to those listed in Appendix E, Section I. The Virginia Public Procurement Act requires the use of competitive sealed bidding for construction projects unless the use of competitive negotiation can be justified under the provisions of Section 2.2-4303.D.

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1. DEFINITIONS:

a. **CSB:** The term "CSB" shall mean the Owner which is the _____ Community Services Board through the governing Body, the Board, the Building Committee or other agent with authority to execute the contract for the _____ Community Services Board. The Community Services Board's Agent is the official with the authority to sign the contract on behalf of the Community Services Board.

b. **Construction:** As used in these documents shall include new construction, reconstruction, renovation, restoration, major repair, demolition and all similar work upon buildings and ancillary facilities owned or to be acquired by the CSB and any draining, dredging, excavation, grading or similar work upon real property.

c. **Contractor:** The term "Contractor" means the person, firm or corporation with whom the Owner has entered into a contractual agreement and includes the plural number and the feminine gender when such are named in the contract as the Contractor.

d. **Defective:** An adjective which when modifying the word "Work" refers to Work that is unsatisfactory, faulty or deficient, or does not conform to the Contract Documents, or does not meet the requirements of any inspections, standard, test or approval referred to in the Contract Documents, or has been damaged prior to final payment.

e. **Emergency:** Any unforeseen combination of circumstances or a resulting state that poses imminent danger to health, life or property.

f. **Final Acceptance:** The CSB's acceptance of the Project from the Contractor upon confirmation from the Project Inspector and the Contractor that the project is totally complete in accordance with the contract requirements and that all defects have been eliminated. Final acceptance is confirmed by the making of final payment of the contract amount including any change orders or adjustment thereto.

g. **Notice:** All written notices, demands, instructions, claims, approvals and disapprovals required to obtain compliance with the Contract requirements. Any written notice by either party to the Contract shall be sufficiently given if delivered to or at the last known business address of the person, firm or corporation constituting the party to the Contract, or to his, their or its authorized agent, representative or officer, or when enclosed in a postage

prepaid envelope addressed to such last known business address and deposited in a United States mailbox.

h. **Notice to Proceed:** A written notice given to the Owner to the Contractor fixing the date on which the Contract time will commence for the Contractor to begin the prosecution of the Work in accordance with the requirements of the Contract Documents.

i. **Owner:** The Community Services Board, with whom the Contractor has entered into a contract and for whom the Work or services is to be provided.

j. **Project Inspector:** One or more individuals employed by the Owner to inspect the Work and/or to act as clerk of the works to the extent required by the Owner. The Owner shall notify the Contractor in writing of the appointment of such Project Inspector(s).

k. **Provide:** Shall mean furnish and install ready for its intended use.

l. **Submittals:** All drawings, diagrams, illustrations, schedules and other data required by the Contract Documents which are specifically prepared by or for the Contractor to illustrate some portion of the Work and all illustrations, brochures, standard schedules, performance charts, instructions, diagrams and other information prepared by a Supplier and submitted by the Contractor to illustrate material or equipment for some portion of the Work.

m. **Subcontractor:** An individual, partnership or corporation having a direct contract with the Contractor or with any Subcontractor for the performance of the Work. It includes one who provides on-site labor but does not include one who furnishes or supplies materials for the project.

n. **Substantial Completion:** The Work which is sufficiently complete, in accordance with the Contract Documents, so that the project can be utilized by the Owner for the purposes for which it is intended.

o. **Supplier:** A manufacturer, fabricator, distributor, materialman or vendor who provides material for the project but does not provide on-site labor.

p. **Underground Facilities:** All pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels or other such facilities or attachments, and any encasements containing such facilities which are or have been installed underground to furnish any of the following services or materials: electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, sewage and drainage removal, traffic or other control systems or water.

q. **Work:** The entire completed construction or the various separately identifiable parts thereof required to be furnished under the Contract Documents. Work is the result of performing services, furnishing labor, and furnishing and incorporating materials and equipment into the construction, all as required by the Contract Documents.

2. CONTRACT DOCUMENTS:

a. The contract entered into by the parties shall consist of the Invitation for Bids, the signed bid submitted by the Contractor; General Terms and Conditions; these Additional Terms and Conditions; the Special Terms and Conditions; the drawing, if any; the specifications; and all modifications and addenda to the foregoing documents, all of which shall be referred to collectively as the Contract Documents.

b. All time limits stated in the Contract Documents, including but not limited to the time for completion of the Work, are of the essence of the Contract.

c. Anything called for by one of the Contract Documents and not called for by the others shall be of like effect as if required or called for by all, except that a provision clearly designed to negate or alter a provision contained in one or more of the other Contract Documents shall have the intended effect.

3. LAWS AND REGULATIONS:

a. The Contractor shall comply with all laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of the Work and shall give all notices required thereby.

b. This Contract and all other contracts and subcontracts are subject to the provisions of Articles 3 and 5, Chapter 4, Title 40.1, *Code of Virginia*, relating to labor unions and the "right to work,", The Contractor and its Subcontractors, whether residents or nonresidents of the Commonwealth, who perform any work related to the project shall comply with all of the said provisions.

c. The provisions of all rules and regulations governing safety as adopted by the Safety Codes Commission of the Commonwealth of Virginia, and as issued by the Department of Labor and Industry under Title 40.1 of the *Code of Virginia* shall apply to all work under this contract. Inspectors from the Department of Labor and Industry shall be granted access to the Work for inspection without first obtaining a search warrant from the court.

d. Building Permit: Building permits where required will be obtained and paid for by the Owner. This does not include any local license fees, business fees or

similar assessments which may be imposed by the appropriate political subdivision.

e. The Contractor, if not licensed as an asbestos abatement contractor or an RFS contractor in accordance with Section 54.1-514, *Code of Virginia*, shall have all asbestos related Work performed by subcontractors who are duly licensed as asbestos contractors of RFS contractors as appropriate for the Work required.

4. PREPARATION AND SUBMISSION OF BIDS: Bids must give the full business address of the Bidder and be signed by him/her with his/her usual signature. Bids by partnerships must furnish the full name of all partners and must be signed in the partnership name by one of the members of the partnership or any authorized representative, followed by the designation of the person signing. Bids by corporations must be signed with the legal name of the corporation followed by the name of the State in which it is incorporated and by the signature and designation of the president, secretary or other person authorized to bind it in the matter. The name of each person signing shall also be typed or printed below the signature. A bid by a person who affixes to the signature the word "President", "Secretary", "Agent" or other designation without disclosing the principal, may be held to be the bid of the individual signing. When requested by the CSB, satisfactory evidence of the authority of the officer signing in behalf of the corporation shall be furnished.

5. WITHDRAWAL OR MODIFICATION OF BIDS: Bids may be withdrawn or modified by written notice received from bidders prior to the time fixed for bid receipt. The withdrawal or modification may be made by the person signing the bid or by an individual(s) who is authorized by him on the face of the bid. Written modifications may be made on the bid form itself, on the envelope in which the bid is enclosed, or on a separate document. Written modifications, whether the original is delivered or transmitted by facsimile, must be signed by the person making the modification or withdrawal.

6. RECEIPT AND OPENING OF BIDS:

a. It is the responsibility of the Bidder to assure that the bid is delivered to the place designated for receipt of bids and prior to the time set for receipt of bids. No bids received after the time designated for receipt of bids shall be considered.

b. Bids will be opened at the time and place stated in the advertisement, and their contents made public for the information of the bidders and others interested who may be present either in person or by representative. The officer or agent of the Owner, whose duty it is to open them, will decide when the specific time has arrived. No responsibility will be attached to any officer or agent for the premature opening of a bid not properly addressed and identified.

c. The provisions of Section 2.2-4342 of the *Code of Virginia*, as amended, shall be applicable to the inspection of bids received.

7. ERRORS IN BIDS

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

In accordance with Section 2.2-4330 A.(ii) of the *Code of Virginia*, the bidder must submit to the contracting authority his or her original work papers, documents and materials used in the preparation of the bid within one day after the date fixed for submission of bids. Such work papers shall be delivered by the bidder in person or by registered mail at or prior to the time fixed for the opening of bids. Such work papers, documents and materials may be considered as trade secrets or proprietary information subject to the conditions of subsection D of Section 2.2-4342, *Code of Virginia*. The bids shall be opened one day following at the time fixed by the contracting authority for the submission of bids. Thereafter, the bidder shall have two (2) hours after the opening of bids within which to claim in writing any mistake as defined herein and withdraw his bid. The contract shall not be awarded by the contracting authority until such two-hour period has elapsed. Such mistake shall be proved only from the original work papers, documents and materials delivered to the contracting authority as required herein.

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

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

If a bid is withdrawn under authority of this section, the next higher bidder shall be deemed to be the low bidder on the project.

8. SUBCONTRACTS

(a) The Contractor shall as soon as practicable after the signing of the contract, notify the Owner in writing of the names of Subcontractors proposed for the principal parts of the Work. The Contractor shall not employ any Subcontractor that the Owner may, within a reasonable time, object to as unsuitable. The Owner will not direct the Contractor to contract with any particular Subcontractor unless provided in the specifications or Bid form.

(b) The Owner shall, on request, furnish to any Subcontractor, if practicable, the amounts of payments made to the Contractor, the Schedule of Values and Requests for Payment submitted by the Contractor which would tend to show what amounts are due and payable by the Contractor to the Subcontractor.

(c) The Contractor agrees that he is a fully responsible to the Owner for the acts and omissions of his Subcontractors, Suppliers, and invitees upon the site of the project and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by him.

9. SEPARATE CONTRACTS

(a) The Owner reserves the right to let other contracts in connection with the project, the work under which may proceed simultaneously with the execution of this contract. The Contractor shall afford other separate Contractors reasonable opportunity for the introduction and storage of their materials and the execution of their Work. The Contractor shall cooperate with them and shall take all reasonable action to coordinate his Work with theirs. If the Owner has listed other separate contracts in the Invitation for Bids which it expects to proceed simultaneously with the Work of the Contractor, and has included the estimated timing of such other Contracts in the Invitation for Bids, the Contractor shall integrate the schedule of those separate contracts into his scheduling. The Contractor shall make every reasonable effort to assist the Owner in maintaining the schedule for all separate contracts. If the Work performed by the separate Contractor is defective or performed so as to prevent this Contractor from carrying out his Work according to the drawings and specifications of this contract, this Contractor shall immediately notify the Owner upon discovering such conditions.

(b) If a dispute arises between the Contractor and separate contractors as to their responsibility for cleaning up as required by Sections 18(c) and 18(d) of these Additional Terms and Conditions, the Owner may clean up and charge the cost thereof to the respective Contractors in proportion to their responsibility. If a Contractor disputes the Owner's apportionment of clean-up costs, it shall be that Contractor's burden to demonstrate and prove the correct apportionment.

10. TAXES: The Contractor shall, without additional expense to the Owner, pay all applicable federal, state, and local taxes, fees, and assessments except the taxes, fees and assessments on the real property comprising the site of the project. If the

State Building Official elects to have the local building official inspect the Work as provided by Section 36-98.1 of the *Code of Virginia*, the Owner will pay the resulting fees to the local building official.

11. PATENTS: The Contractor shall obtain all licenses necessary to use any invention, article, appliance, process or technique of whatever kind and shall pay all royalties and license fees. The Contractor shall hold and save the Owner, its officers, agents and employees, harmless from any loss or liability for or on account of the infringement of any patent rights in connection with any invention, process, technique, article or appliance manufactured or used in the performance of the Contract, including its use by the Owner, unless such invention, process, technique, article or appliance is specifically named in the specifications or drawings as acceptable for use in carrying out the Work. If, before using any invention, process, technique, article or appliance specifically named in the specifications or drawings as acceptable for use in carrying out the Work, the Contractor has or acquires information that the same is covered by letters of patent making it necessary to secure the permission of the patentee, or other, for the use of the same, he shall promptly advise the Owner. The Owner may direct that some other invention, process, technique, article or appliance be used. Should the Contractor have reason to believe that the invention, process, technique, article or appliance so specified is an infringement of a patent, and fail to inform the Owner, he shall be responsible for any loss due to the infringement.

12. INSPECTION

    a. All material and workmanship shall be subject to inspection, examination and test by the Owner and its Project Inspector at any and all times during construction. The Project Inspector shall have authority to reject defective material and workmanship and require its correction. Rejected workmanship shall be satisfactorily corrected and rejected material shall be satisfactorily replaced with proper material without charge therefor, and the Contractor shall promptly segregate and remove the rejected material from the premises. If the Contractor fails to proceed at once with replacement of rejected material and/or the correction of defective workmanship, the Owner may, by contract or otherwise, replace such material and/or correct such workmanship and charge the cost to the Contractor, or may terminate the right of the Contractor to proceed, the Contractor and surety being liable for any damages.

    b. Job-site inspections, tests conducted on site or tests of materials gathered on site, which the Contract requires to be performed by independent testing entities, shall be contracted and paid for by the Owner. Examples of such tests are the testing of cast in-place concrete, foundation materials, soil compaction, pile installations, caisson bearings and steel framing connections. Although conducted by independent testing entities, the Owner will not contract and pay for tests or certifications of materials, manufactured products or assemblies which the Contract, codes, standards, etc. require to be tested and/or certified

for compliance with industry standards such as Underwriters Laboratories, Factory Mutual or ASTM. If there are any fees to be paid for such tests and certifications, they will be paid by the Contractor. The Contractor shall also pay for all inspections, tests, and certifications which the Contract specifically requires him to perform or pay, together with any inspections and tests which he chooses to perform for his own quality control purposes. The Contractor shall promptly furnish, without additional charge, all reasonable facilities, labor and materials necessary and convenient for making such tests. Except as provided in (c) below, whenever such examination and testing finds defective materials, equipment or workmanship, the Contractor shall reimburse the Owner for the cost of reexamination and retesting.

c. Should it be considered necessary or advisable by the Owner at any time before final acceptance of the entire Work to make an examination of any part of the Work already completed, by removing or tearing out portions of the Work, the Contractor shall on request promptly furnish all necessary facilities, labor and material to expose the Work to be tested to the extent required. If such Work is found to be defective in any respect, due to the fault of the Contractor or his Subcontractors, he shall defray all the expenses of uncovering the Work, of examination and testing, and of satisfactory reconstruction. If, however, such work is found to meet the requirements of the Contract, the actual cost of the Contractor's labor and material necessarily involved in uncovering the Work, the cost of examination and testing and Contractor's cost of material and labor necessary for replacement shall be paid to the Contractor and he shall, in addition, if completion of the Work has been delayed thereby, be granted a suitable extension of time.

d. The Project Inspector will recommend to the Owner that the Work be suspended when in his judgment the drawings and specifications are not being followed. Any such suspension shall be continued only until the matter in question is resolved to the satisfaction of the Owner. The cost of any such Work stoppage shall be borne by the Contractor unless it is later determined that no fault existed in the Contractor's Work.

e. The Project Inspector has no authority to and shall not:

(1)Authorize deviations from the Contract Documents;

(2)Enter into the area of responsibility of the Contractor's superintendent;

(3)Issue directions relative to any aspect of construction means, methods, techniques, sequences or procedures, or in regard to safety precautions and programs in connection with the Work;

(4)Authorize or suggest that the Owner occupy the project, in whole or in part;

(5)Issue a certificate for payment.

13. SUPERINTENDENCE BY CONTRACTOR

a. The Contractor shall have a competent foreman or superintendent, satisfactory to the Owner, on the job site at all times during the progress of the Work. The Contractor shall be responsible for all construction means, methods, techniques, sequences and procedures, for coordinating all portions of the Work under the Contract except where otherwise specified in the Contract Documents, and for all safety and worker health programs and practices. The Contractor shall notify the Owner, in writing, of any proposed change in superintendent including the reason therefor prior to making such change.

b. The Contractor shall, at all times, enforce strict discipline and good order among the workers on the project, and shall not employ on the work any unfit person, anyone not skilled in the work assigned to him, or anyone who will not work in harmony with those employed by the Contractor, the Subcontractors, the Owner or the Owner's separate contractors and their subcontractors.

c. The Owner may, in writing, require the Contractor to remove from the Work any employee the Owner deems to be incompetent, careless, not working in harmony with others on the site, or otherwise objectionable.

14. ACCESS TO WORK

The Owner, the Owner's inspectors and other testing personnel, and inspectors from the Department of Labor and Industry shall have access to the Work at all times. The Contractor shall provide proper facilities for access and inspection.

15. AVAILABILITY OF MATERIALS

If material specified in the Contract Documents is not available on the present market, alternate materials may be proposed by the Contractor for approval of the Owner.

16. CONTRACTOR'S TITLE TO MATERIALS

No materials or supplies for the work shall be purchased by the Contractor or by any Subcontractor subject to any security interest, installment or sales contract or any other agreement or lien by which an interest is retained by the seller or is given to a secured party. The Contractor warrants that he has clear title to all materials and supplies which he uses in the Work or for which he accepts payment in whole or in part.

17. WARRANTY OF MATERIALS AND WORKMANSHIP

a. The Contractor warrants that, unless otherwise specified, all materials and equipment incorporated in the Work under the Contract shall be new, in first class condition, and in accordance with the Contract Documents. The Contractor further warrants what all workmanship shall be of the highest quality and in accordance with Contract Documents and shall be performed by persons qualified at their respective trades.

b. Work not conforming to these warranties shall be considered defective.

c. This warranty of materials and workmanship is separate and independent from and in addition to any of the Contractor's other guarantees or obligations in this Contract.

18. USE OF PREMISES AND REMOVAL OF DEBRIS:

a. The Contractor shall:

(1) Perform his contract in such a manner as not to interrupt or interfere with the operation of any existing activity on the premises or with the Work of any Contractor;

(2) Store his apparatus, materials, supplies, and equipment in such orderly fashion at the site of the Work as will not unduly interfere with the progress of his Work or the Work of any other Contractor; and

(3) Place upon the Work or any part thereof only such loads as are consistent with the safety of that portion of the Work.

b. The Contractor expressly undertakes, either directly or through his Subcontractor(s), to effect all cutting, filling or patching of his work required to make the same conform to the drawings and specifications, and, except with the consent of the Owner, not to cut or otherwise alter the work of any other Contractor. The Contractor shall not damage or endanger any portion of the Work or premises, including existing improvements, unless called for by the Contract.

c. The Contractor expressly undertakes, either directly or through his Subcontractor(s), to clean up frequently all refuse, rubbish, scrap materials and debris caused by his operations, to the end that at all times the site of the work shall present a neat, orderly and workmanlike appearance. No such refuse, rubbish, scrap material and debris shall be left within the completed Work nor buried on the building site, but shall be removed from the site and properly disposed of in a licensed landfill or otherwise as required by law.

d. The Contractor expressly undertakes, either directly or through his Subcontractor(s), before final payment, to remove all surplus material, false

work, temporary structures, including foundations thereof, plants of any description and debris of every nature resulting from his operations and to put the site in a neat, orderly condition; to thoroughly clean and leave reasonably dust free all finished surfaces including all equipment, piping, etc. on the interior of all buildings included in the Contract; and to thoroughly clean all glass installed under the Contract including the removal of all paint and mortar splatters and other defacements. If a Contractor fails to clean up at the completion of the Work, the Owner may do so and charge for costs thereof to the Contractor.

e. During and at completion of the Work, the Contractor shall prevent site soil erosion, the runoff of silt and/or debris carrying water from the site, and the blowing of debris off the site in accordance with the applicable requirements and standards of the Virginia Erosion and Sediment Control Handbook, latest edition, and of the Contract Documents.

f. The Contractor shall not operate or disturb the setting of any valves, switches or electrical equipment on the service lines to the building except by proper previous arrangement with the Owner. The Contractor shall give ample advance notice of the need for cut-offs which will be scheduled at the convenience of the Owner.

19. PROTECTION OF PERSONS AND PROPERTY

a. The Contractor expressly undertakes, both directly and through its Subcontractor(s), to take every precaution at all times for the protection of persons and property which may come on the building site or be affected by the Contractor's operation in connection with the Work.

b. The Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work.

c. The provisions of all rules and regulations governing safety as adopted by the Safety Codes Commission of the Commonwealth of Virginia, issued by the Department of Labor and Industry under Title 40.1 of the *Code of Virginia* shall apply to all work under this Contract.

d. The Contractor shall continuously maintain adequate protection of all his work from damage and shall protect the Owner's property from injury or loss arising in connection with this Contract. He shall make good any such damage, injury or loss, except such as may be directly due to errors in the Contract Documents or caused by agents or employees of the Owner. He shall adequately protect adjacent property to prevent any damage to it or loss of use and enjoyment by its owners. He shall provide and maintain all passageways, guard fences, lights and other facilities for protection required by public

authority, local conditions, any of the Contract Documents or erected for the fulfillment of his obligations for the protection of persons and property.

e. In an emergency affecting the safety or life of persons or of the Work, or of the adjoining property, the Contractor, without special instruction or authorization from the Owner, shall act, at his discretion, to prevent such threatened loss or injury. Also, should he, to prevent threatened loss or injury, be instructed or authorized to act by the Owner, he shall so act immediately, without appeal. Any additional compensation or extension of time claimed by the Contractor on account of any emergency work shall be determined as provided by paragraph O. of the General Terms and Conditions.

20. CONTRACTOR'S RIGHT TO STOP WORK OR TERMINATE THE CONTRACT

If the Work should be stopped under any order of any court or other public authority for a period of ninety (90) days through no fault of the Contractor or of anyone employed by him, or if the Owner should fail to pay to the Contractor within thirty (30) days when no dispute exists as to the sum, then the Contractor may, upon ten (10) calendar days written notice to the Owner, stop work or terminate the Contract and recover from the Owner payment for the cost of the Work actually performed, together with overhead and profit thereon, but profit shall be recovered only to the extent that the Contractor can demonstrate that he would have had profit on the entire Contract if he had completed the Work. The Contractor may not receive profit or any other type of compensation for parts of the Work not performed. The Contractor may recover the cost of physically closing down the job site, but no other costs of termination. The Owner may offset any claims it may have against the Contractor against the amounts due to the Contractor. In no event shall termination of the Contract by the Contractor terminate the obligations of the Contractor's surety on its payment and performance bonds.

21. OWNER'S RIGHT TO TERMINATE THE CONTRACT FOR CAUSE

a. If the Contractor should be adjudged as bankrupt, or if he should make a general assignment for the benefit of his creditors, or if a receiver should be appointed on account of his insolvency, the Owner may terminate the Contract. If the Contractor should persistently or repeatedly refuse or should fail, except in cases for which extension of time is provided, to supply enough properly skilled workmen or proper materials, or if he should fail to make prompt payment to subcontractors or suppliers of material or labor, or persistently disregards laws, ordinances or the written instructions of the Owner, or otherwise be guilty of a substantial violation of any provision of the Contract, then the Owner may terminate the Contract.

b. Prior to termination of the Contract, the Owner shall give the Contractor and his surety ten (10) calendar days written notice, during which the Contractor and/or his surety may rectify the cause of the termination. If rectified to the

satisfaction of the Owner within said ten (10) days, the Owner may rescind its notice of termination. If it does not, the termination for cause shall become effective at the end of the ten day (10) notice period. In the alternative, the Owner may postpone the effective date of the termination notice, at its sole discretion, if it should receive reassurances from the Contractor and/or its surety that the causes of termination will be remedied in a time and manner which the Owner finds acceptable. If at any time more than ten (10) days after the notice of termination, the Owner determines that Contractor and/or its surety has not or is not likely to rectify the causes of termination in an acceptable manner or within the time allowed, then the Owner may immediately terminate the Contract for cause by giving written notice to the Contractor and its surety. In no event shall termination for cause terminate the obligations of the Contractor's surety on its payment and performance bonds.

c. Notice of terminations, whether initial or given after a period of postponement, may be served upon the Contractor and the surety by mail or any other means at their last known places of business in Virginia or elsewhere, by delivery to any officer or management/supervisory employee of either wherever they may be found, or, if no such officer, employee or place of business is known or can be found by reasonable inquiry within three (3) days, by posting the notice at the job site. Failure to accept or pick up registered or certified mail addressed to the last known address shall be deemed to be delivery.

d. Upon termination of the Contract, the Owner shall take possession of the premises and of all materials, tools and appliances thereon and finish the work by whatever method he may deem expedient. In such case the Contractor shall not be entitled to receive any further payment. If the expense of finishing the Work, including compensation for additional managerial and administrative services shall exceed the unpaid balance of the Contract price, the Contractor shall pay the difference to the Owner, together with any other expenses of terminating the Contract and having it completed by others.

e. If it should be judicially determined that the Owner improperly terminated this Contract for cause, then the termination shall be deemed to be a termination for the convenience of the Owner.

f. Termination of the Contract under this section is without prejudice to any other right or remedy of the Owner.

22. <u>TERMINATION BY OWNER FOR CONVENIENCE</u>

a. Owner may terminate this Contract at any time without cause, in whole or in part, upon giving the Contractor notice of such termination. Upon such termination, the Contractor shall immediately cease Work and remove from the

project site all of its labor forces and such of its materials as Owner elects not to purchase or to assume in the manner hereinafter provided. Upon such termination, the Contractor shall take such steps as Owner may require to assign to the Owner the Contractor's interest in all Subcontracts and purchase orders designated by Owner. After all such steps have been taken to Owner's satisfaction, the Contractor shall receive as full compensation for termination and assignment the following:

(1) All amounts then otherwise due under the terms of this Contract,

(2) Amounts due for work performed subsequent to the latest Request for Payment through the date of termination,

(3) Reasonable compensation for the actual cost of demobilization incurred by the Contractor as a direct result of such termination. The Contractor shall not be entitled to any compensation for lost profits or for any other type of contractual compensation or damage other than those provided by the preceding sentence. Upon payment of the forgoing, Owner shall have no further obligations to the Contractor of any nature.

b. In no event shall termination for the convenience of the Owner terminate the obligations of the Contractor's surety on its payment and performance bonds.

23. GUARANTEE OF WORK

a. Except as otherwise specified, all work shall be guaranteed by the Contractor against defects resulting from the use of inferior materials, equipment or workmanship for one (1) year from the date of final acceptance of the entire project by the Owner in writing. Equipment and facilities, which have seasonal limitations on their operation, shall be guaranteed for one (1) full year from the date of seasonally appropriate tests and acceptance, in writing, by the Owner.

b. If, within the guarantee period, defects are noticed by the Owner which require repairs or changes in connection with the guaranteed work, those repairs or changes being in the opinion of the Owner rendered necessary as the result of the use of materials, equipment or workmanship, which are defective, or inferior or not in accordance with the terms of the contract, then the Contractor shall, promptly upon receipt of notice from the Owner, such notice being given not more than two weeks after the guarantee period expires, and without expense to the Owner:

(1) Place in satisfactory condition in every particular all of such guaranteed work and correct all defects therein;

(2) Make good all damage to the structure or site or equipment or contents thereof, which is the result of the use of materials, equipment or workmanship which are inferior, defective or not in accordance with the terms of the contracts; and

(3) Make good any work or materials or the equipment and contents of structures or the site disturbed in fulfilling any such guarantee.

c. In any case, where in fulfilling the requirements of the Contract or any guarantee embraced in or required thereby, the Contractor disturbs any work guaranteed under contract, he shall restore such work to a condition satisfactory to the Owner and guarantee such restored work to the same extent as it was guaranteed under such other Contract.

d. If the Contractor, after notice, fails to proceed promptly to comply with the terms of the guarantee, the Owner may have the defects corrected and the Contractor and his surety shall b liable for all expense incurred.

e. All special guarantees applicable to definite parts of the work that may be stipulated in the specifications or other papers forming a part of the Contract shall be subject to the term of this section during the first year of the life of such special guarantee.

f. Nothing contained in this section shall be construed to establish a period of limitation with respect to any other obligation which the Contractor might have under the Contract Documents, including liability for defective work under Section 17 of these additional terms and conditions. This paragraph relates only to the specific obligation of the Contractor contained in this section to correct the work and does not limit the time within which his obligation to comply with the Contract Documents may be sought to be enforced, nor of the time within which proceedings may be commenced to establish the Contractor's liability with respect to his other obligations under this Contract.

g. In the event the work of the Contractor is to be modified by another Contractor, either before or after the Final Inspection, the first Contractor shall remain responsible in all respect under the Guarantee of Work and under any other warranties provided in the contract or by law. However, the Contractor shall not be responsible for any defects in material or workmanship introduced by the Contractor modifying its work. Both the first Contractor and the Contractor making the modifications shall each be responsible solely for the work done by each. The Contractor modifying the earlier work shall be responsible for any damage to or defect introduced into the work which it is modifying. If any Contractor shall claim that another Contractor has introduced defects of materials and/or workmanship into the work of the first, it shall be the burden of the Contractor making the claim to clearly demonstrate the nature and extend of such introduced defects and the responsibility of the other Contractor. Any

Contractor modifying the work of another shall have the same burden if he asserts defects to have been caused by the Contractor whose work he is modifying.

24. ASBESTOS

a. This subsection applies to projects involving existing buildings where asbestos abatement is not a part of the Work. If the Contractor discovers or inadvertently disturbs any material that may contain asbestos that has not been previously identified, that was overlooked during the removal, or which was deemed not to be friable or which was encapsulated, the Contractor shall stop work in the area containing the asbestos, secure the area, and notify the Owner immediately by telephone or in person with written notice as soon as possible. The Owner will have the suspect material sampled.

If the sample is positive and must be disturbed in the course of the Work, the Owner will have the material repaired or removed and will pay for the bulk sample analysis.

If the material disturbed is not within the Contractor's authorized Work and/or Work area or under this Contract, the Contractor will pay for all associated sampling and abatement costs.

b. If asbestos abatement is included as a part of the Work, the Contractor shall assure that the asbestos abatement work is accomplished by those duly licensed in accordance with the specific requirements of the Contract Documents.

c. If asbestos abatement is included as part of the Work, the licensed asbestos Subcontractor shall, in the insurance required, name the Community Services Board and the Contractor as additional insureds.

25. TRAINING, OPERATION AND MAINTENANCE OF EQUIPMENT

a. The Contractor, in conjunction with his Subcontractors and Suppliers, shall provide the Owner's operations and maintenance personnel with instruction and training in the proper operation and maintenance of the equipment and related controls provided or altered in the Work.

b. The Contractor shall provide the Owner with a minimum of two (2) copies of operating, maintenance and parts manuals for all equipment provided in the project. Further specific requirements may be indicated in the specifications.

26. DRUG FREE WORKPLACE: The Contractor acknowledges and certifies that it understands that the following acts by the Contractor, its employees, and/or agents performing services on state property are prohibited.

a. The unlawful manufacture, distribution, dispensing, possession or use of alcohol or other drugs; and

b. Any impairment or incapacitation from the use of alcohol or other drugs (except) the use of drugs for legitimate medical purposes.

The Contractor further acknowledges and certifies that it understands that a violation of these prohibitions constitutes a breach of contract and may result in default action being taken by the CSB in addition to any criminal penalties that may result from such conduct.

SECTION IV

SPECIAL TERMS AND CONDITIONS
INFORMATION TECHNOLOGY GOODS AND SERVICES

The following is a list of special terms and conditions that may be used at the buyer's discretion in information technology IFBs and RFPs as appropriate. The Community Services Board's General Terms & Conditions, any other special terms and conditions as listed in previous sections of this appendix, and any specific terms developed by the buyer should also be included as needed.

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1. **CERTIFICATION TESTING PERIOD - SYSTEMS**: The system specified in the contract shall be considered ready for testing upon receipt of documentation from the contractor that a successful system audit or diagnostic test was performed at the site demonstrating that the system meets the minimum design/performance capabilities stipulated in the purchase agreement. The ___ day testing period shall commence on the next calendar day following receipt of this documentation. Upon request, the procuring agency will provide written confirmation of its acceptance following successful completion of the certification period. Such acceptance shall not be conclusive of complete conformance in all respects to the contract specifications and other requirements, or the nonexistence of potential latent defects.

   When Used: In solicitations for computer systems requiring the installation of multiple components and configuration prior to system operation. NOTE: Specific certification criteria should be stated either in the specification or as a part of this provision.

   CERTIFICATION TESTING PERIOD - HARDWARE: Equipment ordered herein shall be subject to inspection and a 30-day testing period by the procuring agency. Contractor equipment which is found to not meet the specifications or other requirements of the purchase agreement may be rejected and returned to the vendor at no cost (including return transportation) by the procuring agency. Unless otherwise notified or mutually agreed, acceptance shall become effective at the end of the 30-day testing period. Such acceptance shall not be conclusive of complete conformance in all respects to the contract specifications and other requirements, or the nonexistence of potential latent defects.

   When Used: In solicitations for computer hardware requiring the integration of multiple components for utilization. Specific certification/performance criteria should be stated either in the specification or as a part of this provision.

2. **CONFIDENTIALITY (CSB)**: The Community Services Board agrees that neither it nor its employees, representatives, or agents shall knowingly divulge any proprietary information with respect to the operation of the software, the technology embodied therein, or any other trade secret or proprietary information related thereto, except as specifically authorized by the contractor in writing or as required by the Freedom of Information Act or similar law. It shall be the contractor's responsibility to fully comply with Section 2.2-4342 D of the Code of Virginia. All trade secret or proprietary information must be identified in writing or other tangible form and conspicuously labeled as "proprietary" either prior to or at the time of submission to the CSB.

   When Used: Solicitations for commercially developed software that has been patented, copyrighted, otherwise protected by law, or when it is anticipate the vendor may claim that the software contains trade secrets or proprietary information.

CONFIDENTIALITY (Contractor): The contractor assures that information and data obtained as to personal facts and circumstances related to patients or clients will be collected and held confidential, during and following the term of this agreement, and will not be divulged without the individual's and the CSB's written consent. Any information to be disclosed, except to the CSB, must be in summary, statistical, or other form which does not identify particular individuals. Contractors and their employees working on this project will be required to sign the Confidentiality statement in this solicitation.

When Used: Solicitations for commercially developed software that has been patented, copyrighted, otherwise protected by law, or when it is anticipate the vendor may claim that the software contains trade secrets or proprietary information.

3. **DEMONSTRATIONS**: By submitting a bid or proposal, the bidder or offeror certifies that the specified equipment is in productive use and capable of demonstration in the proposed configuration. The CSB reserves the right to require bidders or offerors to demonstrate the functionality of proposed equipment to its satisfaction prior to making an award decision. Such demonstration is intended to show that a vendor's products will perform in a completely satisfactory manner and that they will meet or exceed the performance specifications contained in the solicitation. Failure by a vendor to promptly comply with a request for demonstration could result in their bid being rejected. Failure to reject shall not relieve the vendor of its obligation to fully comply with all requirements of the contract.

   When Used: Equipment purchases in which the agency has a concern that proposed equipment may not be currently available or capable of performing as promised.

4. **DEFINITION – EQUIPMENT:** As used herein, the terms equipment, product, or system shall include hardware and software (when applicable) and any materials or supporting documentation. Such documentation may include but is not limited to: users' guides, operations manuals with part lists, copies of all applicable warranties, and any other pertinent information necessary for the proper operation and maintenance of the equipment being acquired.

   When Used: In solicitations for hardware and software to assure that the CSB receives all supporting materials needed for utilization and maintenance of the purchased equipment.

   DEFINITION – SOFTWARE: As used herein, the terms software, product, or software products shall include all related materials and documentation whether in machine readable or printed form.

When Used: In solicitations for software that the CSB receives all materials, including source code (when appropriate), supporting documentation, and user's information related to utilization of the software being acquired.

5. **EQUIPMENT ENVIRONMENT**: Environmental specifications for any equipment to be delivered under the resulting contract shall be furnished in writing along with the vendor's bid or proposal, should any such requirements be applicable. These specifications must be in sufficient detail to permit all installed equipment to function efficiently from an environmental perspective. Unless otherwise stated in the solicitation, it will be the procuring agency's responsibility to prepare the site at its own expense to meet the environmental specifications provided.

   When Used: For equipment purchases when it is anticipated that the equipment must function in a controlled environment, i.e., a regulated temperature or humidity range, or the absence of electromagnetic interference.

6. **EXCESSIVE DOWNTIME**: Equipment or software furnished under the contract shall be capable of continuous operation. Should the equipment or software become inoperable for a period of more than 24 hours, the contractor agrees to pro-rate maintenance charges to account for each full day of inoperability. The period of inoperability shall commence upon initial notification. In the event the equipment or software remains inoperable for more than ____ consecutive calendar days, the contractor shall promptly replace the equipment or software at no charge upon request of the procuring agency. Such replacement shall be with new, unused product(s) of comparable quality, and must be installed and operational within days following the request for replacement.

   When Used: In solicitations for hardware or software to be used on a continuous basis to support essential activities, and the contractor is responsible for providing full service maintenance.

7. **LIMITATION OF USE**: The Community Services Board's right to use computer software developed entirely at private expense may be limited by the contractor as

stipulated in this contract. Notwithstanding any provision to the contrary however, the CSB shall have at a minimum: unlimited use of the software on the equipment for which it is purchased; use of the software on a secondary system for backup purposes should the primary system become unavailable, malfunctions, or is otherwise rendered inoperable; use of the software at another CSB site should the system be entirely transferred to that location; the right to make a backup copy for safekeeping; the right to modify or combine the software with other programs or materials at the CSB's risk; and the right to reproduce any and all documentation provided such reproduction is for the sole use of the CSB. These rights are perpetual and irrevocable; in the event of any actual or alleged breach by the CSB, the contractor's sole remedy shall be to pursue a monetary claim in accordance with Section 2.2-4363 of the Code of Virginia.

When Used: In solicitations which will result in the acquisition of commercially developed software, when the agency intends to use such software to support critical activities or functions.

8. **MAINTENANCE**: Upon expiration of the specified warranty period and at the Community Services Board's option, the contractor shall provide up to ___ additional one-year periods of on-site maintenance (including labor, parts, and travel) at the prices set forth in the pricing schedule. Maintenance shall not include external electrical work, providing supplies, and adding or removing accessories not provided for in the contract. Maintenance shall also not include repairs of damage resulting from: acts of God, transportation between state locations, negligence by state personnel, or other causes not related to ordinary use in the production environment in which installed. Each successive year of maintenance may be ordered by the CSB in writing at least __ days prior to expiration of the existing maintenance period.

When Used: In solicitations for computer hardware and software, when maintenance services beyond the basic warranty period are desired, and such extended maintenance service is included in the solicitation's pricing schedule. This clause should be used in conjunction with one of the "service period" clauses. NOTE: The specific maintenance requirements or duties must be stated either in the specifications or as a separate condition of the contract.

9. **NEW PRODUCTS**: Unless otherwise expressly stated in this solicitation, any equipment furnished under the contract shall be new, unused equipment. Any software provided under the contract shall be the latest version available to the general public as of the due date of this solicitation.

When Used: For purchases where used, reconditioned, or remanufactured equipment and components or other than the latest version of a software package is not acceptable.

10. **NON-VISUAL ACCESS TO TECHNOLOGY:** All information technology which, pursuant to this Agreement, is purchased or upgraded by or for the use of the CSB shall comply with the following non-visual access standards from the date of purchase or upgrade until the expiration of this Agreement.

(i) effective, interactive control and use of the Technology shall be readily achievable by non-visual means.

(ii) The Technology equipped for non-visual access shall be compatible with information technology used by other individuals with whom any blind or visually impaired user of the Technology interacts;

(iii) Nonvisual access technology shall be integrated into any networks used to share communications among employees, program participants or the public; and

(iv) The technology for non-visual access shall have the capability of providing equivalent access by non-visual means to telecommunications or other interconnected network services used by persons who are blind or visually impaired.

Compliance with the foregoing non-visual access standards shall not be required if the CSB Executive Director determines that (i) the Technology is not available with non-visual access because the essential elements of the Technology are visual and (ii) non-visual equivalence is not available.

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

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

The requirements of this Paragraph shall be construed to achieve full compliance with the Information Technology Access Act, Sections 2.1-3500 through 2.1-3504 of the Code of Virginia.

When Used: In all contracts for the procurement of electronic information processing hardware and software, including telecommunications. The CSB Executive Director may, with respect to non-visual access software or peripheral devices, approve the exclusion of this clause only to the extent that

the cost of such software or devices for the CSB would increase the total cost of the procurement by more than five percent.

11. **OPERATIONAL COMPONENTS**: Unless otherwise requested in the solicitation, stated equipment prices shall include all cables, connectors, interfaces, documentation for all components, and any other items necessary for full systems operation at the user site. This does not include consumable supplies such as paper, tapes, disks, etc., unless such supplies are expressly identified in the pricing schedule.

    When Used: For system purchases requiring incidental hardware for the interconnection of system components.

12. **OWNERSHIP OF INTELLECTUAL PROPERTY**: All copyright and patent rights to all papers, reports, forms, materials, creations, or inventions created or developed in the performance of this contract shall become the sole property of the Community Services Board. On request, the contractor shall promptly provide an acknowledgment or assignment in a tangible form satisfactory to the Commonwealth to evidence the CSB's sole ownership of specifically identified intellectual property created or developed in the performance of the contract.

    When Used: For purchases of software or applications development services which result in deliverables that were developed to specifically meet the state's performance requirements, or when state employees will participate in the creation or invention of any copyright or patentable material.

13. **PRODUCT SUBSTITUTION**: During the term of any contract resulting from this solicitation, the vendor is not authorized to substitute any item for that product and/or software identified in the solicitation without the prior written consent of the Contracting Officer whose name appears on the front of this solicitation, or their designee.

    When Used: Purchases where the vendor will be responsible for maintenance after the sale, and the agency desires to protect against item substitutions.

14. **QUALIFIED REPAIR PERSONNEL**: All warranty or maintenance services to be performed on the items specified in this solicitation as well as any associated hardware or software shall be performed by qualified technicians properly authorized by the manufacturer to perform such services. The Community Services Board reserves the right to require proof of certification prior to award and at any time during the term of the contract.

    When Used: In solicitations for hardware or software when the performance of warranty/maintenance must be performed by qualified personnel so as not to invalidate any warranty or support provided by the product manufacturer.

15. **RELOCATION OF EQUIPMENT**: Should it become necessary to move equipment covered by the contract to another location, the Community Services Board reserves the right to do so at its own expense. If contractor supervision is required, the CSB will provide prior written notice of the move at least thirty days in advance, in which case the contractor shall provide the required services and be reasonably compensated by the CSB. Both the compensation to be paid and any adjustment to the maintenance terms resulting from the move shall be as mutually agreed between the parties. Regular maintenance charges shall be suspended on the day the equipment is dismantled and resume once the equipment is again certified ready for operational use.

    When Used: In solicitations for the acquisition of major computer components or systems for which the contractor is normally the sole provider of maintenance services.

16. **RENEWAL OF MAINTENANCE**: Maintenance of the hardware or software specified in the resultant contract may be renewed by the mutual written agreement of both parties for an additional ____ one-year period(s), under the terms and conditions of the original contract except as noted herein. Price changes may be negotiated at time of renewal; however, in no case shall the maintenance costs for a succeeding one-year period exceed the prior year's contract price(s), increased or decreased by no more than the percentage increase or decrease in the category of the CPI-W section of the US Bureau of Labor Statistic's Consumer Price Index, for the latest twelve months for which statistics are available.

    When Used: In solicitations for hardware or software where extended maintenance beyond the warranty period is not included in the pricing schedule, but the agency wishes to retain the option to acquire such maintenance services with a pre-established cap on the future cost of such services.

17. **REPAIR PARTS**: In the event that the performance of maintenance services under the contract results in a need to replace defective parts, such items may only be replaced by new parts. In no instance shall the contractor be permitted to replace defective items with refurbished, remanufactured, or surplus items without prior written authorization of the Community Services Board.

    When Used: In solicitations for computer hardware that require maintenance after the sale, and the agency wishes to have defective parts replaced only by new parts.

18. **SERVICE PERIOD (EXTENDED)**: Due to the criticality of the applications for which the equipment and/or software is purchased, the contractor shall provide 24 hours a day, 7 days a week, maintenance support, including state holidays. On-site response time shall be within ___ hours following initial notification. All necessary repairs or corrections shall be completed within __ hours of the initial notification.

When Used: In solicitations for hardware or software when it is essential that the equipment remain in continuous operation due to the criticality of the process or function for which it was obtained.

19. **SERVICE PERIOD (ROUTINE)**: Contractor shall provide 24 hour toll free phone support with a __ hour return call response time. On-site maintenance services shall carry a __ hour response time following initial notification and be available during the normal working hours of 8 A.M. to 5 P.M. Monday through Friday, excluding state holidays. All necessary repairs or corrections shall be completed within ___ hours of the initial notification.

    When Used: In solicitations for hardware or software which require regular maintenance support but which are not of such a critical nature as to require expeditious response times or after hours support.

20. **SERVICE REPORTS**: Upon completion of any maintenance call, the contractor shall provide the agency with a signed service report that includes, at a minimum: a general statement as to the problem, action taken, any materials or parts furnished or used, and the number of hours required to complete the repairs.

    When Used: In solicitations requiring maintenance services when the agency intends to maintain detailed service records. This clause should always be included in any solicitation where maintenance is to be performed on a time and materials basis.

21. **SOFTWARE UPGRADES**: The Community Services Board shall be entitled to any and all upgraded versions of the software covered in the contract that becomes available from the contractor. The maximum charge for upgrade shall not exceed the total difference between the cost of the CSB's current version and the price the contractor sells or licenses the upgraded software under similar circumstances.

    When Used: In solicitations for the purchase of computer software when the agency desires the opportunity to acquire future upgrades as they become available, and the availability of upgrades is not a condition stated elsewhere in the contract.

22. **SOFTWARE DISPOSITION**: Unless otherwise instructed by the contractor, the Community Services Board shall render unusable all copies of software acquired under the contract within thirty days of termination of its license, except that the CSB does reserve the right to retain one copy of the software for archival purposes when appropriate.

    When Used: In solicitations for software when it is anticipated that the software license will only be maintained for a limited period of time.

23. **SOURCE CODE**: In the event the contractor ceases to maintain experienced staff and the resources needed to provide required software maintenance, the Community Services Board shall be entitled to have, use, and duplicate for its own use, a copy of the source code and associated documentation for the software products covered by the contract. Until such time as a complete copy of such material is provided, the CSB shall have exclusive right to possess all physical embodiments of such contractor owned materials. The rights of the CSB in this respect shall survive for a period of twenty years after the expiration or termination of the contract. All lease and royalty fees necessary to support this right are included in the initial license fee as contained in the pricing schedule.

    When Used: In solicitations for the purchase of computer software when it is necessary to assure either the availability of program support or the opportunity to provide internal program support.

24. **TERM OF SOFTWARE LICENSE**: Unless otherwise stated in the solicitation, the software license(s) identified in the pricing schedule shall be purchased on a perpetual basis and shall continue in perpetuity. However the Community Services Board reserves the right to terminate the license at any time, although the mere expiration or termination of this contract shall not be construed as an intent to terminate the license. All acquired license(s) shall be for use at any computing facilities, on any equipment, by any number of users, and for any purposes for which it is procured. The CSB further reserves the right to transfer all rights under the license to another CSB or state or local agency to which some or all of its functions are transferred.

    When Used: In all software procurements when the agency intends to acquire unlimited rights to use computer software for an indefinite amount of time.

25. **THIRD PARTY ACQUISITION OF SOFTWARE**: The contractor shall notify the procuring agency in writing should the intellectual property, associated business, or all of its assets be acquired by a third party. The contractor further agrees that the contract's terms and conditions, including any and all license rights and related services, shall not be affected by the acquisition. Prior to completion of the acquisition, the contractor shall obtain, for the Community Services Board's benefit and deliver thereto, the assignee's agreement to fully honor the terms of the contract.

    When Used: In solicitations for commercial software when it is necessary to maintain continuity of support even in the event of sell or transfer of rights to another party.

26. **TITLE TO SOFTWARE**: By submitting a bid or proposal, the bidder or offeror represents and warrants that it is the sole owner of the software or, if not the owner, that it has received all legally required authorizations from the owner to license the software, has the full power to grant the rights required by this solicitation, and that

neither the software nor its use in accordance with the contract will violate or infringe upon any patent, copyright, trade secret, or any other property rights of another person or organization.

When Used: All solicitations for the procurement of computer software for the purpose of assuring the agency only acquires software from an entity legally authorized to market it.

27. **WARRANTY AGAINST SHUTDOWN DEVICES**: The contractor warrants that the equipment and software provided under the contract shall not contain any lock, counter, CPU reference, virus, worm, or other device capable of halting operations or erasing or altering data or programs. Contractor further warrants that neither it, nor its agents, employees, or subcontractors shall insert any shutdown device following delivery of the equipment and software.

    When Used: In solicitations for hardware or software when the agency wishes to protect both its purchase and existing information resources from possible damage or destruction due to computer viruses or other shutdown devices.

28. **WARRANTY OF SOFTWARE**: The contractor warrants the operation of all software products for a period of __ months from the date of acceptance. During the warranty period, the contractor shall provide ___ hour toll free phone support and all patches, fixes, revisions, updates, upgrades, and minor releases to both the software and its supporting documentation. In addition, the contractor shall provide a two hour return call response time and complete all necessary patches/fixes within __ hours of initial notification.

    When Used: In software purchases where the software will be used to support critical agency activities that can not endure extended periods of downtime. NOTE: The warranty requirements or duties are not cited and need to either be added to this clause or included in the specification.

29. **NONVISUAL ACCESS TO TECHNOLOGY:** All information technology which, pursuant to this Agreement, is purchased or upgraded by or for the use of the Community Services Board (the "Technology") shall comply with the following nonvisual access standards from the date of purchase or upgrade until expiration of this Agreement:

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

    (VI) the Technology equipped for nonvisual access shall be compatible with information technology used by other individuals with whom any blind or visually impaired user of the Technology interacts;

(VII) nonvisual access technology shall be integrated into any networks used to share communications among employees, program participants or the public; and

(VIII) the technology for nonvisual access shall have the capability of providing equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired.

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

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

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

The requirements of this Paragraph shall be construed to achieve full compliance with the Information Technology Access Act, Sections 2.1-807 through 2.1-811 of the Code of Virginia.

• **When Used: In all contracts for the procurement of electronic information processing hardware and software, including telecommunications. The head of the Community Services Board may, with respect to nonvisual access software or peripheral devices, approve the exclusion of this clause only to the extent that the cost of such software or devices for the using agency would increase the total cost of the procurement by more than five percent.**

30. **LATEST SOFTWARE VERSION:** Any software product(s) provided under the contract shall be the latest version available to the general public as of the due date of this solicitation.

*** When Used: For purchases where other than the latest available version of a software package is not acceptable.**

APPENDIX F TITLE: Model IFB/RFP Addendum

(CSB Letterhead)

(Date)

SOLICITATION NUMBER: IFB #_____

ADDENDUM NO. 1 TO ALL BIDDERS

COMMODITY (SERVICE): (Title of IFB or RFP)

FOR DELIVERY TO: (Location)

BIDS (PROPOSALS) DUE: (Due Date)

PRE-BID (PROPOSAL)
CONFERENCE: (Conference Date if applicable)

The solicitation referenced above is hereby modified as follows:

Page __, Section __ Change the second sentence to read:
_____

Page __, Section __ Delete the phrase "hours per week" and substitute the phrase "hours per day" from the third sentence. Also, add the following sentence: _____

The Bids (Proposals) Due Date and hour will remain the same

Note: A signed acknowledgment of this addendum must be received by this office either prior to the bid (proposal) due date and hour or attached to your bid (proposal). Signature on this addendum does not substitute for your signature on the original bid document. The original bid (proposal) document must also be signed.

Very truly yours,

Jane Purchaser
Procurement Officer

_____
Name of Firm

_____
Signature/Title

_____
Date

APPENDIX G - Model Advertisement

NEWSPAPER ADVERTISEMENT

FAX TO:
Classified Advertisement Department
FAX No. _____

Please run the following advertisement for one day in the _____:

_____ Community Services Board
_____, Virginia

Request for Proposals No. _____. To provide _(Title of RFP)_.

Proposals Due by ____ P.M. on __(Date)__ at _(Address)

A (mandatory) (non-mandatory) pre-proposal conference will be held at (Time)_ on _(Date)_ at _(Address)_.

For information, call _(Purchasing Officer)_ at __(Phone Number)_.

Send invoice to above address, attention: _____.

(Note #!: *Newspaper advertisements need not be lengthy. For purposes of economy, they should restricted to the basic information about what is being purchased, when bids/proposals are due, and where to obtain further information and/or a copy of the solicitation.)*

(Note #2: *Virginia Business Opportunities has merged with eVA. Advertisements for IFBs and RFPs may be placed through the eVA web site: www.eva.state.va.us.)*

APPENDIX H - TABULATION & EVALUATION FORMS

Oral Bid Tabulation Appendix H-1

This format may be used to record phone quotes. The object is to assure that all bidders are quoting on the same specification or, if the specification

is a brand name and model number, bidders should quote on the specified item or an equal thereto. If the buyer determines that a lesser quality product is acceptable, all bidders must be allowed to requote on the lesser specification.

Proposal Evaluation Instrument — Appendix H-2

This is a model form that may be used by each member of the RFP evaluation committee to record his/her scores. A separate form is used for each Offeror.

Proposal Evaluation Summary — Appendix H-3

This form may be used to record points assigned to each of the evaluation criteria for each proposal reviewed by an RFP Evaluation Committee.

Proposal Evaluation Consensus — Appendix H-4

This form may be used to list the average points assigned to each proposal by the RFP Evaluation Committee. It is a recap of the "Proposal Evaluation Summary" and notes the original and final ranking of each Offeror. Each member of the RFP Evaluation Committee should sign this form.

APPENDIX H-1

ORAL BID TABULATION

Item/Service Procured	BIDDER	BIDDER
Describe briefly mandatory requirements:	Name/Address: Phone:	Name/Address: Phone:

	Spoke To: Delivery/FOB: Terms: Bid Amount(s): Other Information:	Spoke To: Delivery/FOB: Terms: Bid Amount(s): Other Information:
Your Name: Phone Number: Signature:	Bid Date:	Bid Date:

APPENDIX H-2

EVALUATION INSTRUMENT
RFP #_____

TO PURCHASE: _____

Name of Offeror: _____

Name of Evaluator: _____ Date: _____

Did the Proposal include all information requested in the RFP?
_____ YES _____ NO. If NO, indicate deficiencies:

_____
_____
_____

EVALUATION AND AWARD CRITERIA:

1. **(State Criteria #1.)**

   Comments: _____

   _____

   _____

   Points allowed this criteria: ____
   Points assigned by this evaluator for this criteria: _____

2. **(State Criteria #2.)**

   Comments: _____

   _____

   _____

   Points allowed this criteria: _____
   Points assigned by this evaluator for this criteria: _____

3. **(State Criteria #3.)**

   Comments: _____

   _____

   _____

   Points allowed this criteria: ____
   Points assigned by this evaluator for this criteria: _____

4. **(State Criteria #4.)**

   Comments: _____

   _____

   _____

Points allowed this criteria: ____
Points assigned by this evaluator for this criteria: _____

5. **(State Criteria #5.)**

Comments: _____

_____

_____
Points allowed this criteria: ____
Points assigned by this evaluator for this criteria: _____

General Comments: _____

_____

_____

TOTAL POINTS ASSIGNED TO THIS PROPOSAL: _____
(Total Possible Points = 100)

APPENDIX H-4

PROPOSAL EVALUATION CONSENSUS

RFP #720C-033193-02F
Laboratory Reagents and Instrumentation

OFFERORS	Average Points First Ranking	First Ranking	Average Points First Ranking	Fina Ranking

APPENDIX I - Guidelines For Negotiation

These guidelines were developed primarily for procurement by competitive negotiation for goods and non-professional services. However, much of the data is applicable to competitive negotiations for professional services, negotiation for technical proposals, non-competitive negotiation and negotiation for resolution of problems arising out of performance under contract.

Procurement by negotiation is the art of arriving at a common understanding through bargaining on the essentials of a contract, such as delivery, specifications, price, and terms. Because of the interrelation of these factors with many others, it is a difficult art and requires experience and the exercise of judgment, tact, and common sense. An effective negotiator must be thoroughly prepared and aware of the strengths and weaknesses of his/her position versus the other party to the negotiation. Only through an awareness of relative bargaining strength can a negotiator know where to be firm or where he/she may make permissive concessions in price or terms.

Competitive negotiation really begins with the development of the Request for Proposals (RFP). A well prepared RFP will strengthen the negotiator's position.

Negotiation consists of four equally important steps: Preparation for Negotiation, Conduct of Negotiation, Post Negotiation Actions and Review of Lessons Learned.

PREPARATION:

Plan sufficient time for the negotiation process. Insufficient time leads to hasty decisions. The vendor will sense the pressure of time and take advantage of the situation.

Make a methodical study of all proposals and compare prices, terms and conditions. This will provide the negotiator with the facts required to place the burden on the vendor to justify prices or contractual terms that appear unwarranted. Notes should be made of issues which are likely to arise during negotiation and plans made to deal with these issues. Determine from the proposals those areas in which assistance may be required; technical, engineering, legal, etc.

If a market survey was not conducted prior to issuing the RFP, conduct one. This type information is essential to sound negotiation.

Establish the parameters for specific points in the RFP and vendor proposals that might be traded for more important issues.

Determine the bargaining authority of the vendor representative. Insist on dealing with someone with full authority to commit the vendor. Otherwise, you may have to do the job twice.

Arrange for adequate facilities for the negotiations.

Prepare an agenda.

Be prepared. Study all issues thoroughly. Do not go into a session without having done your homework! Negotiate with the confidence gained from advanced preparation. If unsure contact DPS for assistance in negotiation.

CONDUCTING NEGOTIATIONS:

There are many ways in which negotiations may be conducted. Therefore, each negotiator must develop the techniques which they can utilize most effectively.

Outline the important contract issues and obtain the vendor's position on each. The vendor may not want to consider the logic of the negotiator's position until he/she has explained his/her side of the issue. Try to identify the areas of weakness in the vendor's position.

The negotiator should then make his or her own position known in general terms, citing such areas as policy or budget as justification for the position. This places the burden on the vendor to find a way to comply or justify the exception.

Here, the negotiator brings into play the information gained in the market survey and the competitors' proposals without disclosing what the competition offered. When the vendor disputes the validity of the information, require him to provide the specific information on which his position is based; i.e., cost price analysis.

Reach an agreement on the most important issues before discussing the less important items. If agreement cannot be reached on the major items, the negotiator may use the minor issues for bargaining on the major issues. Be prepared to explore alternatives in the event of disagreement.

Reach an agreement on all contract terms.

One person should be designated as the spokesperson and negotiate for the agency. Team participation in the actual negotiation may be required but the agency's position is finalized by the spokesperson.

POST NEGOTIATION ACTIONS:

Be sure all participants fully understand what has been agreed to.

Reduce the agreements to writing and have both parties sign.

Prepare the final contract, obtain necessary signature and any required supporting documents.

REVIEW OF LESSONS LEARNED:

Critique the negotiations with members of your team, pointing out the strong and weak points observed during the negotiation.

Determine if future requirements can be competitively bid.

DO'S AND DON'TS OF NEGOTIATION

DO'S

Develop your own technique for negotiations.

Be well prepared.

Identify each point to be negotiated.

Establish parameters of discussion for each point.

Determine whether you wish to seek resolution of important issues or small issues first.

Try to settle one point before moving to the next.

Discuss budget limitations, policy and restrictions related to the program.

Be prepared to discuss alternatives.

Negotiate on an even basis. If the vendor has legal or technical support, bring you qualified counterparts.

Avoid arguments.

Avoid interruption.

Avoid quick deals.

Be ethical, fair and firm.

Control the negotiation session.

Attempt to reach a WIN-WIN result e.g. both parties at the conclusion of the negotiation of the negotiation believe they have reached a satisfactory contract.

DON'TS

Under estimate the ability of the vendor.

Disclose the specific contents of other proposals.

Negotiate areas beyond the scope of the solicitation.

Make a concession without obtaining a concession.

Accept the first no.

Be unreasonable or unfair.

Negotiate to the point that the price is no longer fair and reasonable.

APPENDIX J - Model Notice of Intent to Award

_____ COMMUNITY SERVICES BOARD

PUBLIC NOTICE

NOTICE OF INTENT TO AWARD

DATE AND TIME:	(Date and Time Posted)
SERVICE (PRODUCT):	(Title of IFB or RFP)
SOLICITATION NUMBER:	
INTENDED CONTRACTOR:	(Name) (Address)
AMOUNT:	(Dollar Amount of Award, if applicable)

CONTRACT OFFICER: (Name)
(Phone Number)

REMOVED: _____
(Date, Time, Initial)

(NOTE: Notice of Intent to Award should be posted on the procurement bulletin board for at least 10 days.)

APPENDIX K - AWARD FORMS

K-1 Standard Contract Form

This is a basic two-party contract form that can be used for mostcontracts (particularly term contracts) that cannot adequately be confirmed through a Purchase Order.

K-2 Contract with a Medical Facility

This is a model contract form that may be used between a CSB and a medical facility. The CSB's legal advisor should review this model and make any necessary revisions.

K-3 Purchase Order Form

This is a model purchase order form that may be used for spot (one-time) purchases or simple term contracts. It does not require the vendor's or provider's signature; however, it must reference the date and type (phone quote, IFB, etc.) of the contractor's quotation.

K-4 Lease Agreement

This is a model agreement that may be used for leases.

K-5 Addendum to Vendor's Contract Form

This form should be used when a vendor/provider (such as a provider of rented equipment) insists that the CSB sign the

vendor's standard contract. This addendum serves to negate any objectionable terms and conditions contained in the vendor's contract form.

APPENDIX K-1 - STANDARD CONTRACT FORM

STANDARD CONTRACT

Contract #_____

This contract entered into this (Date) day of (Month and Year), by (Contractor's Name), hereinafter called the Contractor and _____ Community Services Board, hereinafter called the "Purchaser".

WITNESSETH that the Contractor and the Purchaser, in consideration of the mutual covenants, promises and agreements herein contained and or attached, agree as follows:

SCOPE OF SERVICES: The Contractor shall provide the Purchaser as set forth in the Contract Documents.

PERIOD OF PERFORMANCE: From date of final execution (or actual inception date) through (Expiration Date).

COMPENSATION AND METHOD OF PAYMENT: The Contractor shall be paid by the Purchaser within 30 days after each invoice or delivery, whichever occurs last.

CONTRACT DOCUMENTS: The contract documents shall consist of this signed contract, the description or scope of work, general conditions, special conditions, specifications, and other data contained in the Invitation for Bids/Request for Proposals (Solicitation Number), dated (Date of Solicitation - normally the date it was issued), together with all written modification thereof and the bid/proposal submitted by the Contractor dated (Date of Contractor's Bid or Proposal), all of which contract documents are incorporated herein.

IN WITNESS WHEREOF, The parties have caused this Contract to be duly executed intending to be bound thereby.

(Contractor's Name)	(Name of CSB) COMMUNITY SERVICES BOARD
By: _____	By: _____
Title: _____	Title: _____
Date: _____	Date: _____

APPENDIX K-2 - MEDICAL AGREEMENT

_____ Community Services Board
AGREEMENT

THIS DOCUMENT CONSTITUTES AN AGREEMENT BETWEEN:

The _____ Community Services Board, hereinafter called the CSB.

AND

(Name of the Medical Facility), hereinafter called the Contractor.

This agreement made this (date) of (month/year), by and between (Medical Facility) (hereinafter referred to as the Contractor) and (_____ CSB) (hereinafter referred to as the CSB).

IN CONSIDERATION of the mutual covenants and stipulations set out herein, and WHEREAS, Contractor represents that he is duly qualified and willing to perform the services set forth herein; NOW THEREFORE, it is agreed:

1. **SCOPE OF SERVICES:** Each party to this contract agrees to maintain compliance with the Joint Commission on Accreditation of Healthcare Organizations and/or other accrediting or certifying bodies as applicable and agrees to provide evidence of such to the other party as necessary for accreditation or certification. The Contractor shall provide the services to the CSB set forth in Attachment A.

1. **METHOD OF COMPENSATION:** The contractor shall be paid by the CSB as set forth in Attachment B.

1. **TIME OF PERFORMANCE:** The services of the Contractor shall commence on (Beginning Date), and shall terminate on (Ending Date), the period of performance being (number of months or years).

1. **GENERAL PROVISIONS:** Nothing in this agreement shall be construed as authority for either party to make commitments which will bind the other party beyond the Scope of Service contained herein. Furthermore, the Contractor shall not assign, sublet, or subcontract any work related to this agreement or any interest he/she/it may have herein without the prior written consent of the CSB. This contract is subject to appropriations the Virginia General Assembly and other funding authorities.

1. **CONDITIONS OF PAYMENT:** All services provided by Contractor pursuant to this agreement shall be performed to the satisfaction of the Agency, and in accordance with all applicable federal, state and local law ordinances, rules and regulations. Contractor shall not receive payment for work found by the CSB to be unsatisfactory, or performed in violation of federal, state or local law, ordinances, rules and regulations.

1. **LIABILITY:** The Contractor shall procure and maintain during the life of this agreement such bodily liability and property damage liability insurance as shall protect him from claims for damages for personal injury including death, as well as claims for property damage, which may arise from these activities under this agreement. The Contractor, his employees, assignees or Sub-Contractors shall procure and maintain professional malpractice insurance in amounts no less than $1 million per occurrence and $3 million in the aggregate.

   The Contractor shall indemnify and hold harmless the CSB and, when applicable, its employees and designated representative, from any and all claims, suits, actions, liabilities and cost of any kind, caused by the performance by the Contractor of his/her/its work pursuant to this agreement.

   Neither the Contractor, his employees, assignees or Sub-Contractors shall be deemed employees of the CSB while performing under this agreement.

7. **TERMINATION:** Either party may terminate this agreement for its convenience upon 30 days written notice to the other party. Upon termination for convenience, the Contractor shall be paid only for those additional fees and expenses incurred between notification of termination and the effective date of termination that are necessary for curtailment of his/her/its work under this agreement

   In the event of breach by the Contractor of this agreement, the Agency shall have the right immediately to rescind, revoke or terminate the agreement. In the alternative, the

Agency may give written notice to the Contractor specifying the manner in which the agreement has been breached.

In the event of breach by the CSB of this agreement, the Contractor shall have the right immediately to rescind, revoke or terminate the agreement. In the alternative, the CSB may give written notice to the Contractor specifying the manner in which the agreement has been breached.

In notice of breach is given and the Contractor has not substantially corrected the breach within 5 days of receipt of the written notice, the CSB shall have the right to termination, all documents and other materials related to the performance of this agreement shall become the property of the CSB. In the event of termination under this provision, copies of documents and other materials related to the performance of this agreement shall be provided the CSB.

8. **INTEGRATION AND MODIFICATION:** This contract constitutes the entire agreement between the Contractor and the CSB. No agreement shall be effective unless reduced to writing, signed by the parties and attached thereto.

9. **COLLATERAL CONTRACTS:** Where there exists any inconsistency between this agreement and to the provisions of collateral contractual agreements which are made a part of this agreement by reference or otherwise, the provisions of this agreement shall control.

10. **NON-DISCRIMINATION:** In his/her/its performance of this agreement, the Contractor warrants that he/she/it will not discriminate against any employee, or other person on account of race, color, sex, religious creed, ancestry, age, or national origin.

11. **SEVERABILITY:** Each paragraph and provision of this agreement is severable from the entire agreement, and if any provision is declared invalid, the remaining provisions shall nevertheless remain in effect.

12. **OWNERSHIP OF DOCUMENTS:** Any reports, studies, photographs, negatives, or other documents prepared by the Contractor in the performance of its obligations under this contact shall be the exclusive property of the Contractor. Contractor shall provide copies of all documents, as necessary, to the CSB.

13. **APPLICABLE LAWS:** This agreement shall be governed in all respects whether as to validity, construction, capacity, performance or otherwise, by the laws of the Commonwealth of Virginia.

14. **FINANCIAL RECORDS AVAILABILITY:** The Contractor agrees to retain all books, records, and other documents relative to this agreement for 5 years after final payment, or until audited by the CSB, whichever is later. The CSB or its authorized agents shall have full access to and the right to examine any of said materials during said period.

15. **DISPUTES:** Disputes arising under this agreement will be processed in accordance with the procurement regulations of the CSB as contained in the(name of manual).

IN WITNESS WHERE OF, the parties have caused this contract to be duly executed intending to be bound thereby:

CONTRACTOR

By: _____

Title: _____

Date: _____

AGENCY

By: _____

Title: _____

Date: _____

ATTACHMENT A

SCOPE OF SERVICES

The Contractor shall provide a full range of inpatient and outpatient hospital services, to the clients of __(CSB)__. Services shall include, but not be limited to the services outlined below:

Megavoltage Radiation Therapy
Physical Therapy Services
Rehabilitative Services
Emergency Services
Speech Pathology Services

The Contractor shall provide emergency department or outpatient services reports at the time of the patient's release. If available, copies of the discharge summaries, operative reports and other medical records shall be made available as soon as possible after being completed by the physician.

The CSB shall provide at the time of registration at the Contractor's facility for each inpatient the following:

1. Pre-Admission Form
1. Transfer Summary
1. Medical History Abstract
1. Consent for Treatment
1. Billing information to bill third party payers

A. For patients incapable of providing informed consent, the CSB shall secure and provide such consent for elective procedures in accordance with the Code of Virginia. In the case of emergency care, the CSB shall assist the contractor in meeting the provisions of Section 54.1-2970 of the Code of Virginia.

A. The Contractor will be authorized and responsible to refer patients to other Healthcare Providers when such referral is clinically indicated for the patient being served and is ordered by the patient's attending physician.

A. The Contractor shall assume full responsibility for the medical care delivered and the CSB shall not be liable for any acts of omission, negligence, medical malpractice related to actions of the Contractor/Medical Staff.

A. The Contractor shall insure procedures for communication of clinical information to accompany the patient upon transfer, including but not limited to: Physician's Recommendations/Medication Sheet/Follow-Up Appointments/Laboratory Tests.

A. Questions of psychiatric treatment may be managed by on-site psychiatric consultation if available and/or consultation with the proper CSB staff person.

A. Contractor shall as soon as practicable notify the CSB of their intent to return/discharge a patient under their care. The CSB will not assume financial liability for transportation of patients without its expressed consent.

A. In the event of a patient death while at the Contractor's facility, the Contractor shall notify the CSB immediately. Notification should be made through contact with the staff person designated by the CSB.

ATTACHMENT B

METHOD OF COMPENSATION:

Third Party Payment:

In cases wherein the patient is eligible for coverage under Medicare/Medicaid, Blue Cross/Blue Shield, and/or commercial insurance, the CSB will provide identification numbers to the provider of services. The Contractor shall bill such third party payer. The Contractor shall bill the CSB for uninsured patients who do not have third-party coverage. The CSB will provide coverage and reimburse the Contractor in the amount equal to the coverage provided by the Virginia Medical Assistance Program (Medicaid) to include a 21-day cap per confinement. The Contractor shall attempt to collect deductibles and co-insurance from the patient. However, if the patient cannot pay or the Contractor cannot deduct the charges as an allowable cost, the CSB will reimburse the contractor for these charges.

The CSB will not be liable for charges denied by third party payers due to failure of the Contractor or its Medical Staff to met contractual obligations to that payer.

BILLINGS AND PAYMENTS

An itemized bill shall be provided for each payment and for each occasion of service. The bill shall clearly identify the patient served and the dates of service.

All bills shall be directed to:

(Name and Address of CSB)

Payment shall be made within 30 days after receipt of accurate and fully documented invoice.

APPENDIX K-3

PURCHASE ORDER NO:

Page ___ of ___

DELIVERY ADDRESS:	**INVOICE TO:**	
MAIL TO:	Contract No.	PO Date:
	Bid Opening Date:	Ref. Doc.:
	Bid Ref/Req.No.:	Must Be Delivered By:

		Terms:			
		IMPORTANT: See Instructions, Terms & Conditions Attached.			
		Delivery is F.O.B. Destinations Unless Otherwise noted in the body of this Purchase Order			
Inv.Control No. Commodity Code	COMPLETE ITEM DESCRIPTION OR SERVICE	Quantity Wanted	Unit of Measure	**COST** Each	Extended
				TOTAL AMOUNT	
PURCHASE AUTHORIZED BY:			TITLE:		
IF YOU HAVE ANY QUESTIONS OR NEED ADDITIONAL INFORMATION, PLEASE CALL THE BUYER SPECIFIED BELOW.					
	PHONE:		FAX:		

TERMS AND CONDITIONS & INSTRUCTIONS TO VENDORS

1. This contractual agreement is subject to the terms and conditions of the _____ Community Services Board's "Vendors Guide to CSB Procurement Regulations" and any revisions thereto.

2. Goods or Services delivered must be strictly in accordance with bid referred to and shall not deviate in any way from terms, conditions or specifications of bid. Equipment, materials and/or supplies delivered on this order shall be subject to inspection and test upon receipt. If rejected, same shall remain the property of the Vendor.

3. Purchase Order number shall be shown by vendor on all related invoices, delivery memoranda, bills of lading, packages and/or correspondence.

4. A SEPARATE INOVICE FOR THIS PURCHASE ORDER OR FOR EACH SHIPMENT THEREONSHALL BE RENDERED IMMEDIATELY FOLLOWING SHIPMENT. ALL COPIES SHALL BE FORWARDED DIRECT TO CSB AT INVOICE ADDRESS SHOWN.

5. Sales and Use Tax Certificate of Exemption will be issued upon request.

6. Deliveries against this order must be free of excise or transportation taxes.

7. If discount for prompt payment is allowed, the discount period will begin on the date of receipt of proper invoice, or material/service, whichever is the later.

8. In case of default by the successful bidder, or failure to deliver the supplies or services ordered by the time specified, the CSB after due notice (oral or in writing), may procure them from other sources and hold vendor responsible for any excess cost occasioned thereby.

9. No substitution, change or deviation shall be made without written authority from the CSB by Purchase Order Change.

10. Vendors and contractors providing goods to the CSB under this order herewith assure the CSB that they are conforming to the provisions of the Civil Rights Act of 1964 as amended, as well as the Virginia Fair Employment Contracting Act of 1975 as amended, where applicable.

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

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

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

14. Vendors and Contractors performing work on CSB owned or leased facilities or property shall, during the entire term of the contract, maintain at a minimum, the following insurance coverages: Worker's Compensation – Statutory requirements and benefits; Employers Liability - $100,000; General Liability - $500,000 combined single limit; Automobile Liability - $500,000 combined single limit.

NOTE: This public body does not discriminate against faith-based organizations in accordance with the Code of Virginia, Sections 2.2-4300 and 2.2-4343 or against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.

APPENDIX K-4 - LEASE AGREEMENT

The following is a model lease that may be used by a CSB for the rental of real estate.

NOTE: All leases should be reviewed by the CSB's legal advisor prior to being executed.

LEASE AGREEMENT

This LEASE AGREEMENT, made this _____ day of _____, 19__, by and between _____ (the "Lessor) and the _____ Community Services Board (the "Lessee").

WITNESSETH:

For and in consideration of the terms, conditions, covenants, promises and agreements herein made, Lessor hereby leases and demises unto Lessee the following described real property (the "demised premises"): (Include parking facilities, if any, and square footage or acreage, if applicable.)

1. INITIAL TERM OF LEASE: The demised premises are leased to Lessee for a period of _____ ( ) _____ (months, years) beginning on the _____ day of _____, 19____ and terminating on the _____ day of _____, 19____ (the "initial term").

2. RENT: Lessee covenants to pay Lessor the sum of _____ DOLLARS ($) as rent for the initial term which amount shall be paid in installments of _____ DOLLARS ($) due and payable in arrears at the end of each _____ (month/quarter). Rent shall be payable to the order of _____ and mailed to _____ at _____, _____.

3. PURPOSE AND USE OF DEMISED PREMISES: The demised premises are leased to be used and occupied by the _____ Community Services Board and it agents and employees, for such purposes and uses as it may now or hereafter be empowered by law to use same.

4. ACCESSIBILITY BY THE HANDICAPPED:
(A) Prior to commencement of the initial term and delivery of possession, Lessor shall certify to Lessee in writing that the minimum requirements of the Virginia Uniform Statewide Building Code pertaining to access by physically handicapped and aged persons have been met. As hereinafter used, the term "the standards" shall mean and incorporate those standards issued or promulgated by the America National Standards Institute, entitled "American National Standard Specifications for Making Buildings and

Facilities Accessible to and Usable by Physically Handicapped People," ANSI-A117.1-1980, and the term "accessible" shall mean accessible to physically handicapped and aged individual in accordance with the standards. The minimum requirements are:

(1) If public or private parking is provided, at least one accessible parking space shall be provided as close as possible to an accessible route to the primary building entrance.

(2) Walks used as accessible routes to the building shall comply with the standards.

(3) An accessible primary entrance to the building shall be at grade or ramped to grade in accordance with the standards.

(4) An accessible entrance to the building shall comply with the standards.

(5) At least one accessible route (corridors and doors) to the demised premises shall comply with the standards.

(6) If support areas within the building (e.g., lunch rooms, cafeteria, etc.) are used by Lessee, its employees or the public, such areas shall be accessible.

(7) If Lessee occupies floors other than the main floor of access to the building, at least one accessible elevator shall be provided.

(8) Accessible public rest rooms for each sex shall be provided, preferably on all floors. As a minimum, accessible rest rooms shall be provided on the ground floor or the floor occupied by Lessee if the building if four stories or less in height. If Lessee occupies an area above the fourth floor, accessible public rest rooms for each sex shall be provided on the floor occupied by Lessee. If Lessee occupies more than one floor, at least one accessible public rest room for each sex shall be provided on at least every fourth floor occupied by Lessee.

(9) All corridors, doors and spaces in or about the demised premises and used by the public or employees of Lessee shall be accessible.

(10) Directional signs complying with the standards shall be provided directing the public to the demised premises occupied by Lessee.

(11) Where the foregoing standards for handicapped access conflict with applicable local ordinances, rules, or regulations setting forth standards for handicapped access, the more restrictive of the two shall govern.

(B) Any modifications, alterations or deletions to the minimum requirements designed in sub-paragraph 4(A), shall be made only by an attachment to this lease as provided in paragraph 17.

5. DELIVERY OF POSSESSION:

(A) Lessor covenants to deliver quiet possession of the demised premises at the commencement of the initial term.

(B) Lessor covenants to deliver the demised premises to Lessee at the commencement of the initial term in good repair and condition, suitable to the purpose and use for which the demised premises are leased. Lessor warrants that all plumbing, heating, air conditioning, electrical and mechanical devices and appliances of every kind or nature located upon or serving the demised premises are, or will be, in good repair, condition and working order as of the commencement of the initial term.

6. MAINTENANCE:

(A) Lessor covenants to keep, repair and maintain, at Lessor's expense, the demised premises and all plumbing, heating, air conditioning, electrical and mechanical devices, appliances and equipment of every kind or nature located upon or serving the demised premises in good repair, condition and working order, suitable to the purpose and use for which Lessee has leased same, during the initial term and any renewal terms and, if necessary, shall make such alterations, additions and/or modifications of the demised premises and all equipment, electrical and mechanical devices and appliances thereon or serving same so as to comply at all times with all applicable federal, state and local laws, ordinances, rules and regulations pertaining to health, safety, fire and public welfare. As used herein, the word "repair" shall be deemed to mean and include replacement of broken or cracked glass.

(B) If Lessor fails to keep, repair and maintain the demised premises and all plumbing, heating, air conditioning, electrical and mechanical devices, appliances and equipment of every kind or nature located upon or serving the demised premises in good repair, condition and working order as provided in sub-paragraph 6(A), then Lessee, at it option, may either (a) immediately terminate this lease and all obligations hereunder, or (b) proceed to make, or cause to be made, such upkeep, repair and/or maintenance, at Lessor's expense, so as to render the demised premises suitable for the purpose and use for which same are leased, in which event, Lessee may deduct the cost of same from future rent installments as they become due and/or may collect such cost from Lessor in any manner provided by law.

7. UTILITIES: Lessor shall provide, at Lessor's expense, all heating and air conditioning as conditions require, electricity, water, sewage and trash disposal, and janitorial services to and for the demised premises during the initial term and any renewal terms. In the event that any one or more such utilities are not provided or are reduced, other than due to causes beyond the reasonable control of Lessor, and the failure to provide or reduction of same renders the demised premises unsuitable for the purpose and use for which same are leased, then Lessee, in addition to any other remedy available under the law, shall be entitled to deduct from the total rent, or any installment thereof, the per diem rental for each day that the demised premises are rendered unsuitable due to the failure to provide or reduction of such utilities.

8. ALTERATIONS BY LESSEE: Lessee may make such alterations, modifications, additions and/or improvements upon or to the demised premises and may install or remove such fixtures and partitions as Lessee may deem proper; provided, however, that any structural alterations of the roof, foundation or exterior walls shall require the prior written consent of Lessor. All materials used in such alterations, modifications, additions or improvements, and all fixtures and partitions made and/or installed by Lessee shall remain the property of Lessee and, upon termination of this lease, may, at Lessee's option, be removed.

9. DAMAGE OR DESTRUCTION OF DEMISED PREMISES:

(A) If the demised premises are damaged by fire or other casualty so as to render same, in the opinion of Lessee, untenantable for the purpose or use for which Lessee has leased same, this lease, and all obligations hereunder, shall immediately terminate upon Lessee's giving notice of that fact to Lessor by certified or registered mail, return receipt requested, as hereinafter provided.

(B) If the demised premises are damaged by fire or other casualty, but not so as to render same untenantable, in the opinion of Lessee, for the purpose or use for which Lessee has leased the demised premises, upon being so notified by Lessee by certified or registered mail, return receipt requested, Lessor shall repair and restore within a reasonable time, at Lessor's expense, the demised premises to its former condition. In this event, the rent shall be adjusted on a pro rata basis for the period of such repair and restoration for that portion of the premises rendered untenantable for Lessee by the fire or other casualty. As used herein, the words "repair" and "restore" shall be deemed to mean and include replacement of broken, cracked or damaged glass or windows.

(C) If Lessor fails to make or fails to complete repair and restoration of the demised premises within a reasonable time after Lessee provides notice pursuant to sub-paragraph 9(B), then Lessee, at its option, may either (a) immediately terminate this lease and all obligations hereunder, or (b) proceed to make, or cause to be made, such repair and restoration, at Lessor's expense, in which event, Lessee may deduct the cost of same from future rent installments as they become due and/or may collect such cost from Lessor in any manner provided by law.

10. RENEWAL OF LEASE: Unless otherwise terminated as herein provided, at the end of the initial term, this lease shall automatically renew and continue in full force and effect from year to year ("renewal term") at the same rental, adjusted pro rata on any annual basis and due and payable in the same periodic installments as provided in paragraph 2, and subject to all terms, conditions, covenants, promises and agreements herein contained. Such year-to-year or renewal term shall continue to renew automatically unless terminated by either party in such manner and at such time as hereinafter provided for termination of the initial term.

11. TERMINATION:

(A) This lease and any renewal term of this lease may be terminated by either party only upon written notice to the other party by certified or registered mail, return receipt

requested, at least three (3) months prior to the expiration of the initial term or any renewal term; otherwise, this lease shall renew and continue as provided in paragraph 10. In addition, during any renewal term, Lessee, at its option, may terminate this lease at any time upon at least three (3) months written notice to Lessor by certified or registered mail, return receipt requested.

(B) Notwithstanding any provision in this lease to the contrary, if the Commonwealth of Virginia, the applicable local government or the federal government fails to appropriate or allocate sufficient funds for the purpose of continuation of this least, it shall automatically terminate upon depletion of the then currently allocated funds.

(C) Notwithstanding any provision to the contrary, if, by operation of law, the leasing agency designated in paragraph 3 shall cease to exist or its powers and authority are limited so as not to permit the continued use of the demised premises for the purpose and use for which same is leased, then this lease and all obligations of the Lessee hereunder shall terminate.

12 NOTICE:

(A) Any and all notices affecting this lease may be served by the parties hereto, or by their duly authorized agents, as effectively as if same were served by any officer authorized by law to serve such notices. The return of such party, or its duly authorized agent, showing the time, place and manner of service of such notice shall have the same force and effect in any legal proceedings based thereon as a return of service by any officer authorized by law to serve such notice.

(B) All notices required by law to be served upon, and all notices permitted by this lease to be mailed to, a party to this lease shall be served upon or mailed to, as the case may be, the following agents for each party who are hereby appointed and designated as such for the purpose of receiving all such notices:

(1) Lessor's agent shall be _____.

whose address is _____.

_____,_____ _____.

(2) Lessee's agent shall be _____.

whose address is _____.

_____,_____
_____.

Each party shall immediately notify the other party, in writing, of any change of agents, and no change of agents shall be effective until such notice is given.

(C) Where, under the terms of this lease, a notice is required or permitted to be mailed by certified or registered mail, return receipt requested, and such notice is not mailed in such manner, the notice shall be effective if actually received by the party, or its appointed agent, to whom the notice is directed.

13. BINDING UPON SUCCESSORS: This lease shall be binding upon the heirs, successors in interest and assigns of the parties hereto.

14. ENTIRE AGREEMENT: This written Lease Agreement constitutes the entire, full and complete understanding and agreement of the parties, and all representations, conditions, statements, warranties, covenants, promises or agreements previously made or given by either party to the other are hereby expressly merged into this written Lease Agreement and shall be null, void and without legal effect.

15. MODIFICATION: This Lease Agreement shall not be modified, altered or amended except by written agreement executed by the parties hereto with the same formality as this agreement.

16. PARAGRAPH HEADINGS: Headings to the paragraphs are mere catchwords and are illustrative only; they do not form a part of this lease nor are they intended to be used in construing same.

17. ADDITIONAL PROVISIONS: This lease is subject to the terms, conditions, modifications, additions and/or deletions provided in the following designated attachments which are incorporated herein by reference: (Designate as "Attachment No. 1" etc. If none, state "NONE".)

18. This Lease Agreement shall not be effective or binding unless and until signed by both parties.

IN WITNESS WHEREOF, the parties have affixed their signatures and seals.

LESSOR:

_____

(Type or print name)

By: _____

LESSEE: _____ Community Services Board

By: _____

COMMONWEALTH OF VIRGINIA

CITY/COUNTY OF _____, to wit:

The foregoing Lease Agreement was acknowledged before me by _____ on the _____ day of _____, 19____ in the jurisdiction aforesaid.

My Commission expires: _____

_____

Notary Public

COMMONWEALTH OF VIRGINIA

CITY/COUNTY OF _____, to wit:

The foregoing Lease Agreement was acknowledged before me by _____ on the _____ day of _____, 19____ in the jurisdiction aforesaid.

My Commission expires: _____

_____

Notary Public

ATTACHMENT NO. _____

This ATTACHMENT forms a part of that certain Lease Agreement by and between _____, Lessor, and the _____ Community Services Board, Lessee, dated the _____ day of _____, 19,_____.

Lessor and Lessee agree to the following terms, conditions, modifications, additions and/or deletions.

APPENDIX K-5
ADDENDUM TO VENDOR'S FORM

_____ Community Services Board (CSB)

CONTRACT FORM ADDENDUM TO CONTRACTOR'S FORM

CONTRACTOR NAME:

DATE:

The CSB and the Contractor are this day entering into a contract and, for their mutual convenience, the parties are using the standard form agreement provided by the Contractor, _____. This addendum, duly executed by the parties, is attached to and hereby made a part of the contract.

The Contractor represents and warrants that it is a(n) / / individual proprietorship / / association / / partnership / /
corporation / / governmental agency or authority authorized to do in Virginia the business provided for in this contract. (Check the appropriate box.)

Notwithstanding anything in the Contractor's form to which this Addendum is attached, the payments to be made by the CSB for all goods, services and other deliverables under this contract shall not exceed $_____; payments will be made only upon receipt of a proper invoice, detailing the goods/services provided and submitted to _____. The total cumulative liability of the CSB, its officers, employees and agents in connection with this contract or in connection with any goods, services, actions or omissions relating to the contract, shall not under any circumstance exceed payment of the above maximum purchase price plus liability for an additional amount equal to such maximum purchase price. In its performance under this contract, the Contractor acts and will act as an independent contractor, and not as an agent or employee of the CSB.

The Contractor's form contract is, with the exceptions noted herein, acceptable to the CSB. Nonetheless, because certain standard clauses that may appear in the Contractor's form agreement cannot be accepted by the CSB, and in consideration of the convenience of using that form, and this form, without the necessity of specifically negotiating a separate contract document, the parties hereto specifically agree that, notwithstanding any provisions appearing in the attached Contractor's form contract, none of the following shall have any effect or be enforceable against the CSB:

1. Requiring the CSB to maintain any type of insurance either for the CSB's benefit or for the Contractor's benefit;

2. Renewing or extending the agreement beyond the initial term or automatically continuing the contract period from term to term;

3. Requiring or stating that the terms of the attached Contractor's form agreement shall prevail over the terms of this addendum in the event of conflict;

4. Requiring the CSB to indemnify or to hold harmless the Contractor for any act or omission;

5. Imposing interest charges contrary to that specified by the *Code of Virginia*, § 2.2-4347 through 2.2-4356, Prompt Payment;

6. Requiring the application of the law of any state other than Virginia in interpreting or enforcing the contract or requiring or permitting that any dispute under the contract be resolved in the courts of any state other than Virginia;

7. Requiring any total or partial compensation or payment for lost profit or liquidated damages by the CSB if the contract is terminated before its ordinary period;

8. Requiring that the contract be "accepted" or endorsed by the home office or by any other officer subsequent to execution by an official of the CSB before the contract is considered in effect;

9. Delaying the acceptance of this contract or its effective date beyond the date of execution;

10. Limiting or adding to the time period within which claims can be made or actions can be brought;

11. Limiting the liability of the Contractor for property damage or personal injury;

12. Permitting unilateral modification of this contract by the Contractor;

13. Binding the CSB to any arbitration or to the decision of any arbitration board, commission, panel or other entity;

14. Obligating the CSB to pay costs of collection or attorney□s fees;

15. Granting the Contractor a security interest in property of the CSB.

16. Bestowing any right or incurring any obligation that is beyond the duly granted authority of the undersigned agency representative to bestow or incur on behalf of the CSB.

This Agency contract consisting of this Agency addendum and the attached Contractor's form contract constitute the entire agreement between the parties and may not be waived or modified except by written agreement between the parties.

This contract has been reviewed by staff of the agency. Its substantive terms are appropriate to the needs of the agency and sufficient funds have been allocated for its performance by the agency. This contract is subject to appropriations by the Virginia General Assembly.

IN WITNESS WHEREOF, the parties have caused this contract to be duly executed, intending thereby to be legally bound.

CSB by _____ CONTRACTOR by

Title_____ Title

When Used: For contracts valued at less than $30,000 and it is not feasible to award a contract without using the contractor's form, and clauses which are not in the best interest of the CSB cannot be crossed out, then use this form. For contracts over $30,000, your legal advisor should be consulted prior to using this form.

APPENDIX L - CONTRACT MODIFICATION FORMS

Contract Change Appendix L-1

Purchase Order Change Appendix L-2

APPENDIX L-1 - CONTRACT CHANGE FORM

(Example)

(CSB Letterhead)

CONTRACT CHANGE

CONTRACT NUMBER: _____

CHANGE NUMBER: (Number beginning with "one"

SERVICE: (Name of Contract)

CONTRACTOR: (Name of Contractor)

THE ABOVE-REFERENCED CONTRACT IS MODIFIED AS FOLLOWS:

Section ____, Page __ of RFP #_____:

CHANGE THE FIRST SENTENCE TO READ: "_____ _____."

ADD THE FOLLOWING SENTENCE: "_____ _____."

(or other changes as may be applicable)

ACKNOWLEDGEMENT:

By my signature below, I acknowledge and accept the above-noted changes to this contract.

(Contractor's Name) (Name) Community Services Board

By: _____ By: _____

Title: _____ Title: _____

Date: _____ Date: _____

APPENDIX L-2 - PURCHASE ORDER CHANGE FORM

PURCHASE ORDER CHANGE NO:

Page ___ of ___

VENDOR:	Purchase Order No.	Date of Change:
	CSB:	

YOU ARE REQUESTED TO MAKE THE FOLLOWING CHANGE IN PURCHASE ORDER ABOVE DESIGNATED.

ORIGINAL ORDER TOTAL: Including Previous Change Orders (Disregard any payments) ?

CHANGE ORDER AS FOLLOWS: Show Deletions and/or additions to fully explain change:

Inv.Control No. Commodity Code	COMPLETE ITEM DESCRIPTION OR SERVICE	Quantity Wanted	Unit of Measure	Unit Price	

REASON FOR CHANGE:	AMOUNT OF INCREASE/ DECREASE ?	
	NEW TOTAL - CHANGE ORDER NO. ?	
CHANGE AUTHORIZED BY:	TITLE:	

IF YOU HAVE ANY QUESTIONS OR NEED ADDITIONAL INFORMATION, PLEASE CALL THE BUYER SPECIFIED BELOW.		
	PHONE:	FAX:

APPENDIX M
CONTRACT ADMINISTRATION DOCUMENTS

NOTE: Refer to Subject 20.130 of this Manual for further information

Sample Cure Letter Appendix M-1

Default Letter Appendix M-2

Request for Payment Letter Appendix M-3

Default and Request for Payment Letter Appendix M-4

Sample Assignment of Contract Administration Letter Appendix M-5

APPENDIX M-1 - Sample Cure Letter

(NOTE: The following letter is used when a Contractor has failed to perform or deliver as required by the terms and conditions of the contract. It provides the Contractor a period of time to correct or "cure" the deficiency and places the Contractor on notice as to the consequences for failure to take the required corrective action. The Contractor can be given an oral notice to cure which should then be confirmed in writing.)

Dear _____:

Reference: Purchase Order/Contract Number _____.

Delivery (performance) on the above referenced purchase order (contract) has not been completed. You are hereby requested to make delivery (complete the project) within ____ days of the date of this letter. Failure to make delivery (complete the project) within the stated time limit will result in (1) termination for default; (2) action taken to procure the items or service from other sources and charge the additional cost to your company; and (3) removal of your company from the Vendor's List.

Sincerely,

Appendix M-2 - Default Letter

(NOTE: The following letter is used when a Contractor has failed to take appropriate corrective action as notified in a "cure letter", (M-1). It notifies the Contractor that the contract is being terminated for default and that when the CSB purchases the goods or services from another source any additional cost to the CSB will be billed to the Contractor.)

Dear _____:

Reference: Our Notice of Contract Deficiency Letter dated _____.

Reference is made to our Notice of Contract Deficiency dated _____ and our telephone conversation this between (CSB official) and (Contractor official).

This is confirm that (name of contractor) has been placed in default for failure to take corrective action to deliver the goods (perform the services) within the additional time granted in the referenced letter. Subject contract (purchase order) is hereby terminated for Default. _____ Community Services Board will repurchase the specified goods (services). You will be promptly notified of any additional purchase or administrative costs for which you become liable as a result of this default.

Sincerely,

APPENDIX M-3 - Request for Payment Letter

(NOTE: This letter is used when termination for default action has been taken and the goods or service has been repurchased at an additional cost to the CSB. The former Contractor is then billed for the additional cost by means of this letter)

Dear _____:

Reference is made to our letter dated _____, subject: Notice of Termination for Default on Purchase Order (Contract) No. _____. The specified goods (services) have been repurchased at an additional cost to the _____ Community Services Board of $_____. (Former contractor) is indebted to the _____ Community Services Board in the amount of $_____ and is requested to submit a check to this office payable to the _____ Community Services Board. Your firm will be removed from our Vendors' List for _____ days or until receipt of this payment, whichever occurs first.

Sincerely,

APPENDIX M-4 - Default and Request for Payment Letter

(NOTE: In some instances a Contractor will notify the CSB that they refuse to or cannot deliver or complete performance on a contract. In those situations it is not practical to follow the procedure of using a cure notification, a Termination for Default Letter and a Demand for Payment Letter. Instead, this letter may be used.)

Dear _____:

Reference is made to your letter (telephone conversation) dated _____ of your firm's refusal to perform on subject contract (purchase order).

This is to confirm that (Contractor) has been placed in default for failure to take correction action to deliver (perform the service) within the time specified in the referenced letter (contract). Subject contract (purchase order) is hereby canceled. The specified goods (services) have been repurchased at an additional cost to the _____ Community Services Board of $_____. A copy of Purchase Order Number _____ is enclosed. (Contractor) is indebted to the _____ Community Services Board in the amount of $_____ and is requested to submit a check to this office payable to _____ Community Services Board. Your firm is removed from our mailing list and is ineligible to receive awards until receipt of this payment.

Sincerely,

APPENDIX M-5
ASSIGNMENT OF CONTRACT ADMINSTRATION LETTER

_____ Community Services Board

Date

TO:	(Name), Contract Administrator
FROM:	(Contract Officer)
SUBJECT:	ASSIGNMENT OF CONTRACT ADMINISTRATION
PROJECT:	(Name of Contract)
CONTRACT NUMBER:	XXXXX-XXX
Contractor:	(Name and Address of Contractor)
Period of Contract:	XXXX XX, 200X through XXXX XX, 200X
Renewal Options:	(Number) one-year renewal option available
Compensation:	See Attached.

NOTICE: You are hereby appointed Contract Administrator for the above named contract. Your duties and responsibilities are as follows:

- Day to day coordination of the delivery of this service:
  - Maintain a detailed file of communication (oral and written) with the Contractor.
  - Review Contractor's work to ensure compliance with requirements of the contract with no substitutions of personnel, equipment, or type of service.
  - Monitor due dates and projected time line activities.
  - Certify that required reports are submitted in the proper format and with the proper information.

- Administer contract performance evaluations and participate in performance evaluation meetings of key staff, as appropriate.
  - Inspect work and services. Document performance outcomes, timeliness, efficiency and effectiveness.
  - Assist the Contractor and the Purchasing Office in interpreting technical requirements. The Purchasing Office is the principal interpreter of the project.
  - Notify the Purchase/Contract Officer if any administration duties are delegated.

- Report persistent or serious service delivery failures or other compliance failures by the Contractor to the Purchasing Office.

- Assure that proper action has been taken to modify the contract through the Purchasing Office before the Contractor proceeds with any changes. Make written recommendations to the Purchasing Office regarding any changes needed in the scope of work, duties of the parties, contractual terms or other elements of the contract.

- Submit written recommendations with justifications to the Purchase/Contract Officer regarding any changes needed in the contract.

- Monitor budget and funding activities associated with the project and promptly report any issues or inconsistencies.
  - Track funding and costs associated with the project.
  - Assure that funding limits are not exceeded without identification of additional resources through the Fiscal Office and approval by the Purchase/Contract Officer.
  - Review contractor invoices and recommend approval or disapproval for payment as appropriate in accordance with the Prompt Payment Act.
  - Prepare or arrange for the preparation of any cost estimated associated with increasing or decreasing any work or activities or performances of the work.

- Keep the Purchase/Contract Officer informed regarding the status of performance of the contract.

- Notify Purchase/Contract Officer of completion of work.

- Assure that the Contractor complies with all of the attached special requirements of this contract.

.

This contract, the scope of work, technical requirements, terms and conditions or other elements of the contract may not be extended, increased, decreased or modified in any way without action through and approval by the Purchase/Contract Officer. The Contract Administrator shall not:

- ❑ Make commitments to the Contractor which involve funding or contract changes.
- ❑ Promise additional work.
- ❑ Modify terms and conditions of the contract.
- ❑ Change the period of performance.
- ❑ Issue stop work orders.
- ❑ Accelerate or decelerate the delivery schedule.
- ❑ Negotiate, approve or execute agreements.
- ❑ Authorize additional agency furnished property or services.
- ❑ Authorize performance of work outside the scope of the contract.
- ❑ Add additional users to the contract.

APPENDIX N

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JULY, 2002

CHAPTER 43

Virginia Public Procurement Act.

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