



PROCUREMENT POLICY

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SOUTHEASTERN PUBLIC SERVICE AUTHORITY PROCUREMENT POLICY

PURPOSE

This Procurement Policy Manual, hereinafter referred to as the “Manual,” contains the policies and procedures by which departments within the Southeastern Public Service Authority (“SPSA” or the “Authority”) are to follow for the procurement of goods, services, insurance and construction unless inconsistent with or otherwise provided by law. The policy is designed to comply with the Virginia Public Procurement Act (VPPA). This Manual shall be used as a reference resource to maintain the conduct of procurement related activities within the realm of the law and comply with the stated purpose of SPSA’s procurement policy:

...to encourage competition among vendors and contractors, to provide for the fair and equitable treatment of all persons involved in public procurement by SPSA, to maximize the value of public funds in procurement so that high quality goods and services may be obtained at the lowest possible price, and to increase public confidence in procurement practices by providing safeguards for maintaining a procurement system of quality and integrity.

CHAPTER I - LEGAL ASPECTS OF THIS MANUAL

1. **Procurement contracts entered into by SPSA.** The policies and procedures of this Manual apply to all contracts for the procurement of goods, services, insurance and construction entered into by SPSA. The policy and procedures of this Manual shall apply whether the consideration is monetary or non-monetary and regardless of whether SPSA, a contractor, or some third party is providing the consideration. Policies and procedures of this Manual shall be followed without deviation unless authorized in writing by the Executive Director or his/her designee.
2. **Penalty for willful violations.** Willful violation of any provision of this Manual may constitute a Class I misdemeanor. Upon conviction, any public employee, in addition to any other fine or penalty provided by law, may be required to forfeit his/her employment.
3. **Severability.** If any provision of this Manual or any application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this Manual which can be given effect without the invalid provision or application, and to this end the provisions of this Manual are declared to be severable.

CHAPTER II – AUTHORITY, RESPONSIBILITY AND DUTIES

1. **Authority, Responsibilities and Duties.** In accordance with §15.2-5102.1 of the Code of Virginia, the Executive Director is not permitted to execute or commit the Authority to any contract, memorandum of agreement or memorandum of understanding without an informed vote of approval by the SPSA Board of Directors with the exception of (1) contracts involving matters with a value of less than \$100,000 that are consistent with the Board-approved annual budget and, if applicable, the authority's approved procurement policy, and (2) sole source and emergency procurements in accordance with the policies set forth herein.

Except as specifically provided in the following sections of this Manual, the Executive Director shall, without the need for further or additional approval of the Board of Directors, have the authority and responsibility to:

- (a) Establish additional procedures, consistent with this Manual, governing the procurement, management, control, and disposal of any and all goods, services, and construction to be procured by SPSA;
- (b) Consider and decide matters of procedure within the provisions of this Manual and for complying with procurement law;
- (c) Execute contracts and agreements for procurements that fall within the Small Dollar Procedures set forth in this Manual;
- (d) Execute contract modifications, individually or cumulatively less than \$100,000 but no fixed-price contract may be increased by more than twenty-five percent of the amount of the contract or \$50,000 whichever is greater, without approval by the SPSA Board of Directors (Va. Code § 2.2-4309(A)).
- (e) Exercise authority over the award or administration of any particular contract, or over any dispute, claim, or litigation pertaining thereto, with appropriate consultation with SPSA's legal counsel as necessary.
- (f) In addition to the procurement methods in this Manual, utilize other procurement methods authorized by the VPPA, as amended, and adopt such procedures as may be necessary or advisable to comply with the requirements of the VPPA for use of such other procurement methods.
- (g) Determine the procurement method to be utilized for a procurement transaction and prepare any written determination or notice necessary or advisable to justify or explain why such method is being used.
- (h) If not already within the scope of the Executive Director's authority, to make decisions and take actions as may be necessary to prevent a detrimental delay or stoppage of a contractor's work or to preclude an avoidable

increase in contract price, but only if (i) it is not reasonably practicable to obtain the advanced approval of the Board of Directors; and (ii) the Executive Director has notified and obtained the consent of the Chair of the Board of Directors. The Executive Director shall thereafter have such decision or action ratified at the next meeting of the Board of Directors.

- (i) Utilize contingencies and issue work orders, unit price orders, or similar instructions to proceed under a contract that has been approved by the Board of Directors as long as such contingencies, orders or instructions are within the scope of work and cost of the contract as approved by the Board of Directors.
- (j) For any contract involving matters valued at more than \$30,000 and any contract modification of more than \$30,000 executed solely by the Executive Director in accordance with the provisions of this section concerning the execution or modification of agreements without further Board approval, the Executive Director will report such contracts and modifications to the SPSA Board of Directors at its next regularly scheduled meeting.

2. **Departmental Authority, Responsibilities and Duties.** It is the responsibility of each Supervisor to determine the goods or services needed for efficient operation and to relay this information to the Deputy Executive Director in a timely manner to ensure feasibility of compliance with purchasing policies and procedures. Authority, responsibilities, and duties at the department level include:

- (a) Preparing sufficient and concise technical specifications that characteristically define the quality, which will best serve the interest of SPSA within available funding, of goods or services needed to perform a specific function. Specifications shall provide a basis for full and fair competition.
- (b) Identifying special terms and conditions which are pertinent to the procurement, such as delivery schedules, local service, warranty provisions, etc.
- (c) Planning and submitting requirements to Purchasing sufficiently in advance of need to allow the necessary time for compliance with appropriate competitive procedures and allow the supplier ample time for regular (versus expedited) delivery.
- (d) Receiving goods and services and ensuring that goods and services received are in strict accordance with the purchase order or other form of contract. Should substitute goods or services of a lesser quality or alternate terms for the purchasing transaction be proposed (or delivered), the

Supervisor shall notify and request instruction for executing the original contract.

- (e) Documenting vendor performance and providing an appropriate level of contract administration to monitor all aspects of the contract/purchase order to insure proper fulfillment. Should any problems arise, it is the department's responsibility to notify the Purchasing department. Copies of all procurement related correspondence shall be forwarded to Purchasing.

CHAPTER III – DEFINITIONS

Definitions. For the purposes of this Manual, the following words and phrases shall have the meanings respectively ascribed to them. Nothing in this section shall preclude the Executive Director, or his/her designee from defining additional terms to provide consistency for the purposes of this Manual in the conduct of procurement related activities.

Act or VPPA. The Virginia Public Procurement Act, Title 2.2, Chapter 43 of the Code of Virginia.

Addendum. A modification of the bid/contract documents issued in writing by SPSA prior to the opening of the bids.

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

Authority. The Southeastern Public Service Authority of Virginia, a public body politic and corporate of the Commonwealth of Virginia.

Best value. As predetermined in the solicitation, means the overall combination of quality, price, and various elements of required services that in total are optimal relative to a public body's needs.

Board of Directors or Board. The Board of Directors of the Authority.

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

Complex Project. A construction project that includes one or more of the following significant components: difficult site location, unique equipment, specialized building systems, multifaceted program, accelerated schedule, historic designation, or intricate phasing or some other aspect that makes competitive sealed bidding not practical.

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

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

Contract. A legal obligation between a buyer and a seller to perform certain duties/provide certain goods. General requirements of a contract include an offer and acceptance by capable parties; mutual assent/consent; lawful objective; and mutual consideration.

Contract Modification (Change Order). Any written alteration in a specification, delivery point, rate of delivery, period of performance, price, quantity, or other provision of any contract accomplished by mutual action of the parties to the contract.

Contractor. Any person having a contract with SPSA or a using department thereof.

Design-build Contract. 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 or other item specified in the contract.

Emergency. An emergency shall exist when a breakdown in an essential service occurs or under any other circumstances when goods or services are needed for immediate use in work which may vitally affect the safety, health or welfare of the public.

Employee. An individual drawing a salary, wages or other compensation from SPSA; any non-compensated individual performing personal services for SPSA.

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

Goods. All material, equipment, supplies, printing and automated data processing hardware and software.

Immediate Family. A spouse, child, parent, brother and sister, and any other person living in the same household of an employee.

Insurance. A contract whereby, for a stipulated consideration, one party undertakes to compensate the other for loss on a specified subject by specified perils.

Informality. A minor defect or variation of a bid, proposal, or other offer from the exact requirements of the Invitation to Bid, the Request for Proposal, or other solicitation, which does not affect the price, quality, quantity or delivery schedule for the goods, services or construction being procured.

Invitation to Bid or Invitation for Bids (IFB). All documents, whether attached or incorporated by reference, utilized for soliciting sealed bids.

Job order contracting. A method of procuring construction by establishing a book of unit prices and then obtaining a contractor to perform work as needed using the prices, quantities, and specifications in the book as the basis of its pricing. The contractor may be selected through either competitive sealed bidding or competitive negotiation depending on the needs of the public body procuring the construction services. A minimum amount of work may be specified in the contract. The contract term and the project amount shall not exceed the limitations specified in Virginia Code § 2.2-4303.2.

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

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

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

or other entity is owned by one or more minority individuals who are U.S. citizens or legal resident aliens, and both the management and daily business operations are controlled by one or more minority individuals, or any historically black college or university as defined in Virginia Code § 2.2-1604, regardless of the percentage ownership by minority individuals or, in the case of a corporation, partnership, or limited liability company or other entity, the equity ownership interest in the corporation, partnership, or limited liability company or other entity.

Multiphase professional services contract. A contract for the providing of professional services where the total scope of work of the second or subsequent phase of the contract cannot be specified without the results of the first or prior phase of the contract.

Nominal Value. Value so small, slight, or the like in comparison to what might properly be expected, as scarcely to be entitled to the name.

Life Cycle Costing. An evaluation that takes into account all costs incidental to the planning, design, construction, operation, maintenance and disposal of a system or facility calculated in terms of present value, annual owning and operating costs (total cost bid).

Non-Professional Services. Any services not specifically identified as professional services in the definition of professional services.

Official Responsibility. Administrative or operating authority, whether intermediate or final, to initiate, approve/disapprove or otherwise affect procurement transactions or any claim resulting therefrom.

Pecuniary Interest Arising from the Procurement. A personal interest in a contract as defined in the State and Local Government Conflict of Interests Act (Va. Code § 2.2-3100 et seq.).

Person. Any individual, corporation, limited liability company, partnership, joint venture, trust, unincorporated organization, association, or other entity or a government or any agency, authority or political subdivision thereof.

Potential Bidder or Offeror. Any person who, at the time SPSA negotiates and awards or proposes to award a contract, is engaged in the sale or lease of goods, or the sale of services, insurance or construction, of the type to be procured under the contract, and who at such time is eligible and qualified in all respects to perform that contract, and who would have been eligible and qualified to submit a bid or proposal had the contract been procured through competitive sealed bidding or competitive negotiation.

Procurement Transaction. 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.

Professional Services. Work performed by an independent contractor within the scope of the practice of accounting, actuarial services, architecture, land surveying, landscape

architecture, law, dentistry, medicine, optometry, pharmacy, professional engineering, or other professions as defined in the VPPA.

Public Body. Any legislative, executive or judicial body, agency, office, department, authority, post, commission, committee, institution, board, or political subdivision created by law to exercise some sovereign power or to perform some governmental duty, and empowered by law to undertake the activities described.

Public Contract. Any form of agreement between a public body/SPSA and a nongovernmental source that is enforceable in a court of law.

Public Employee. Any person employed by a public body, including elected officials or appointed members of governing bodies.

Purchase Order. A form of contract which provides the supplier authorization to provide goods/services and is the purchaser's commitment for the value of the goods/services. Special terms and conditions may be incorporated in the purchase order by reference.

Requisition. A written or electronic communication describing the needs of the using department to the purchasing department; a request to purchase. It includes appropriate authorization of the using department to proceed to purchase the designated items and the appropriate funding source/account to be charged.

Request for Proposals (RFP). All documents, whether attached or incorporated by reference, utilized for soliciting proposals.

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

Responsive Bidder. A person who has submitted a bid which conforms in all material respects to the Invitation to Bid.

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

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.

Service-disabled veteran business. A business that is at least 51 percent owned by one or more service disabled veterans or, in the case of a corporation, partnership, or limited liability company or other entity, at least 51 percent of the equity ownership interest in the corporation, partnership, or limited liability company or other entity is owned by one or more individuals who are service disabled veterans and both the management and

daily business operations are controlled by one or more individuals who are service disabled veterans.

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

Small Dollar Procedures. The respective procurement procedures and transaction amounts, which apply when said requirement is exempt from formal competitive sealed bid or sealed proposal procedures, as established herein.

SPSA. The Southeastern Public Service Authority of Virginia, a public body politic and corporate of the Commonwealth of Virginia.

State Public Body. Any authority, board, department, instrumentality, agency, or other unit of state government. "State public body" does not include any covered institution; any county, city, or town; or any local or regional governmental authority.

Using Department. Any department, division, section, office, or other unit in SPSA requiring goods, services, insurance or construction as provided for in this Manual.

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

CHAPTER IV – METHODS OF PROCUREMENT

All public contracts with non-governmental contractors for the purchase or lease of goods, services, insurance or construction shall be awarded after competitive sealed bidding or competitive negotiation as provided in this Manual and the VPPA unless otherwise authorized by law or this Manual. Such procurement transactions shall provide for competition wherever practicable and shall be subject to the requirements of this Manual, the VPPA and procedures established by the Executive Director or his/her designee.

1. **Small Dollar Procedures:** SPSA may award single or term contracts less than \$30,000 for goods, services and non-transportation-related construction without competitive sealed bidding or competitive negotiation. This threshold applies to the total value of all phases of single or term contracts. Contract requirements shall not be artificially divided so as to qualify as an exception.
 - (a) **Goods and Services with a cost less than \$5,000 per unit:** Requirements for goods or services which are less than \$5,000 per unit may be purchased at the discretion of the using department provided the total order does not exceed \$5,000. Departments are encouraged to consider total delivered cost and convenience in making a vendor selection and to seek competition where practicable.
 - (b) **Goods and Services with a cost between \$5,000 and \$29,999 per unit:** With the exception of SPSA annual contracts, where the cost is expected to be between \$5,000 and \$29,999 per unit and the total order does not exceed \$29,999, no fewer than three valid responsible vendors shall be solicited to submit electronic or written quotations. All quotations shall be documented and must contain at a minimum, the name of the business submitting quotation; the person providing the quote, the date, and the amount of each quotation. The purchase and payment shall be processed by requisition/purchase order with documentation attached electronically with the requisition and/or purchase order.
 - (c) **Goods and Services with a cost equal to or in excess of \$30,000 per unit:** Where the cost is expected to equal or exceed \$30,000 per unit or in total sum, a formal competitive sealed bidding (Invitation to Bid or IFB) or competitive negotiation (Request for Proposal or RFP) process shall be used and may be awarded following approval of the Board of Directors.
2. **Purchasing Card:**
 - (a) The purchasing card program is intended as an alternate method for procuring goods and services and simplifying the payment process. The program reduces the number of accounts payable transactions and associated handoffs by consolidating multiple vendor invoices into one monthly invoice from the charge card vendor.

- (b) The purchasing card shall only be used to purchase low dollar or emergency goods and services for SPSA operations, maintenance and repairs. Use of the card for personal items, cash advances, business travel (includes gasoline), nonexpendable and expendable furnishings, or other fixed assets expenses is not permitted. Efforts should be made to use vendors who accept the purchasing card where appropriate in order to maximize administrative cost savings. Purchasing cards must be used for official SPSA purchases only. Split tickets are prohibited.
 - (c) The Accounting Manager will act as SPSA's Purchasing Card Program Administrator. This person is responsible for card issuance, card cancellation, and communication with the supporting card's agency, receipt of the cards, monthly billings, additional statements and management reports.
3. **Competitive Sealed Bidding** shall be conducted by the issuance of a written IFB containing or incorporating, by reference, the specifications and contractual terms and conditions applicable to the procurement. The IFB shall include a statement of any requisite qualifications of potential contractors, unless a prequalification process has been conducted.
- (a) Public notice of the IFB shall comply with the current requirements of the VPPA and, at a minimum, shall be given at least ten (10) days prior to the date set for receipt of bids by posting on SPSA's website and eVA. In addition, notice may be published in a newspaper of general circulation in the Hampton Roads area of Virginia. Bids may also be solicited directly from potential contractors.
 - (b) All bids received shall be opened and announced publicly.
 - (c) Evaluation of bids shall be based upon the requirements set forth in the IFB, which may include special qualifications of potential contractors, life cycle costing, value analysis, and any other criteria such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose, which are helpful in determining acceptability.
 - (d) An award shall be to the lowest responsive and responsible bidder. When the terms and conditions of multiple awards are so provided in the IFB, awards may be made to more than one bidder.
 - (e) Nothing in this section shall preclude the use of a multi-step bid process.
 - (f) SPSA reserves the right to cancel or reject any and all bids.

4. **Competitive Negotiation** shall be conducted by the issuance of a written RFP indicating in general terms that which is sought to be procured, specifying the factors which will be used in evaluating the proposal, indicating whether a numerical scoring system will be used in evaluation of the proposal and containing or incorporating by reference the other applicable contractual terms and conditions, including any unique capabilities or qualifications which will be required of the contractor. In the event that a numerical scoring system will be used in the evaluation of proposals, the point values assigned to each of the evaluation criteria shall be included in the RFP or posted at the location designated for public posting of procurement notices prior to the due date and time for receiving proposals.
- (a) Public notice of the RFP shall comply with the current requirements of the VPPA and, at a minimum, shall be given at least ten (10) days prior to the date set for receipt of proposals by posting on SPSA's website and eVA. In addition, notice may be published in a newspaper of general circulation in the Hampton Roads area of Virginia. Proposals may also be solicited directly from potential contractors.
 - (b) For procurement of goods, nonprofessional services and insurance, selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals, on the basis of the factors involved in the RFP including price if so stated in the RFP. Negotiations shall then be conducted with each of the offerors so selected. Price shall be considered, but need not be the sole or primary determining factor. After negotiations have been conducted with each offeror so selected, SPSA shall select the offeror which, in its opinion, has made the best proposal and provides the best value, and shall award the contract to that offeror. SPSA shall not be required to make an award and may reject any or all proposals at any time during the process. Should SPSA 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.
 - (c) For professional services, the Executive Director or his/her designee, 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 are encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project as well as alternative concepts. In addition, offerors shall be informed of any ranking criteria that will be used by SPSA. The RFP shall not, however, request that offerors furnish estimates of man-hours or cost of services. These discussions may encompass non-binding estimates of total project costs, including design, construction and life cycle costs. In accordance with Virginia Code § 2.2-

4342, proprietary information from competing offerors shall not be disclosed to the public or to competitors.

- (d) At the conclusion of informal discussions on the basis of evaluation factors published in the RFP and all information developed in the selection process, an evaluation committee selected by the Executive Director or his/her designee shall select in the order of preference two or more offerors whose professional qualifications and proposed services are deemed most meritorious.
- (e) Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract satisfactory and advantageous to SPSA can be negotiated at a price considered fair and reasonable and pursuant to contractual terms and conditions acceptable to SPSA, 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 and until such a contract can be negotiated at a fair and reasonable price. SPSA shall not be required to make an award and may reject any or all proposals at any time during the process. Should SPSA 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.
- (f) A contract for architectural or professional engineering services relating to multiple construction projects may be awarded by SPSA, provided
 - i. the projects require similar experience and expertise,
 - ii. the nature of the projects is clearly identified in the RFP, and
 - iii. the contract is limited to a term of one year or when the cumulative total project fees reach the maximum authorized in this section, whichever occurs first.

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

The sum of all projects performed in a one-year contract term shall not exceed the limits set forth in the VPPA.

Competitive negotiations for such architectural or professional engineering services contracts may result in awards to more than one offeror, provided (i) the RFP so states and (ii) SPSA has established procedures for distributing multiple projects among the selected contractors during the

contract term. Such procedures shall prohibit requiring the selected contractors to compete for individual projects based on price.

5. **Construction** may be procured only by competitive sealed bidding, except as provided in the small dollar procedures and competitive negotiation may be used in the following instances:
- (a) On a fixed price design-build basis or construction management basis as provided in Chapter 43.1 of the Virginia Code (§§ 2.2-4378 et seq.); or
 - (b) For the construction of highways and any draining, dredging, excavation, grading or similar work upon real property upon a determination made in advance by SPSA and set forth in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to the public, which writing shall document the basis for this determination.

SPSA shall report no later than November 1 of each year to the Director of the Department of General Services on all completed capital projects in excess of \$2 million, which report shall include at a minimum (i) the procurement method utilized, (ii) the project budget, (iii) the actual project cost, (iv) the expected timeline, (v) the actual completion time, and (vi) any post-project issues.

6. **Design-Build Contracts**. SPSA may enter into a contract for construction on a fixed price or not-to-exceed price design-build basis in accordance with Virginia Code §2.2-4382.

A design-build contract procurement method shall be a two-step competitive negotiation process and price is a critical basis for award of the contract. The following procedures shall govern the selection, evaluation, and award of design-build contracts:

- (a) Prior to making a determination as to the use of a design-build for a specific construction project, SPSA shall have in its employ or under contract a licensed architect or engineer with professional competence appropriate to the project who shall (i) advise SPSA regarding the use of design-build for that project and (ii) assist SPSA with the preparation of the RFP and the evaluation of such proposals.
- (b) A written determination shall be made in advance by SPSA, which may be made by the Executive Director or his/her designee, that competitive sealed bidding is not practicable or fiscally advantageous, and such writing shall document the basis for the determination to utilize design-build. The determination shall be included in the Request for Qualifications and be maintained in the procurement file.

- (c) SPSA will establish an Evaluation Committee to be responsible for evaluating the qualifications of offerors responding to the design-build solicitation and reviewing proposals submitted for such services. The Executive Director or his/her designee will appoint at least three people, of which one committee member shall be a professional engineer or architect.
- (d) Selection of Qualified Offerors (Step 1) – Request for Qualifications (RFQ).
 - i. SPSA shall publish notice of the RFQ at least thirty (30) days prior to the date set for receipt of qualifications by advertising in a local newspaper of general circulation, and posting on SPSA's website and eVA.
 - ii. The RFQ shall provide a description of the project, building and site criteria, site and survey date (if available), the services required, any unique capabilities or qualifications to be required of the offeror, the criteria to be used in evaluating the potential offeror's qualifications, and other relevant information. The RFQ should request from potential offerors only such information as is appropriate for an objective evaluation of all offerors pursuant to such criteria. The RFQ shall establish procedures whereby comments concerning provisions in the RFQ can be received and considered prior to the time set for receipt of qualifications. All offerors shall have a licensed Class "A" contractor and an architect or engineer registered in the Commonwealth of Virginia as part of the offeror's team.
 - iii. The Evaluation Committee shall evaluate each responding offeror's qualifications submittal and any other relevant information and shall determine which offerors are fully qualified and suitable for the project.
 - iv. The RFQ evaluation shall result in a short list (if sufficient responses have been received) of three (3) to five (5) offerors to receive an RFP. If available, the short list shall include a minimum of one Department of Small Business and Supplier Diversity (DSBSD) Certified Small Business that meets the minimum qualifications for prequalification. An offeror may be denied prequalification only as specified in Virginia Code § 2.2-4317(C). However, the short list shall also be based on the RFQ criteria and a determination by the Evaluation Committee of which qualified offerors should be on the short list based on such offeror's responses to the RFQ. The evaluation process shall evaluate an offeror's experience for a period of ten prior years to determine whether the offeror has constructed, by any method of project delivery, at least three projects similar in program and size.

- v. At least thirty (30) days prior to the date established for the submission of proposals to the RFP, SPSA shall advise each offeror in writing as to whether that offeror has been prequalified. In the event that an offeror is denied prequalification, the written notice shall state the reasons for the denial of prequalification and the factual basis for such reasons. Prequalified offerors that are not selected for the short list shall likewise be provided the reasons for such decision.
- (e) Selection of Design-Build Contractor (Step II).
- i. SPSA shall prepare a RFP that includes, but is not limited to, the following:
 - a. the instructions for submitting a proposal, the criteria for evaluation, and proposed terms and conditions of the design-build contract;
 - b. a narrative description of the project requirements;
 - c. general conditions and technical specifications; and
 - d. a facility and site plan as appropriate for the project.
 - e. The RFP may also define such other requirements as SPSA determines appropriate for a particular project. The RFP shall include procedures whereby comments concerning specifications or other provisions contained in the RFP can be received and considered prior to the time set for receipt of proposals.
 - ii. SPSA shall send an RFP to the qualified design-build offerors on the short list for the project and request formal proposals from each of them. The RFQ shall state whether responses may be submitted electronically and/or via paper response. Offerors will have at least ten (10) days to submit a proposal. Separately sealed technical and financial proposals will be required to be submitted. SPSA shall first provide the technical proposals to the Evaluation Committee and hold the sealed financial proposals until the technical review has been completed.
 - iii. Based on criteria established in the RFP, the Evaluation Committee shall evaluate each of the technical proposals. As part of the evaluation process, the Evaluation Committee may conduct direct and private communications with each of the offerors. Each offeror shall be allotted the same fixed amount of time. In its communications with offerors, the Evaluation Committee shall exercise care to discuss the same information with all offerors. In addition, the Evaluation Committee shall not disclose any trade

secrets or proprietary information for which the offeror has invoked protection in accordance with Virginia Code § 2.2-4342.

- iv. The Evaluation Committee will inform each offeror of any adjustments necessary to make such offeror's technical proposal fully compliant with the requirements of the RFP. In addition, SPSA may require that any and/or all offerors make design adjustments necessary to incorporate project improvements and/or additional detailed information identified by the Evaluation Committee during design development.
- v. Based on the adjustments made to the technical proposals, an offeror may amend its financial proposal. In addition, an offeror may submit cost modifications to its original sealed financial proposal, which are not based on revisions to the technical proposal.
- vi. The Evaluation Committee shall evaluate and rank (if technical rankings are to be considered as a criterion for an award) the technical proposals. Should SPSA 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. Otherwise, SPSA shall open the financial proposals and apply the criteria for an award as specified in the RFP. The Evaluation Committee may then negotiate with the offeror or offerors selected in order to arrive at terms for a design-build contract.
- vii. The Evaluation Committee shall make its recommendation for the selection of a design builder to the SPSA Board of Directors based on its evaluations of the technical and financial proposals and all amendments thereto. The contract shall be awarded to the offeror who is fully qualified and has been determined to have provided the best value in response to the RFP.
- viii. SPSA will notify all offerors who submitted proposals which offeror was selected for the project. Alternatively, a Notice of Intent to Award may be used to notify all offerors who submitted a proposal. When the terms and conditions of multiple awards are so provided in the RFP, awards may be made to more than one offeror.
- ix. Upon request and in accordance with Virginia Code § 2.2-4342, documentation of the process used for the final selection shall be made available to the unsuccessful offerors.

7. **Construction Management.** SPSA may enter into a contract for construction management on a fixed price or not-to-exceed price in accordance with Virginia Code § 2.2-4382.

The procurement method for a construction management contract shall be a two-step competitive negotiation process and shall follow the steps for a design-build procurement except:

- (a) A construction management contract is limited to complex projects with a total construction value below the threshold established by Virginia Code § 2.2-4382.
 - (b) A construction management contract must be executed no later than the completion of the schematic phase of design, unless prohibited by funding restrictions.
 - (c) A construction management contract shall require that (i) no more than 10 percent of the construction work, as measured by the cost of the work, be performed by the construction manager with its own forces and (ii) the remaining 90 percent of the construction work, as measured by the cost of the work, be performed by subcontractors of the construction manager, which the construction manager shall procure by publicly advertised, competitive sealed bidding to the maximum extent practicable.
8. **Emergency.** In the event of a threat to public health, welfare, or safety, and in accordance with the procedures set forth in the VPPA, a contract may be awarded without competitive sealed bidding, competitive sealed proposals or competitive negotiation. Such procurement, however, shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file. If an emergency occurs during office hours, the using department shall immediately notify the Executive Director or his/her designee, who shall either purchase directly or authorize the purchase of the needed goods or services. If any emergency occurs during non-office hours, the using department may purchase any goods or services needed to meet such existing emergency, provided that the Supervisor shall send as soon as practicable to the Executive Director or his/her designee a requisition and a copy of the delivery receipt together with written explanation of the circumstances of the emergency.
9. **Joint and Cooperative Procurement.** SPSA may participate in, sponsor, conduct or administer a joint or cooperative procurement agreement with one or more other public bodies, public agencies or institutions or localities of the several states, of the United States or its territories, the District of Columbia, the U.S. General Services Administration, or the Metropolitan Washington Council of Governments, for the purpose of combining requirements to increase efficiency or reduce administrative expenses in any acquisition of goods, services, or

construction. Any public body which enters into a joint or cooperative procurement agreement with SPSA shall comply with the provisions of the respective IFB, RFP, and awarded contract. Except for contracts for professional services, SPSA may purchase from another public body's contract even if it did not participate in the RFP or IFB, if the RFP or IFB specified that the procurement was a cooperative procurement that was being conducted on behalf of other public bodies.

10. **State and Federal Contracts.** SPSA may enter into contracts without competition for the purchase of goods or services which are performed by: (a) State Contracts, (b) U.S. General Services Administration (GSA) contracts, (specific) or a contract awarded by any other agency of the U.S. Government.
11. **Legal services.** SPSA may enter into contracts, without competition, for legal services and for expert witnesses and other services associated with litigation or regulatory proceedings. The provisions of Chapter 5 (§§ 2.2-500 et seq.) of the Code of Virginia are included by reference in these regulations.
12. **Sole Source.** Upon a determination that only one source is practicably available, the requesting Supervisor shall certify in writing the request for sole source procurement and obtain the Executive Director's or his/her designee's permission. Use of SPSA's Sole Source Procurement Approval Request Form is required, see Appendix. All sole source procurements shall comply with the requirements of the VPPA.
13. **Public Auction.** Upon a determination made in advance by SPSA and set forth in writing that the purchase of non-technology goods, products or commodities from a public auction sale is in the best interests of the public, such items may be purchased at the auction. The writing shall document the basis for this determination.

CHAPTER V – GENERAL TERMS AND CONDITIONS

Except as otherwise specifically provided in an IFB, RFP, or written contract, and except as otherwise required by law, the following terms and conditions generally apply to all procurements made by SPSA.

1. **Commonwealth of Virginia Public Procurement Act:** IFBs and RFPs are subject to the provisions of the VPPA, including any revisions thereto in effect at the time of the IFB or RFP.
2. **Applicable Laws and Courts:** Solicitations 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 Circuit Court for the City of Chesapeake. The contractor shall comply with all federal, state and local laws, rules and regulations that are applicable to this solicitation and any resulting contract.
3. **Debarment Status:** By submitting a bid, bidders certify that they are not currently debarred by the Commonwealth of Virginia from submitting bids on contracts for the type of goods and/or services covered by a solicitation, nor are they an agent of any person or entity that is currently so debarred.
4. **Employment Discrimination by Contractor Prohibited:** By submitting a bid, bidders certify to SPSA that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, and, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and § 2.2-4311 of the VPPA.

If an 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, sexual orientation, gender identity, 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 SPSA. (Va. Code § 2.2-4343.1(E)).

- (a) During the performance of the contract, the contractor agrees as follows:
 - i. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in

conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

- ii. 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.
- iii. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.

(b) The contractor will include the provisions of clause (a) above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each applicable subcontractor or vendor.

- 5. **Ethics In Public Contracting:** By submitting a bid, bidders certify that their bid is made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other bidder, supplier, manufacturer or subcontractor in connection with their bid, and that they have not conferred on any public employee having official responsibility for the 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.
- 6. **Immigration Reform and Control Act Of 1986:** By entering into a written contract with SPSA, the contractor certifies that the contractor does not, and shall not during the performance of the contract, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.
- 7. **Mandatory Use of SPSA Form and Terms and Conditions:** Failure to submit a bid on the official SPSA form provided for that purpose shall be a cause for rejection of the bid. Modification of or additions to any portion of the IFB may be cause for rejection of the bid; however, SPSA 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, SPSA 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 or addition to the provisions of the contract shall be effective unless reduced to writing and signed by the parties.
- 8. **Clarification of Terms:** If any prospective bidder has questions or comments about the specifications in an IFB or RFP or other solicitation documents, the prospective bidder should contact SPSA's Purchasing Department, via email at purchasing@spsa.com, no later than five (5) working days before the due date for bids or proposals. Any revisions to the solicitation will be made only by addendum issued by SPSA.

9. **Payment to Vendors:**

(a) To Prime Contractor:

- i. 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 SPSA contract number and/or purchase order number. Payment shall be made following completion of the project and acceptance by SPSA. Progress billing may be provided.
- ii. 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.
- iii. All goods or services provided under a contract or purchase order, that is to be paid for with public funds, shall be billed by the contractor at the contract price.
- iv. The postmark date in all cases shall be deemed to be the date of payment.
- v. Unreasonable Charges. Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges which appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, SPSA 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.

(b) To Subcontractors:

- i. A contractor awarded a contract under a solicitation is obligated:
 - a. To pay the subcontractor(s) within seven (7) days of the contractor's receipt of payment from SPSA for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or
 - b. To notify SPSA and the subcontractor(s), in writing, of the contractor's intention to withhold payment and the reason.

- ii. 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 SPSA, 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 SPSA.
 - (c) SPSA recognizes the importance of timely payments to our vendors. Therefore, we offer our vendors the opportunity to enroll in our ePayables program. This program allows us to make card payments to our vendors and features an online portal to facilitate payments as well as reduce payment processing times. Our ePayables program is mutually beneficial and is our preferred method of payment. If you choose not to enroll in this program, payments will be made by check and mailed through the postal service which could impact how quickly you receive payments. Payment(s) made through the ePayables are processed every two weeks as compared to monthly in the form of a check. Contractors should let SPSA know if they capable of accepting credit card payment(s), and SPSA will assist in enrolling contractors in Bank of America's ePayables Program to allow faster payment transactions.
 - (d) For contracts for construction that provide for progress payments in installments based upon an estimated percentage of completion, the contractor shall be paid at least ninety-five percent of the earned sum when payment is due, with no more than five percent being retained to ensure faithful performance of the contract. All amounts withheld may be included in the final payment. Any subcontract for a public project that provides for similar progress payments shall be subject to the provisions of this section.
10. **Qualifications of Bidders:** SPSA may make such reasonable investigations as deemed proper and necessary to determine the ability of each bidder to perform the services solicited by an IFB, and the bidder shall furnish to SPSA all such information and data for this purpose as may be requested. SPSA reserves the right to inspect each bidder's physical facilities prior to award to satisfy questions regarding the bidder's capabilities. SPSA further reserves the right to reject any bid if the evidence submitted by, or investigation of, a bidder fails to satisfy SPSA that such bidder is sufficiently responsible to carry out the obligations of the contract and to provide the services contemplated therein.
11. **Testing and Inspection:** SPSA reserves the right to conduct any test/inspection it may deem advisable to ensure that goods and services provided under the contract conform to specifications.

12. **Assignment of Contract:** Contracts shall not be assignable by the contractor in whole or in part without the written consent of SPSA.
13. **Modification of the Contract:** The parties may agree in writing to modify the terms, conditions, or scope of a contract. Any additional goods or services to be provided shall be of a sort that is ancillary to the contract goods or services, or within the same broad product or service categories as were included in the contract award. Any increase or decrease in the price of the contract resulting from any such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.

A fixed-price contract may be increased by no more than twenty-five percent of the amount of the contract or \$50,000, whichever is greater, without the written approval of the SPSA Board of Directors. 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.

Existing contracts may be extended for services to allow completion of any work undertaken but not completed during the original term of the contract.

14. **Default:** In case of failure to deliver goods or services in accordance with the contract terms and conditions, SPSA, after 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 SPSA may have.
15. **Taxes:** Sales to SPSA 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 a contract shall usually be free of Federal excise and transportation taxes.
16. **Use of Brand Names:** Unless otherwise provided in a solicitation, the name of a certain brand, make or manufacturer does not restrict bidders to the specific brand, make or manufacturer named, but conveys the general style, type, character, and quality of the article desired. Any article which SPSA, in its sole discretion, determines to be the equivalent of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted.
17. **Transportation and Packaging:** By submitting their bids, all bidders 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.

18. **Insurance:** By signing and submitting a bid under any solicitation, the bidder certifies that, if awarded the contract, it will have the following insurance coverage at the time the contract is awarded. The bidder further certifies that the contractor and any subcontractors will maintain this insurance coverage during the entire term of the contract and that all insurance coverage will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.
- (a) Employers' Liability and Workers' Compensation - Statutory requirements and benefits. Coverage is compulsory for employers of three or more employees, to include the employer. Contractors who fail to notify SPSA of increases in the number of employees that change their workers' compensation requirements under the Code of Virginia during the course of the contract shall be in noncompliance with the contract.
 - (b) Commercial General Liability - \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, products and completed operations coverage. SPSA must be named as an additional insured and so endorsed on the policy.
 - (c) Automobile Liability - \$1,000,000 combined single limit. Contractor must assure that the required coverage is maintained by the contractor (or third-party owner of such motor vehicle).
19. **Drug-Free Workplace:** During the performance of the 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 applicable subcontractor or vendor.

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

20. **Discrimination Prohibited**: No bidder or contractor shall be discriminated against in the solicitation or award of any contract because of race, religion, color, sex, sexual orientation, gender identity, national origin, age, disability, status as a service disabled veteran, faith-based organization or any other basis prohibited by state law relating to discrimination in employment or because the bidder or contractor employs ex-offenders unless SPSA makes a written determination that employing ex-offenders on the contract is not in its best interest.

SPSA will facilitate the participation of small businesses, businesses owned by women, minorities, and service-disabled veterans, and employment services organizations in procurement transactions. Whenever direct solicitations to potential bidders, offerors or contractors are made, SPSA shall include businesses selected from a list made available by the Department of Small Business and Supplier Diversity, which list shall include all companies and organizations certified by the Department.

21. **Availability of Funds**: SPSA shall be bound under a contract only to the extent of the funds available or which may hereafter become available specifically for the purpose of the contract.

22. **Authorization To Conduct Business In The Commonwealth**: A contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the Code of Virginia or as otherwise required by law. Any business entity described above that enters into a contract with SPSA pursuant to the VPPA shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the contract. SPSA may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.

23. **Negotiation with the Lowest Bidder**: Unless all bids are cancelled or rejected, SPSA reserves the right granted by § 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 whenever such low bid exceeds the available funds. For the purpose of determining when such negotiations may take place, the term “available funds” shall mean those funds which were budgeted for the contract prior to the issuance of the written IFB. Negotiations with the low bidder may include both modifications of the bid price and the Scope of Work/Specifications to be performed. SPSA shall initiate such negotiations by written notice to the lowest responsive, responsible bidder that its bid exceeds the available funds and that SPSA wishes to negotiate a lower contract price. The times, places, and manner of negotiating shall be agreed to by SPSA and the lowest responsive, responsible bidder.

24. **Contractor Registration:** If a contract for construction, removal, repair or improvement of a building or other real property is for \$120,000 or more, or if the total value of all such contracts undertaken by bidder within any 12-month period is \$750,000 or more, the bidder 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 \$10,000 or more but less than \$120,000, or if the total value of all such contracts undertaken by bidder within any 12-month period is \$150,000 or more, but less than \$750,000 or more, the bidder is required to be licensed as a “CLASS B CONTRACTOR.” If such a contract is over \$1,000 but less than \$10,000, or if the contractor does less than \$150,000 in business in a 12-month period, the bidder is required to be licensed as a “CLASS C CONTRACTOR.” The State Board of Contractors requires a master tradesmen license as a condition of licensure for electrical, plumbing and heating, ventilation and air conditioning contractors. The bidder shall place on the outside of the envelope containing the bid and shall place in the bid 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 shall fail to provide this information on his bid or on the envelope containing the bid and shall fail to promptly provide said contractor license number to SPSA in writing when requested to do so before or after the opening of bids, he shall be deemed to be in violation of § 54.1-1115 of the Code of Virginia (1950), as amended, and his bid will not be considered.

If a bidder shall fail to obtain the required license prior to submission of his bid, the bid shall not be considered.

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

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

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

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

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

Trade secrets or proprietary information submitted by a bidder, offeror, or contractor in connection with a procurement transaction or prequalification application submitted pursuant to subsection B of Virginia Code § 2.2-4317 shall not be subject to disclosure under the Virginia Freedom of Information Act (§ 2.2-3700 et seq.); however, to invoke the protections of Virginia Code § 2.2-4342, the bidder, offeror, or contractor shall (i) invoke the protections of this section prior to or upon submission of the data or other materials, (ii) identify the data or other materials to be protected, and (iii) state the reasons why protection is necessary. A bidder, offeror, or contractor shall not designate as trade secrets or proprietary information (a) an entire bid, proposal, or prequalification application; (b) any portion of a bid, proposal, or prequalification application that does not contain trade secrets or proprietary information; or (c) line item prices or total bid, proposal, or prequalification application prices.

26. **SPSA Environmental Procurement Policy:** In 2003, SPSA implemented an environmental management system (EMS) that conforms to the elements of the ISO 14001 Environmental Standard. SPSA's EMS is designed to assist it in managing and minimizing the environmental impacts of its processes and activities, which are called ***environmental aspects***. SPSA will provide a list of the environmental aspects known to be associated with the planned/proposed activity in every IFB and/or RFP. Any contractor coming on any SPSA site to provide services to SPSA must comply with the policies, intent and/or procedures of SPSA's EMS to manage these environmental aspects. This compliance will be demonstrated by the following:
- (a) Agreeing in writing to comply with SPSA's established emergency response procedures in the event of an incident that could adversely impact the environment; and
 - (b) Attending an environmental briefing prior to providing SPSA with any services. During this briefing, SPSA's representatives and the contractor representative will collaboratively identify any planned activities, processes or products that could potentially impact the environment. Proactive measures designed to minimize these potential environmental impacts will be discussed. Results of this discussion will be documented on SPSA's *Contractor Environmental Briefing Form*. The need for written procedures

to manage those impacts will be determined at that time. If written procedures are required, the contractor representative shall:

- i. Provide SPSA copies of their existing written procedures (these procedures and/or instructions must be at least as stringent as SPSA's established procedures for managing similar environmental aspects); OR
- ii. Agree in writing to follow the SPSA Standard Operating Procedures established to manage the identified environmental aspects.

27. **Cancellation/Rejection of Bids/Waiver of Informalities:** An IFB, RFP, any other solicitation, or any and all bids or proposals, may be canceled or rejected. The reasons for cancellation or rejection shall be made part of the contract file. SPSA shall not cancel or reject an IFB, RFP, any other solicitation, bid or proposal pursuant to this section solely to avoid awarding a contract to a particular responsive and responsible bidder or offeror.

SPSA also reserves the right to waive informalities in bids.

28. **Bid Bond or Guarantee:** An IFB or RFP may include a requirement for a bid bond or guarantee, which shall be a certified check, cash escrow or a bid bond payable to SPSA. 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 acceptance period; that if such bid is accepted, the bidder will accept and perform under the terms of the IFB or RFP and the resulting contract. The bid guarantee will be returned upon award of contract.
29. **Performance and Payment Bonds:** Bidders may be required to provide and deliver to SPSA executed Performance and Labor and Material Payment Bonds, each in the sum of the contract amount, with SPSA 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 SPSA.

CHAPTER VI – ETHICS IN PUBLIC CONTRACTING

1. **Purpose.** The provisions of this chapter supplement, but do not supersede, other provisions of law including, but not limited to, the State and Local Government Conflict of Interests Act (§ 2.2-3100 et seq.), the Virginia Governmental Frauds Act (§ 18.2-498.1 et seq.), and Articles 2 (§ 18.2-438 et seq.) and 3 (§ 18.2-446 et seq.) of Chapter 10 of Title 18.2. The provisions of this chapter apply notwithstanding the fact that the conduct described may not constitute a violation of the State and Local Government Virginia Conflict of Interests Act.

2. **Policy.** It is SPSA's policy to maintain and practice the highest possible standards of business ethics, professional courtesy, and competence in all dealings. At all times, applicable laws must be observed. In this regard, the following should be considered when dealing with suppliers and their representatives:
 - (a) Accord prompt and courteous reception and fair and equal treatment of all suppliers and their representatives.
 - (b) Provide equal opportunity for all responsible suppliers to make price and specifications quotations.
 - (c) When requested, explain, as clearly and fully as possible to suppliers the reason for our rejection of their bids/proposals.
 - (d) Avoid inappropriate obligations to suppliers.
 - (e) Keep informed about sources of supply, methods, services and materials, and encourage their testing.
 - (f) If for any reason one supplier is permitted to re-quote, his competitors will be given the same opportunity. Re-quoting should be restricted to an absolute minimum.

3. **Proscribed Participation by Public Employees in Procurement Transactions.** Except as specifically permitted by law, no employee having official responsibility for a procurement transaction shall participate in that transaction on behalf of SPSA when the employee knows that:
 - (a) The employee is contemporaneously employed by a bidder, offeror or contractor involved in the procurement transaction; or
 - (b) The employee, the employee's partner, or any member of the employee's immediate family holds a position with a bidder, offeror or contractor such as an officer, director, trustee, partner or the like, or is employed in a capacity involving personal and substantial participation in the procurement

transaction, or owns or controls an interest of more than five percent of a bidder, offeror or contractor; or

(c) The employee, the employee's partner, or any member of the employee's immediate family has a pecuniary interest arising from the procurement transaction; or

(d) The employee, the employee's partner, or any member of the employee's immediate family is negotiating, or has an arrangement concerning, prospective employment with a bidder, offeror or contractor.

4. **Solicitation or Acceptance of Gifts.** 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. SPSA may recover the value of anything conveyed in violation of this section.

5. **Disclosure of Subsequent Employment.** No SPSA employee or former employee having official responsibility for procurement transactions shall accept employment with any bidder, offeror or contractor with whom the employee or former employee dealt in an official capacity concerning procurement transactions for a period of one year from the cessation of employment by SPSA unless the employee, or former employee, provides written notification to SPSA prior to commencement of employment by that bidder, offeror or contractor.

6. **Gifts by Bidders, Offerors, Contractors or Subcontractors.** No bidder, offeror, contractor or subcontractor shall confer upon any SPSA employee having official responsibility for a procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is exchanged.

7. **Kickbacks.**

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

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

- (c) No person shall demand or receive any payment, loan, subscription, advance, and deposit of money, services or anything of value in return for an agreement not to compete on a public contract with SPSA.
 - (d) If a subcontractor or a supplier makes a kickback or other prohibited payment as described in this section, the amount thereof shall be conclusively presumed to have been included in the price of the subcontract or order and ultimately borne by SPSA and will be recoverable from both the maker and recipient. Recovery from one offending party shall not preclude recovery from other offending parties.
8. **Purchase of Building Materials, Etc., From Architect or Engineering Prohibited.** Except in cases of emergency, no building materials, supplies or equipment for any building or structure constructed by or for SPSA shall be sold by or purchased from any person employed as an independent contractor by SPSA to furnish architectural or engineering services, but not construction, for such building or structure, or from any partnership, association, or corporation in which such architect or engineer has a pecuniary interest.
9. **Penalty for Violation.** Willful violation of any provision of this chapter may constitute a Class I misdemeanor. Upon conviction, any SPSA employee, in addition to any other fine or penalty provided by law, shall forfeit his/her employment.

CHAPTER VII – REMEDIES FOR CONTRACTORS

1. **Ineligibility.**

- (a) Any bidder, offeror or contractor refused permission to, or disqualified from participation in a SPSA public contract shall be notified in writing. Prior to the issuance of a written determination of disqualification or ineligibility, SPSA shall (i) notify the bidder in writing of the results of the evaluation, (ii) disclose the factual support for the determination, and (iii) allow the bidder an opportunity to inspect documents that relate to the determination, if so requested by the bidder within five business days after receipt of the notice.
- (b) Within ten business days after receipt of the notice, the bidder may submit rebuttal information challenging the evaluation. SPSA shall issue its written determination of disqualification or ineligibility based on all information in its possession, including any rebuttal information, within five business days of the date SPSA received such rebuttal information.
- (c) If the evaluation reveals that the bidder, offeror or contractor should be allowed permission to participate in the public contract, SPSA shall cancel the proposed disqualification action. If the evaluation reveals that the bidder should be refused permission to participate, or disqualified from participation, in the public contract, SPSA shall so notify the bidder, offeror or contractor. The notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within ten days after receipt of the notice by instituting legal action as provided in Virginia Code § 2.2-4364.
- (d) If, upon appeal, it is determined that the action taken was arbitrary or capricious, or not in accordance with the Constitution of Virginia, statutes or regulations, the sole relief shall be restoration of eligibility.

2. **Withdrawal of bid due to error.**

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

- (b) The bidder shall give notice in writing of his claim of right to withdraw his bid within two business days after the conclusion of the bid opening procedure and shall submit original work papers with such notice.
- (c) If a bid is withdrawn in accordance with this section, the lowest remaining bid shall be deemed to be the low bid.
- (d) 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.
- (e) SPSA shall notify the bidder in writing within five business days of its decision regarding the bidder's request to withdraw its bid. If SPSA denies the withdrawal of a bid under the provisions of this section, it shall state in such notice the reasons for its decision and award the contract to such bidder at the bid price, provided such bidder is a responsible and responsive bidder. At the same time that the notice is provided, SPSA shall return all work papers and copies thereof that have been submitted by the bidder.

3. **Appeal of denial of withdrawal of bid.**

- (a) A decision denying withdrawal of a bid shall be final and conclusive unless the bidder appeals the decision within ten days after receipt of the decision by instituting legal action.
- (b) If no bid bond was posted, a bidder refused withdrawal of a bid, prior to appealing, shall deliver to SPSA a certified check or cash bond in the amount of the difference between the bid sought to be withdrawn and the next low bid. Such security shall be released only upon a final determination that the bidder was entitled to withdraw the bid.
- (c) If, upon appeal, it is determined that the decision refusing withdrawal of the bid was arbitrary or capricious or not in accordance with the Constitution of Virginia, applicable state law or regulations, or the terms or conditions of the IFB, the sole relief shall be withdrawal of the bid.

4. **Determination of non-responsibility**

- (a) If SPSA determines that the apparent low bidder is not responsible it shall
 - (i) notify the apparent low bidder in writing of the results of the evaluation,
 - (ii) disclose the factual support for the determination, and
 - (iii) allow the apparent low bidder an opportunity to inspect documents that relate to the determination, if so requested by the bidder within five business days after receipt of the notice.

- (b) Within 10 business days after receipt of the notice, the bidder may submit rebuttal information challenging the evaluation. SPSA shall issue its written determination of responsibility based on all information in the possession of SPSA, including any rebuttal information, within five business days of the date SPSA received the rebuttal information. At the same time, SPSA shall notify, with return receipt requested, the bidder in writing of its determination.
- (c) Such notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within 10 days after receipt of the notice by instituting legal action as provided in Virginia Code § 2.2-4364.
- (d) Any determination that a low bidder is not responsible that uses such factors listed in the IFB as a basis for its decision shall be presumptively considered an honest exercise of discretion.

5. Protest of award or decision to award.

- (a) Any bidder or offeror who desires to protest the award or decision to award a contract shall submit such protest in writing to SPSA no later than ten days after 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 days after posting or publication of the notice of such contract.
- (b) However, if the protest of any actual or potential bidder or offeror depends in whole or in part upon information contained in public records pertaining to the procurement transactions which are subject to inspection under Virginia Code § 2.2-4342 then the time within which the protest must be submitted shall expire ten days after those records are made available for inspection. No protest shall lie for a claim that the selected bidder or offeror is not a responsible bidder or offeror. The written protest shall include the basis for the protest and the relief sought. SPSA shall issue a decision in writing within ten days stating the reasons for the action taken. This decision shall be final unless the bidder or offeror appeals within ten days of the written decision by instituting legal action as provided for in Section 2.2-4364 of the Code of Virginia. Nothing in this subsection shall be construed to permit a bidder to challenge the validity of the terms or conditions of the IFB or RFP.
- (c) If prior to an award it is determined that the decision to award is arbitrary or capricious, then the sole relief shall be a finding to that effect. SPSA shall cancel the proposed award or revise it to comply with the law. If, after an award, it is determined that an award of a contract was arbitrary or

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

6. **Effect of appeal upon contract.**

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.

7. **Stay of award during protest**

An award need not be delayed for the period allowed a bidder or offeror to protest, but in the event of a timely protest in accordance with the above, no further action to award the contract will be taken unless there is a written determination that proceeding without delay is necessary to protect the public interest or unless the bid or offer would expire.

8. **Contractual disputes**

- (a) Contractual claims, whether for money or other relief, shall be submitted in writing no later than sixty (60) days after final payment or as allowed by the specific contract; however, written notice of the contractor's intention to file such claim shall have been given at the time of the occurrence or beginning of the work upon which the claim is based.
- (b) SPSA shall give consideration of contractual claims and provide a written decision within thirty days, or as allowed by the specific contract, of receipt of claim.
- (c) No written decision denying a claim or addressing issues related to the claim shall be considered a denial of the claim unless the written decision is signed by the Executive Director or his/her designee. The contractor may not institute legal action prior to receipt of the final written decision on the claim unless SPSA fails to render a decision within 90 days of submission of the claim. Failure of SPSA to render a decision within 90 days shall not result in the contractor being awarded the relief claimed or in any other relief or penalty. The sole remedy for SPSA's failure to render a decision within 90 days shall be the contractor's right to institute immediate legal action.

- (d) The decision of SPSA shall be final and conclusive unless the contractor appeals within six months of the date of the final decision on the claim by SPSA by instituting legal action.
- (e) 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.

9. **Legal actions.**

- (a) A bidder or offeror, actual or prospective, who is refused permission or disqualified from participation in bidding or competitive negotiation, or who is determined not to be a responsible bidder or offeror for a particular contract, may bring an action in the appropriate circuit court challenging that decision, which shall be reversed only if the petitioner establishes that the decision was arbitrary or capricious, or not in accordance with the Constitution of Virginia, applicable state law or regulations, or the terms or conditions of the IFB, or, in the case of denial of prequalification, that the decision to deny prequalification was not based upon the criteria for denial of prequalification set forth in Subsection B of Virginia Code § 2.2-4317. In the event the apparent low bidder, having been previously determined by SPSA to be not responsible in accordance with Virginia Code § 2.2-4301, is found by the court to be a responsible bidder, the court may direct SPSA to award the contract to such bidder in accordance with the requirements of this section and the IFB.
- (b) A bidder denied withdrawal of a bid under the Code of Virginia § 2.2-4358 may bring an action in the appropriate circuit court challenging that decision, which shall be reversed only if the bidder establishes that SPSA's decision was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid.
- (c) A bidder, offeror or contractor, or a potential bidder or offeror on a contract negotiated on a sole source or emergency basis in the manner provided in Virginia Code § 2.2-4303, whose protest of an award or decision to award under Virginia Code § 2.2-4360 is denied, may bring an action in the appropriate circuit court challenging a proposed award or the award of a contract, which shall be reversed only if the petitioner establishes that the proposed award or the award is not (i) an honest exercise of discretion, but rather is arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms and conditions of the IFB or RFP.

- (d) If injunctive relief is granted, SPSA may request that the court require the posting of reasonable security to protect SPSA.
- (e) Nothing herein shall be construed to prevent SPSA from instituting legal action against a contractor.

CHAPTER VIII – DEBARMENT POLICY

1. Purpose

Prospective contractors may be debarred from contracting for particular types of supplies, services, insurance or construction, for specified periods of time. The purpose of debarment is to protect the Authority from risks associated with awarding contracts to persons or firms having exhibited an inability or unwillingness to fulfill contractual requirements, and to protect Authority interests and the integrity of the Authority's procurement process by preventing individuals or firms who have displayed improper conduct from contracting with the Authority for specific periods of time.

- (a) This policy is established pursuant to Section 2.2-4321 of the VPPA.
- (b) As used herein, "Contractor Party" shall mean a Vendor and any Affiliate of that Vendor.

2. Causes for debarment. The Authority may debar a Vendor for any of the following reasons:

- (a) Conviction of a Contractor Party for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract.
- (b) Conviction of, or entry of a civil judgment against a Contractor Party for violation of any of the following:
 - i. A state or federal statute of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects the responsibility of a Contractor Party as an Authority contractor; or
 - ii. The state or federal antitrust statutes arising out of the submission of bids or proposals.
- (c) Violation by a Contractor Party of either of the following of such a serious character that the Executive Director or his/her designee concludes that the Contractor Party is not a responsible contractor:
 - i. Deliberate failure without good cause to perform in accordance with the specifications/scope of services or within the time limit provided in the contract; or

- ii. A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts with the Authority or with others, provided, that failure to perform or unsatisfactory performance caused by acts beyond the control of a Contractor Party shall not be considered to be a basis for suspension or debarment.
- (d) Any other offense or act indicating a lack of business integrity or honesty that seriously and directly affects the responsibility of a Contractor Party as a contractor, such as debarment by another governmental entity for any cause listed herein, or because of prior reprimands.
- (e) A Contractor Party's having abandoned performance or having been terminated for default on any other Authority project or contract.
- (f) A Contractor Party's having defaulted on any surety bond or written guarantee on which the Authority is an obligee.
- (g) A Contractor Party's conferring or offering to confer any gift, gratuity, favor, or advantage, present or future, upon any employee of the Authority who exercises any "official responsibility" for a "procurement transaction" as those terms are defined in § 2.2-4368 of the Act. It is not necessary that there be a judicial determination that the Act or other law has been violated, 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 Authority employee exercising official responsibility for a procurement transaction any discount or privilege not available to all Authority employees is considered to be offering an advantage.
- (h) A Contractor Party's failing to disclose a condition constituting a conflict of interest by any officer, director, owner, a partner of the Contractor Party in a contract or purchase order awarded by the Authority.
- (i) A Contractor Party's 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.
- (j) A Contractor Party's falsifying or misrepresenting manufacturer's specifications in order to appear responsive to a solicitation.
- (k) A determination by the Executive Director or his/her designee that any employee or agent of a Contractor Party has engaged in harassment or abusive conduct, has used abusive language or has acted in a threatening manner toward Authority employees during the performance of their duties or as a result of the performance of their duties.

- (l) Any cause indicating that a Contractor Party is not a responsible contractor.
3. **Term.** Debarment shall be for a period commensurate with the seriousness of the cause. Generally, debarment shall not exceed five (5) years. If suspension precedes a debarment, the suspension period shall be considered in determining the debarment period.
- (a) During the period of debarment, the Vendor will not be eligible to receive solicitations, contract awards, or have contracts renewed or extended.
 - (b) It is the debarred Vendor's responsibility to request reinstatement at the end of the debarment period.
4. **Process.** The debarment procedure for a Vendor shall be conducted as follows:
- (a) The Authority's Purchasing Department is advised that a Vendor or other Contractor Party may have committed one of the violations listed above.
 - (b) The Authority's Executive Director or his/her designee will review the facts concerning the alleged violation to see that they are accurate and to determine if they require debarment.
 - (c) Following review of the facts, if the Executive Director concurs with the alleged violation, he/she will issue a written "Notice of Debarment" to the Vendor including the factual basis and the cause(s) for debarment.
 - (d) Upon receipt of the Notice of Debarment, the Vendor will have ten (10) business days in which to submit a rebuttal. During the first five (5) business days of this period, the Vendor will have the right to inspect any non-privileged records the Authority is using as part of its debarment action.
 - (e) If the Authority receives rebuttal information, the Executive Director or his/her designee will have ten (10) business days to review it and render a decision. If no rebuttal is received, the Executive Director or his/her designee will make a final decision within fifteen (15) business days following Notice of Debarment.
 - (f) After rendering a final decision, the Executive Director or his/her designee will write and send a letter to the Vendor advising the Vendor of the decision. If the decision is to debar the Vendor, the letter will describe the Authority's reason(s) for debarment and address the rebuttal if any was offered.
 - (g) All letters and other notices to a Vendor hereunder shall be sent to the Vendor's last known address by certified or registered mail and shall be effective three (3) calendar days after mailing. As used herein the term "business day" shall mean any day on which the Authority's offices located

in the Regional Building at 723 Woodlake Drive, Chesapeake, Virginia are open for business.

CHAPTER IX – DISPOSAL OF SURPLUS PROPERTY

1. **Authority.** Unless otherwise directed by the Board of Directors, the Executive Director or his/her designee shall sell, trade, or otherwise dispose of all materials, supplies, equipment, or other personal property recorded as a fixed asset if it has become excess to its requirements, obsolete, and/or unusable by the using department, or any other department.
2. **Dollar Threshold.** Materials, supplies, equipment or other personal property which are not recorded as a fixed asset and have a current book or fair market value of less than \$1,000 may be disposed of at the end of their useful life at the discretion of the department supervisor.
3. **Reporting of Surplus Personal Property and Equipment.** All using departments shall, as requested by the Executive Director or his/her designee, report on the form prescribed by the Executive Director or his/her designee any and all items of surplus supplies, materials, equipment or other personal property to which the using department has no further need, including cannibalization and trade-in of any equipment items.
4. **Disposal of Surplus Property.** Unless otherwise directed by the Board of Directors, methods for disposal of surplus property shall be limited to:
 - (a) **Cannibalization.** At the discretion of the department supervisor of the using department, obsolete, worn-out, inactive, or uneconomical operating equipment may be used for parts for the repair of other equipment.
 - (b) **Trade-in.** At the discretion of the department supervisor of the using department, obsolete, worn-out, inactive, or uneconomical operating equipment may be traded-in on the purchase of equipment of the same commodity class which has been approved through the budgetary process.
 - (c) **Sales.** All sales of property pursuant to this section shall be sold on the basis of:
 - i. competitive bids or quotations as governed by small dollar procedures; or
 - ii. public auction.
 - (d) **Donation.** With the approval of the Board of Directors, any surplus property which remains unsold may be donated to any non-profit or historical organization.
 - (e) **Scrap.** Should no additional offers be received or direction for donation by the Board of Directors be given within thirty days, the Executive Director or

his/her designee may declare the surplus void of any value to SPSA and notify the department to dispose of the property as scrap.

CHAPTER X – PPEA POLICY

1. Introduction.

- (a) **The PPEA.** The Public-Private Education Facilities and Infrastructure Act of 2002 (Va. Code § 56-575.1 *et seq.*) grants responsible public entities the authority to create public-private partnerships for the development of a wide range of projects for public use if the public entity determines: (i) that there is a public need for the project; (ii) that the estimated cost of the project is reasonable in relation to similar projects; and (iii) that the plans of the public-private partnership will result in the timely development or operation of the project.
- (b) **SPSA as a Responsible Public Entity.** The PPEA defines “responsible public entity” to mean any public entity, including an authority, that has the power to develop or operate a qualifying project. SPSA is a public body politic and corporate organized under the laws of the Commonwealth of Virginia and is a “responsible public entity” as that term is defined in the PPEA. SPSA’s Governing Body has adopted these guidelines in accordance with the provisions of the PPEA.
- (c) **Guidelines.** The PPEA requires a responsible public entity to adopt guidelines to enable the responsible public entity to comply with the provisions of the PPEA and to respond to proposals submitted to the responsible public entity. SPSA has adopted these Guidelines and made them publicly available in accordance with the provisions of the PPEA. SPSA has designed these Guidelines to be reasonable and to encourage competition with respect to Qualifying Projects.
- (d) **Submissions.** SPSA has designated the SPSA Executive Director or his/her designee as SPSA’s primary point of contact for information about these Guidelines and for submission of solicited and unsolicited proposals in accordance with the PPEA. Proposers shall submit solicited and unsolicited proposals to the SPSA Executive Director or his/her designee at 723 Woodlake Drive, Chesapeake, VA 23320. In the event that the PPEA or other applicable State law is amended in a manner that either conflicts with these Guidelines or concerns material matters not addressed by these Guidelines, SPSA will amend these Guidelines accordingly. If these Guidelines are not amended prior to the effective date of the new law, these Guidelines shall nonetheless be interpreted in a manner to conform to the new State law.
- (e) **Reservation of SPSA’s Rights.** SPSA reserves all rights available to it under State law in administering these Guidelines including, without limitation, the right in its sole discretion to:

- i. Reject any and all proposals at any time, subject to applicable State law.
- ii. Terminate consideration or evaluation of any and all proposals at any time.
- iii. Suspend, discontinue and/or terminate discussions regarding confidentiality agreements, interim agreements and comprehensive agreements at any time prior to the authorized execution of such agreements by all parties.
- iv. Suspend or eliminate conceptual phase review and proceed directly to detailed phase review.
- v. Negotiate with a proposer without being bound by any provision in its proposal.
- vi. Negotiate with fewer than all proposers at any given time.
- vii. Request and/or receive additional information regarding any proposal.
- viii. Issue addenda to and/or cancel any IFB or any RFP at any time.
- ix. Revise, supplement or withdraw at any time all or any part of these Guidelines.
- x. Assess, retain and/or waive on a case by case basis any and all fees required to be paid by proposers in accordance with these Guidelines.
- xi. Request revisions to conceptual phase or detailed phase proposals.

(f) **Definitions.** The following definitions are applicable to projects proposed pursuant to the PPEA unless otherwise specified:

- i. “Affected jurisdiction”: any county, city or town in which all or a portion of a qualifying project is located.
- ii. “Bid”: a proposal submitted to SPSA by a private entity in response to an IFB.
- iii. “Comprehensive agreement”: the comprehensive agreement between the private entity and SPSA required by Section 56-575.9 of the PPEA.
- iv. “Conceptual phase”: the first phase of project evaluation where SPSA makes a determination whether the proposed project serves a public purpose and meets the criteria for a qualifying project, assesses the qualifications and experience of a private entity proposer, reviews the project for financial feasibility, and determines whether the project warrants further pursuit.
- v. “Cost-benefit analysis”: an analysis that weighs expected costs against expected benefits in order to choose the best option. For example, SPSA may compare the costs and benefits of constructing

a new building to those of renovating and maintaining an existing building in order to select the most financially advantageous option.

- vi. “Detailed phase”: the second phase of project evaluation where SPSA, after completing the conceptual phase and accepting a proposal for detailed phase review, may request additional information regarding a proposed project prior to entering into competitive negotiations with one or more private entities to develop an interim or comprehensive agreement.
- vii. “Develop” or “development”: to plan, design, develop, finance, lease, acquire, install, construct, or expand.
- viii. “FOIA”: the Virginia Freedom of Information Act (Va. Code § 2.2-3700 *et seq.*).
- ix. “Governing body”: The Board of Directors of SPSA.
- x. “Guidelines”: these guidelines adopted by SPSA in accordance with the provisions of the PPEA.
- xi. “IFB”: an invitation for bids under the PPEA published by SPSA.
- xii. “Interim agreement”: an agreement between a private entity and SPSA that provides for phasing of the development or operation, or both, of a qualifying project. Such phases may include, but are not limited to, design, planning, engineering, environmental analysis and mitigation, financial and revenue analysis, or any other phase of the project that constitutes activity on any part of the qualifying project.
- xiii. “Lease payment”: any form of payment, including a land lease, by SPSA to the private entity for the use of a qualifying project.
- xiv. “Lifecycle cost analysis”: an analysis that calculates the cost of an asset over its entire life span and includes the cost of planning, constructing, operating, maintaining, replacing, and when applicable, salvaging the asset. Although one proposal may have a lower initial construction cost, it may not have the lowest lifecycle cost once maintenance, replacement, and salvage value are considered.
- xv. “Material default”: any default by the private entity in the performance of its duties under Virginia Code Section 56-575.8. E. that jeopardizes adequate service to the public from a qualifying project.

- xvi. “Operate” or “operation”: to finance, maintain improve, equip, modify, repair, or operate.
- xvii. “Opportunity cost”: means the cost of passing up another choice when making a decision or the increase in costs due to delays in making a decision.
- xviii. “PPEA”: The Public-Private Education Facilities and Infrastructure Act of 2002 (Va. Code § 56-575.1 *et seq.*).
- xix. “Private entity”: any natural person, corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, non-profit entity or other business entity.
- xx. “Proposal”: a bid submitted by a private entity in response to an IFB or a proposal submitted by a private entity in response to an RFP, as the context may require; for purposes of convenience, bids and proposals are referred to herein as proposals.
- xxi. “Public entity”: The Commonwealth of Virginia and any agency or authority thereof, any county, city, or town and any other political subdivision of the Commonwealth. Under the PPEA, “public entity” also includes any public body politic and corporate, or any regional entity that serves a public purpose.
- xxii. “Qualifying project”:
 - a. any education facility, including, but not limited to, a school building, any functionally related and subordinate facility and land to a school building (including any stadium or other facility primarily used for school events), and any depreciable property provided for use in a school facility that is operated as part of the public school system or as an institution of higher education;
 - b. any building or facility that meets a public purpose and is developed or operated by or for any public entity;
 - c. any improvements, together with equipment, necessary to enhance public safety and security of buildings to be principally used by a public entity;
 - d. any utility and telecommunications and other communications infrastructure;

- e. a recreational facility;
 - f. technology infrastructure, services, and applications including, but not limited to, telecommunications, automated data processing, word processing and management information systems, and related information, equipment, goods and services;
 - g. any services designed to increase the productivity or efficiency of SPSA through the use of technology or other means;
 - h. any technology, equipment or infrastructure designed to deploy wireless broadband services to schools, businesses or residential areas;
 - i. any improvements necessary or desirable to any unimproved locally- or state-owned real estate; or
 - j. any solid waste management facility defined in Virginia Code Section 10.1-1400 that produces electric energy derived from solid waste.
- xxiii. “Responsible public entity”: a public entity that has the power to develop and/or operate the applicable qualifying project.
- xxiv. “Revenues”: all revenues, including, but not limited to, income, earnings, user fees, lease payments, allocations, federal, state and local appropriations, bond proceeds, equity investments, and/or service payments arising out of or in connection with supporting the development and/or operation of a qualifying project, including, without limitation, money received as grants or otherwise from the United States of America, from any public entity, or from any agency or instrumentality of the foregoing in aid of such project.
- xxv. “RFP”: a request for proposals under the PPEA published by SPSA.
- xxvi. “Service contract”: a contract entered into between a public entity and the private entity pursuant to Virginia Code Section 56-575.5.
- xxvii. “Service payments”: payments to the private entity in connection with the development and/or operation of a qualifying project pursuant to a service contract.
- xxviii. “Solicited proposal”: a bid submitted to SPSA in response to an IFB or a proposal submitted to SPSA in response to an RFP.

- xxix. “SPSA”: The Southeastern Public Service Authority of Virginia.
- xxx. “State”: The Commonwealth of Virginia.
- xxxi. “Unsolicited proposal”: a bid submitted to SPSA that is not in response to an IFB or a proposal submitted to SPSA that is not in response to an RFP.
- xxxii. “User fees”: the rates, fees or other charges imposed by a private entity for the use of all or a portion of a qualifying project pursuant to a comprehensive agreement.

2. **General Provisions.**

- (a) Proposal Submission to SPSA.
 - i. Proposals may be submitted by private entities to SPSA either (i) in response to an IFB or RFP published by SPSA or (ii) on an unsolicited basis.
 - ii. SPSA may require that any proposal be clarified. Such clarification may include, but shall not be limited to, the submission of additional documentation, responses to specific questions, and interviews with potential project participants.
 - iii. In accordance with the provisions of the PPEA, SPSA will engage the services of qualified professionals to provide independent analysis regarding the specifics, advantages, disadvantages, and the long-term and short-term costs of any proposal, unless SPSA’s Governing Body determines that SPSA will perform such analysis with SPSA employees. Such qualified professionals may include an architect, professional engineer, certified public accountant or other consultants, not otherwise employed by SPSA.
- (b) **Duty to Provide Copy to Affected Jurisdictions.** Any private entity submitting a proposal to SPSA must provide any other affected jurisdiction with a copy of its proposal by certified mail, express delivery, or hand delivery within five (5) business days following submission of the proposal to SPSA. Any such other jurisdiction shall have sixty (60) days from the date it receives its copy of the proposal to submit written comments to SPSA (to the attention of the SPSA Executive Director or his/her designee). The copy provided to an affected jurisdiction shall include a notice of the deadline for comments. Under the PPEA, such written comments shall indicate whether the proposed project is compatible with the affected jurisdiction’s (i) local comprehensive plan; (ii) local infrastructure

development plans; or (iii) capital improvements budget or other government spending plans. SPSA will consider comments received within the 60-day period prior to entering into a comprehensive agreement regarding the proposal, but SPSA may begin or continue its evaluation of any such proposal during the 60-day period. (See Va. Code §§ 56-575.6).

(c) Fees for Processing, Reviewing and Evaluating Proposals.

- i. SPSA will process, review and evaluate each proposal, either through appropriate internal staff, or through outside qualified professionals, advisors or consultants with relevant experience, in analyzing whether to enter into an agreement with the private entity, in each case taking into account the specifics, advantages, disadvantages and long- and short-term costs of such proposal and contemplated agreement and all in accordance with and as further described in Section 6 below. SPSA is authorized to and may charge a fee to a private entity to cover the costs of processing, reviewing, and evaluating any unsolicited proposal and any competing unsolicited proposal, including reasonable attorney's fees and fees for financial, technical and other necessary advisors or consultants; provided, any such fee should be reasonable in comparison to the level of expertise required to process, review and evaluate the proposal and should not be greater than the direct costs associated with processing, reviewing and evaluating the proposed qualifying project. "Direct costs" may include, among other things, (i) the cost of materials, supplies and internal staff time required to process, evaluate, review and respond to the proposal, and (ii) the out-of-pocket costs for qualified engineers, architects and other similar professionals, attorneys, accountants, consultants and financial advisors engaged by SPSA in its sole discretion to assist in such processing, review, evaluation and response.
- ii. The initial proposal fee is Ten Thousand Dollars (\$10,000.00) and must be paid by the proposer to SPSA at the same time that an unsolicited proposal, and each competing proposal with respect to such unsolicited proposal, is submitted to SPSA. The initial proposal fee may cover all or part of the processing, review and evaluation process. However, if the cost of processing, reviewing and evaluating any proposal exceeds the initial proposal fee charged by SPSA, SPSA may assess the proposer the additional costs deemed necessary to process, review and evaluate the proposal. SPSA will charge such fees to any proposer whose unsolicited proposal has been accepted by SPSA for conceptual phase review and to any proposer who submits a competing proposal with respect to such unsolicited proposal. Any initial proposal fees assessed and collected in connection with proposals that are rejected or otherwise

not accepted by SPSA will be returned to the proposer in accordance with Section I.A.iii below.

- iii. SPSA will not charge a fee for the processing, review and evaluation of proposals solicited by SPSA pursuant to a published IFB or RFP.
- iv. In the event the total fees paid by a proposer exceed SPSA's total direct costs incurred in processing, reviewing, and evaluating the proposal, SPSA will reimburse the difference. Otherwise, SPSA will retain all fees paid.

(d) Virginia Freedom of Information Act.

- i. Proposal documents submitted by private entities are generally subject to the FOIA, except that subdivision 11 of Virginia Code Section 2.2-3705.6 exempts certain documents from public disclosure. FOIA exemptions, however, are discretionary, and SPSA may elect to release some or all of the documents received, except to the extent that such documents are: (i) trade secrets of the private entity as defined in the Uniform Trade Secrets Act (Virginia Code Section 59.1-336 et seq.); (ii) financial records of the private entity that are not generally available to the public through regulatory disclosure or otherwise, including but not limited to, balance sheets and financial statements; or (iii) other information submitted by a private entity, where if the record or document were made public prior to the execution of an interim or comprehensive agreement the financial interest or bargaining position of the public or private entity would be adversely affected. Notwithstanding anything herein to the contrary, at no time shall SPSA be liable to a proposer for the disclosure of all or a portion of a proposal submitted under these Guidelines.
- ii. Memoranda, staff evaluations or other records prepared by SPSA, its staff, outside advisors or consultants exclusively for the evaluation and negotiation of proposals are excluded from the obligation to disclose to the extent permitted in Virginia Code Section 2.2-3705.6.11. Also, cost estimates prepared by or for SPSA will not be open to public inspection.
- iii. In order to avail itself of the protection against the release of certain documents accorded to private entities under Section i above, the private entity must make a written request to SPSA at the time the documents are submitted designating with specificity the documents for which the protection is being sought and a clear statement of the reasons for invoking the protection with reference to one or more of the three classes of records listed in Section i above. A private entity

may request and receive a determination from SPSA as to the anticipated scope of protection prior to submitting the proposal. SPSA is authorized and obligated to protect only confidential and proprietary information and will not protect any portion of a proposal from disclosure if the entire proposal has been designated confidential by the private entity without reasonably differentiating between the proprietary and non-proprietary information contained therein.

- iv. Upon the receipt of a written request for protection of documents, SPSA shall determine whether the documents contain: (i) trade secrets, (ii) financial records, or (iii) other information that would adversely affect the financial interest or bargaining position of SPSA or the private entity. SPSA shall make a written determination of the nature and scope of the protection to be afforded by SPSA under this subdivision. If the written determination provides less protection than requested by the private entity, SPSA will permit the private entity to withdraw its proposal. Nothing shall prohibit further negotiations of the documents to be accorded protection from release although what may be protected must be limited to the categories of records identified in Section i. SPSA will treat such a withdrawn proposal in the same manner as a proposal not accepted for publication and conceptual phase review as provided in Section 0, except that SPSA may retain all or a portion of the proposal review fee at its sole discretion to cover the costs of processing the proposal, including determinations regarding disclosure pursuant to this Section iii. Once a written determination has been made by SPSA, the documents afforded protection under this subdivision shall continue to be protected from disclosure when in the possession of SPSA or any affected jurisdiction to which such documents are provided. If a private entity fails to designate trade secrets, financial records, or other confidential or proprietary information for protection from disclosure, such information, records or documents shall be subject to disclosure under the FOIA.
 - v. SPSA and a private entity may enter a written confidentiality agreement upon mutually acceptable terms regarding the treatment of confidential and proprietary data or materials included in a proposal submitted under these Guidelines.
 - vi. Once an interim agreement or a comprehensive agreement has been entered into, SPSA will make procurement records available in accordance with Virginia Code Section 56-575.17. D.
- (e) **Use of Public Funds.** Virginia constitutional and statutory requirements regarding the appropriation and expenditure of public funds apply to any

interim or comprehensive agreement entered into under the PPEA. Accordingly, SPSA shall incorporate all of the processes and procedural requirements associated with the expenditure or obligation of public funds into planning for any PPEA project.

- (f) **Applicability of Other Laws.** Nothing in the PPEA shall affect the duty of SPSA to comply with all other federal, state, and local laws, and with SPSA's Procurement Policies, not in conflict therewith. In particular, the provisions of the Virginia Public Procurement Act shall be applicable as set forth in Virginia Code Section 56-575.16.

3. **Solicited Proposals.**

- (a) **General.** SPSA shall specify the procedures and requirements applicable to any particular solicited proposal in the solicitation for that proposal, which procedures and requirements shall be consistent with the requirements of the PPEA and other applicable law. SPSA shall make all such solicitations pursuant to a written IFB or RFP, in accordance with the SPSA Procurement Policies.
- (b) **Required Information and Evaluation Criteria.** The IFB or the RFP should specify, but should not necessarily be limited to, information and documents that must accompany each proposal and the factors that SPSA will use in evaluating submitted proposals. The IFB or the RFP should also contain or incorporate by reference other applicable terms and conditions, including any unique capabilities or qualifications that will be required of the private entities submitting proposals. Pre-bid and pre-proposal conferences may be held as deemed appropriate by SPSA.
- (c) **Notice and Posting Requirements**
 - i. SPSA will post the IFB or the RFP in such public areas as are normally used for posting of SPSA's notices, including SPSA's website, for a period of sixty (60) days. Such IFB or RFP shall also be advertised in *Virginia Business Opportunities* and posted on the State's Department of General Services electronic procurement website commonly known as "eVA", in each case for such period of time as SPSA determines in its sole discretion.
 - ii. Upon receipt of any proposal submitted in response to an IFB or RFP, SPSA shall determine whether to accept such solicited proposal for conceptual phase review, as described below.
 - iii. If SPSA determines to accept a solicited proposal for conceptual phase review, then within ten (10) working days after its acceptance of such solicited proposal for conceptual phase review SPSA shall

post such proposal on SPSA's website and/or on the State's Department of General Service's central electronic procurement website commonly known as "eVA". In addition, SPSA may in its discretion publish in a newspaper of general circulation in the area in which the contract is to be performed a summary of the proposal, and the location where copies of the proposal are available for public inspection. Finally, SPSA may, in the exercise of its discretion, post such solicited proposal that has been accepted for conceptual phase review by additional means deemed appropriate by SPSA so as to provide maximum notice to the public of the opportunity to inspect the proposal.

iv. In addition to the posting requirements, SPSA shall make available for public inspection at least one copy of the solicited proposal that has been accepted for conceptual phase review.

(d) **Proposals Other Than in Response to an IFB or an RFP.** Any PPEA proposal submitted to SPSA other than in response to an IFB or RFP shall be deemed an unsolicited proposal under Article 0 below. Such unsolicited proposals shall include (a) proposals received in response to a notice issued by SPSA that it has received another unsolicited proposal, and (b) proposals received in response to publicity by SPSA concerning particular needs but where SPSA has not issued a written IFB or RFP.

4. **Unsolicited Proposals.**

(a) **General.**

- i. The following procedure for evaluating unsolicited proposals shall serve as SPSA's general process for encouraging the receipt and consideration of proposed projects under the PPEA. This procedure shall not preclude SPSA, however, from discontinuing its evaluation of any proposal at any time. Furthermore, if SPSA determines that it is in SPSA's interest to do so with respect to any unsolicited proposal, SPSA may cease or eliminate conceptual phase review and proceed directly to detailed phase review.
- ii. SPSA may publicize its needs and may encourage interested parties to submit unsolicited proposals subject to the terms and conditions of the PPEA. When such proposals are received by SPSA other than in response to an IFB or RFP, SPSA shall treat the proposal as an unsolicited proposal.

(b) **Submission of Unsolicited Proposal.** Any private entity seeking to submit an unsolicited proposal to SPSA or a competing proposal for an unsolicited proposal already submitted to SPSA shall deliver twenty (20) complete copies of its proposal, as provided below, to the SPSA Executive Director

or his/her designee at the address provided above, together with a check in the amount of \$10,000 to cover SPSA's initial proposal fee described above in Section i. The term "Public Private Education Facilities and Infrastructure Proposal" must be clearly labeled on the outside of the envelope or package. The proposer shall also provide to SPSA a list of all affected jurisdictions that are being provided a copy of the proposal, together with the name and address of recipient and date delivered. SPSA may designate a working group to review and evaluate any such proposal.

(c) Preliminary Review and Acceptance.

- i. Upon receipt of any unsolicited proposal, accompanied by the required initial proposal fee, SPSA shall determine whether to accept the unsolicited proposal for conceptual phase review, as described below.
- ii. To ensure that sufficient information is available upon which to base the development of a serious competing proposal, SPSA shall make available representatives of SPSA familiar with the unsolicited proposal and the Guidelines to respond to inquiries and meet with private entities that are considering the submission of a competing proposal. SPSA shall conduct an analysis of the information pertaining to the proposal included in the notice to ensure that such information sufficiently encourages competing proposals. Further, SPSA shall establish criteria, including key decision points and approvals to ensure proper consideration of the extent of competition from available private entities prior to selection.
- iii. If SPSA determines not to accept the proposal, whether the proposal is a single proposal or one or multiple proposals, SPSA will return the rejected proposal(s), together with all fees and accompanying documentation, to the proposer.

(d) Notice and Posting Requirements.

- i. If SPSA determines to accept an unsolicited proposal for conceptual phase review, SPSA shall post a notice containing the information prescribed under Section I.A.ii below in a public area regularly used by SPSA for posting of public notices, including SPSA's website, for a period of sixty (60) days, during which period SPSA will receive any competing proposals submitted pursuant to Section 56-575.4(A) of the PPEA. Such notice shall also be advertised in *Virginia Business Opportunities* and posted on the State's Department of General Service's central electronic procurement website commonly known as "eVA", in each case for such period of time as SPSA determines in its sole discretion.

- ii. The notice shall state that SPSA (i) has received an unsolicited proposal under the PPEA, (ii) intends to evaluate the proposal, (iii) may negotiate an interim or comprehensive agreement with the proposer based on the proposal, and (iv) will receive for simultaneous consideration during the 60-day notice period specified in Section I.A.i above any competing proposals that comply with the procedures adopted by SPSA and the PPEA. The notice also shall summarize the proposed qualifying project or projects, and identify their proposed locations.
- iii. In addition, if SPSA determines to accept an unsolicited proposal for conceptual phase review, then within ten (10) working days after its acceptance of such unsolicited proposal for conceptual phase review SPSA shall post such proposal on SPSA's website and/or on the State's Department of General Service's central electronic procurement website commonly known as "eVA". In addition, SPSA may in its discretion publish in a newspaper of general circulation in the area in which the contract is to be performed a summary of the proposal, and the location where copies of the proposal are available for public inspection. Finally, SPSA may, in the exercise of its discretion, post such unsolicited proposal accepted for conceptual phase review by additional means deemed appropriate by SPSA so as to provide maximum notice to the public of the opportunity to inspect the proposal.
- iv. In addition to the posting requirements, SPSA shall make available for public inspection at least one copy of the unsolicited proposal that has been accepted for conceptual phase review.
- v. Trade secrets, financial records, or other records of the private entity excluded from disclosure under the provisions of subdivision 11 of § 2.2-3705.6 shall not be required to be posted, except as otherwise agreed to by SPSA and the private entity. Any inspection of procurement transaction records shall be subject to reasonable restrictions to ensure the security and integrity of the records.

(e) Conceptual Phase Review by SPSA.

- i. SPSA will only consider proposals complying with the requirements of the PPEA that contain sufficient information for a meaningful evaluation and that are provided in an appropriate format for further review at the conceptual phase. Formatting suggestions for proposals at the conceptual phase are found in Section 5.
- ii. SPSA will initially determine whether it will proceed using:

- a. Standard procurement procedures consistent with the Virginia Public Procurement Act; or
 - b. SPSA's policies for procurement of other than professional services through "competitive negotiation" as the term is defined in Virginia Code Section 2.2-4301. SPSA may proceed using such policies only if it makes a written determination that doing so is likely to be advantageous to SPSA and the public based upon either: (i) the probable scope, complexity or priority of need; (ii) the risk sharing including guaranteed cost or completion guarantees, added value or debt, or equity investments proposed by the private entity; or (iii) the increase in funding, dedicated revenue or other economic benefit that would otherwise not be available. If SPSA elects to proceed with procurement through "competitive negotiation," SPSA shall not be required to select the proposal with the lowest price offer, but may consider price as one factor in evaluating the proposals received.
- iii. After reviewing the original proposal and any competing proposals submitted during the 60-day notice period specified under Section I.A.i above, SPSA may determine:
- a. not to proceed further with any proposal;
 - b. to proceed to detailed phase review with the original proposal;
 - c. to proceed to detailed phase review with a competing proposal;
 - d. to proceed to detailed phase review with multiple proposals;
or
 - e. to request modifications or amendments to any proposals.
- iv. Any discussions between SPSA and a private entity about the need for infrastructure improvements shall not limit the ability of SPSA to later determine to use standard procurement procedures to meet its infrastructure needs. SPSA retains the right to reject any proposal at any time prior to the execution of an interim or comprehensive agreement.

5. **Proposal Preparation and Submission.**

- (a) **Format for Submissions for Conceptual Phase Review.**

An unsolicited proposal must contain information in the following areas: (i) the proposer's qualifications and experience, (ii) project characteristics, (iii) project financing, (iv) anticipated public support or opposition, or both, (v) project benefit and compatibility, and (vi) any additional information that SPSA may reasonably request to comply with the requirements of the PPEA. Suggestions for formatting information to be included in proposals at this stage include the items listed below, as well as any additional information or documents that SPSA may request:

- i. Qualification and Experience.
 - a. Identify the legal structure of the firm or consortium of firms making the proposal (e.g., corporation, partnership, joint venture, limited liability company, etc.). Identify the organizational structure for the project, the management approach, and how each principal (e.g., major shareholder, member, partner, etc.) and major subcontractor in the structure fits into the overall team.
 - b. Describe the experience of the firm or consortium of firms making the proposal and the key principals involved in the proposed project, including experience with projects of comparable size and complexity. Describe the length of time in business, business experience, public sector experience, and other engagements of the firm or consortium of firms. Include the identity of any firms that will provide design, construction and completion guarantees and warranties, and a description of such guarantees and warranties. Provide resumes of the key individuals who will be involved in the project.
 - c. Provide the names, addresses, and telephone numbers of persons within the firm or consortium of firms who may be contacted for further information.
 - d. Provide a current or most recently audited financial statement of the firm or firms and each partner, member or shareholder with an equity interest of twenty percent (20%) or greater.
 - e. Identify any persons known to the proposer who would be obligated to disqualify themselves from participation in any transaction arising from or in connection to the project pursuant to Virginia State and Local Government Conflict of Interest Act (Virginia Code Section 2.2-3100 *et seq.*).

ii. Project Characteristics.

- a. Provide a description of the project, including the conceptual design. Describe the proposed project in sufficient detail so that type and intent of the project, the location, and the communities that may be affected are clearly identified.
- b. Identify and fully describe any work to be performed by SPSA or any private entity other than the proposer.
- c. Include a list of all federal, state, and local permits and approvals required for the project and a schedule for obtaining such permits and approvals.
- d. Identify any anticipated adverse social, economic, and environmental impacts of the project. Specify the strategies or actions to mitigate known impacts of the project.
- e. Identify the projected positive social, economic and environmental impacts of the project.
- f. Identify the proposed schedule for the work on the project, including the estimated time for completion.
- g. Propose allocation of risk and liability for work completed beyond the project completion date, and assurances for timely completion of the project.
- h. State assumptions related to ownership, legal liability, law enforcement and operation of the project and the existence of any restrictions on SPSA's use of the project.
- i. Provide information relative to phased or partial openings of the proposed project prior to completion of the entire work.
- j. Describe any architectural (including, where appropriate, historic district considerations), building, engineering, or other applicable standards that the proposed project will meet.
- k. Describe the method by which all necessary property interests, including rights-of-way or easements, are to be secured. Include the names and addresses of current property owners, if known, the nature of property to be acquired, and a description of any property for which condemnation may be necessary.

- I. List any other assumptions relied on for the project to be successful.
- m. List any contingencies that must occur for the project to be successful.

iii. Project Financing.

- a. Provide a preliminary estimate and describe the estimating methodology of the cost of the work by phase, segment, or both.
- b. Submit a plan for the development, financing, and operation of the project showing the anticipated schedule on which funds will be required. Describe the anticipated costs of and proposed sources and uses for such funds including any anticipated debt service costs. The operational plan should include appropriate staffing levels and associated costs. Include supporting due diligence studies, analyses, or reports.
- c. Include a list and discussion of assumptions underlying all major elements of the plan. Assumptions should include all significant fees associated with financing given the recommended financing approach. In addition, complete disclosure of interest rate assumptions should be included. Any ongoing operational fees, if applicable, should also be disclosed as well as any assumptions with regard to increases in such fees.
- d. Identify the proposed risk factors and methods for dealing with these factors.
- e. Identify any local, state or federal resources that the proposer contemplates requesting for the project. Describe the total commitment, if any, expected from governmental sources (and identify of each such source) and the timing of any anticipated commitment. Such disclosure should include any direct or indirect guarantees or pledges of SPSA's credit or revenue.
- f. Identify the amounts and the terms and conditions for any revenue sources, including any third parties that the proposer contemplates will provide financing for the project, and describe the nature and timing of each such commitment.

- g. Identify any aspect of the project that could disqualify the project from eligibility for tax-exempt financing.

iv. Project Benefit and Compatibility.

- a. Describe the anticipated benefits to the community, region, or state, including anticipated benefits to the economic condition of SPSA, and identify who will benefit from the project and how they will benefit.
- b. Identify any anticipated public support or opposition as well as any anticipated government support or opposition, for the project.
- c. Explain the strategy and plans that will be carried out to involve and inform the general public, business community, and governmental agencies in areas affected by the project.
- d. Describe whether the project is critical to attracting or maintaining competitive industries and businesses to SPSA or the surrounding region.
- e. State whether the project is compatible with the comprehensive plan(s) for any affected jurisdiction, infrastructure development plans, capital improvements projects program, or other government spending plans and, if so, explain how.
- f. Provide a statement setting forth participation efforts that are intended to be undertaken in connection with this project with regard to the following types of businesses:
 - 1. minority-owned businesses,
 - 2. woman-owned businesses, and
 - 3. small businesses.

(b) **Format for Submissions for Detail Phase Review.** If SPSA decides to proceed to detail phase review with one or more unsolicited bids/proposals, then each included proposer shall provide the following information to SPSA unless contained in the conceptual phase proposal or expressly waived by SPSA:

- i. A topographical map (1:2000 or other appropriate scale) depicting the location of the proposed project.

- ii. A list of public utility facilities, if any, that will be crossed by the qualifying project and a statement of the plans of the proposer to accommodate such crossings.
- iii. A statement and strategy setting out the plans for securing all necessary property. The statement shall include the names and addresses, if known, of the current owners of the subject property as well as a list of any property for which condemnation may be necessary.
- iv. A detailed listing of all firms that will provide specific design, construction and completion guarantees and warranties, and a brief description of such guarantees and warranties.
- v. A cost-benefit analysis for the project, specifying methodology and assumptions of the project.
- vi. A total lifecycle cost specifying methodology and assumptions of the project or projects and the proposed project start date. Include anticipated commitment of all parties; equity, debt, and other financing mechanisms; and a schedule of project revenues and project costs. The lifecycle cost analysis should include, but not be limited to, a detailed analysis of the projected return, rate of return, or both, expected useful life of facility and estimated annual operating expenses.
- vii. A detailed discussion of assumptions about user fees or rates, and usage of the projects.
- viii. Identification of any known government support or opposition, or general public support or opposition for the project. Government or public support should be demonstrated through resolution of official bodies, minutes of meetings, letters, or other official communications.
- ix. Demonstration of consistency with appropriate local comprehensive or infrastructure development plans or indication of the steps required for acceptance into such plans.
- x. Explanation of how the proposed project would impact local development plans of each affected jurisdiction.
- xi. Identification of the executive management and the officers and directors of the firm or firms submitting the proposal. In addition, identification of any known conflicts of interest or other disabilities that may impact SPSA's consideration of the proposal, including the

identification of any persons known to the proposer who would be obligated to disqualify themselves from participation in any transaction arising from or in connection to the project pursuant to the Virginia State and Local Government Conflict of Interest Act (Virginia Code Section 2.2-3100 *et seq.*).

- xii. Detailed analysis of the financial feasibility of the proposed project, including its impact on similar facilities operated or planned by SPSA. Include a detailed description of any financial plan proposed for the project, a comparison of that plan with financing alternatives that may be available to SPSA, and all underlying data supporting any conclusions reached in the analysis or the selection by the proposer of the financing plan proposed for the project.
- xiii. Such additional material and information as SPSA may request.

6. **Proposal Evaluation and Selection Criteria.**

In addition to evaluation of materials and information described in Article 0 above, some or all of the following matters may be considered in the evaluation and selection of PPEA proposals.

- (a) Qualifications and Experience. Factors to be considered to determine whether the proposer possesses the requisite qualifications and experience may include but shall not be limited to:
 - i. Experience with similar projects.
 - ii. Demonstration of ability to perform work.
 - iii. Leadership structure.
 - iv. Project manager's experience.
 - v. Management approach.
 - vi. Financial condition.
 - vii. Project ownership.
- (a) Project Characteristics. Factors to be considered in determining the project characteristics may include but shall not be limited to:
 - i. Project definition.
 - ii. Proposed project schedule.
 - iii. Operation of the project.
 - iv. Technological, technical feasibility.
 - v. Conformity to laws, regulations, and standards.
 - vi. Environmental impacts.
 - vii. Condemnation impacts.
 - viii. State and local permits.
 - ix. Maintenance of the project.

- (b) Project Financing. Factors to be considered in determining whether the proposed project financing allows adequate access to the necessary capital to finance the project may include but shall not be limited to:
- i. Cost and benefit to SPSA based on a cost-benefit analysis. Financing and the impact on the debt or debt burden of SPSA.
 - ii. Financial plan, including the degree to which the proposer has conducted due diligence investigation and analysis of the proposed financial plan and the results of any such inquiries or studies.
 - iii. Opportunity costs assessment.
 - iv. Estimated cost.
 - v. Lifecycle cost analysis.
 - vi. The identity, credit history and past performance of any third party that will provide financing for the project and the nature and timing of their commitment, as applicable.
 - vii. Such other items as SPSA deems appropriate.
- (c) Project Benefit and Compatibility. Factors to be considered in determining the proposed project's compatibility with the appropriate local or regional comprehensive or development plans may include but shall not be limited to:
- i. Community benefits.
 - ii. Community support or opposition, or both.
 - iii. Public involvement strategy.
 - iv. Compatibility with existing and planned facilities.
 - v. Compatibility with local, regional, and state economic development efforts.
- (d) Other Factors. Other factors that SPSA may consider in the evaluation and selection of PPEA and proposals include:
- i. The proposed cost of the qualifying project.
 - ii. The general reputation, industry experience, and financial capacity of the private entity.
 - iii. The proposed design of the qualifying project.
 - iv. The eligibility of the project for accelerated documentation, review, and selection.
 - v. Local citizen and government comments.
 - vi. Benefits to the public, including financial and nonfinancial.
 - vii. The private entity's compliance with a minority business enterprise participation plan or good faith effort to comply with the goals of such plan.
 - viii. The private entity's plans to employ local contractors and residents.

- ix. The recommendation of a committee of representatives of members of SPSA which may be established to provide advisory oversight for the project.
- x. Such other criteria that SPSA deems appropriate.

7. **Interim and Comprehensive Agreements.**

Prior to developing or operating the qualifying project, the selected private entity shall enter into a comprehensive agreement with SPSA and may enter into an interim agreement as described below. SPSA may designate a working group to be responsible for negotiating any interim or comprehensive agreement. Any interim or comprehensive agreement shall define the rights and obligations of SPSA and the selected proposer with regard to the project.

(a) **Interim Agreement Terms.** Prior to entering into and/or in connection with the negotiation of a comprehensive agreement, SPSA may enter into an interim agreement that permits a private entity to perform compensable activities related to the project. The scope of an interim agreement may include but shall not be limited to:

- i. Project planning and development.
- ii. Design and engineering.
- iii. Environmental analysis and mitigation.
- iv. Site planning and survey.
- v. Ascertaining the availability of financing for the proposed facility through financial and revenue analysis.
- vi. Establishing a process for and timing of the negotiation of the comprehensive agreement.
- vii. Any other provisions related to any aspect of the development or operation of a qualifying project that the parties deem appropriate prior to the execution of a comprehensive agreement.

(b) **Comprehensive Agreement Terms.** The scope of a comprehensive agreement shall include but shall not be limited to:

- i. Delivery of maintenance, performance, and payment bonds or letters of credit in connection with any acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, or operation of the qualifying project, in the forms and amounts satisfactory to SPSA.
- ii. Review and approval of plans and specifications for the qualifying project by SPSA.
- iii. The right of SPSA to inspect the qualifying project to ensure compliance with the comprehensive agreement.
- iv. Maintenance of a policy or policies of liability insurance or self-insurance in a form and amount satisfactory to SPSA and reasonably

- sufficient to insure coverage of the project and the tort liability to the public and employees and to enable the continued operation of the qualifying project.
- v. Monitoring and acting upon the practices of the operator by SPSA to ensure proper maintenance.
 - vi. The terms under which the private entity will reimburse SPSA for services that SPSA will provide.
 - vii. Policies and procedures governing the rights and responsibilities of SPSA and the private entity in the event that the comprehensive agreement is terminated or there is a material default by the operator, including the conditions governing assumption of the duties and responsibilities of the private entity by SPSA and the transfer or purchase of property or other interests of the private entity by SPSA.
 - viii. Filing by the private entity of appropriate financial statements on a periodic basis.
 - ix. The mechanism by which user fees, lease payments, or service payments, if any, may be established from time to time upon agreement of the parties. Any payments or fees, subject to applicable laws controlling SPSA's ability to set or charge fees, shall be set at a level that are the same for persons using the facility under like conditions and that will not materially discourage use for the qualifying project. In addition:
 - a. A copy of any service contract shall be filed with SPSA.
 - b. A schedule of the current user fees or lease payments shall be made available by the private entity to any member of the public upon request.
 - c. Classifications according to reasonable categories for assessment of user fees may be made.
 - x. The terms and conditions under which SPSA may contribute financial resources, if any, for the qualifying project.
 - xi. The terms and conditions under which existing site conditions will be assessed and addressed, including indemnification of SPSA for conducting the assessment and taking necessary remedial action.
 - xii. Any changes to the terms of the interim or comprehensive agreement may be agreed upon by the parties from time to time and shall be added to the interim or comprehensive agreement only by written amendment.
 - xiii. The comprehensive agreement may provide for the development or operation of phases or segments of a qualifying project.
 - xiv. Other requirements of the PPEA and other applicable law.

(c) Public Hearing, Posting and Other Requirements.

- i. In accordance with the PPEA, SPSA shall hold a public hearing on the proposals during the proposal review process, but not later than

thirty (30) days prior to entering into an interim or a comprehensive agreement.

- ii. Once the negotiation phase for the development of an interim or comprehensive agreement is complete and a decision to award and/or consummate a qualifying project has been made by SPSA, but before an interim agreement or comprehensive agreement is entered into, SPSA shall post the proposed agreement on SPSA's website and/or on the State's Department of General Service's central electronic procurement website commonly known as "eVA" for a period of at least three (3) days. In addition, SPSA may in its discretion publish in a newspaper of general circulation in the area in which the agreement is to be performed a summary of the proposed agreement, and the location where copies of the proposed agreement are available for public inspection.
- iii. In addition to the posting requirements, SPSA shall make available for public inspection at least one copy of the proposed agreement. Trade secrets, financial records, or other records of the private entity excluded from disclosure under the provisions of subdivision 11 of § 2.2-3705.6 shall not be required to be posted, except as otherwise agreed to by SPSA and the private entity.
- iv. Once SPSA has entered into an interim agreement or a comprehensive agreement, SPSA shall make procurement records available for public inspection, upon request.
 - a. Such procurement records shall include documents protected from disclosure during negotiation on the basis that the release of such documents would have an adverse effect on the financial interest or bargaining position of SPSA or private entity in accordance with Section (d).
 - b. Such procurement records shall not include (i) trade secrets of the private entity as defined in the Uniform Trade Secrets Act (Virginia Code Section 59.1-336 et seq.) or (ii) financial records, including balance sheets or financial statements of the private entity that are not generally available to the public through regulatory disclosure or otherwise.
 - c. To the extent access to procurement records are compelled or protected by a court order, then SPSA shall comply with such order.
- v. SPSA shall electronically file a copy of all interim and comprehensive agreements and any supporting documents with the Auditor of Public Accounts. SPSA shall provide such agreements and supporting documents within thirty (30) days of the execution of the interim or comprehensive agreement.

8. **Governing Provisions.**

In the event of any conflict between these Guidelines and the PPEA, the terms of the PPEA shall control.

CHAPTER XI – APPENDICES

1. Sole Source/Emergency Procurement Approval Request
2. Board of Directors Contract Approval Form
3. Change Order Form
4. Purchase Order Terms & Conditions

JUSTIFICATION FOR SOLE SOURCE/EMERGENCY PROCUREMENT

Note: This form is to be used to request a Sole Source or Emergency Procurement in accordance with Virginia Public Procurement Act 2.2-4303E, Code of Virginia. Contracting without providing for full and open competition shall not be justified on the basis of (1) lack of advanced planning, or (2) concerns related to the amount of funds available (expiring funds). Statements such as "only known source" or "only known source which can meet the required delivery date" are inadequate and insufficient to support a Sole Source purchase.

It is requested that the following Purchase Order(s) be restricted to the following manufacturer/supplier:

Purchase Order Number(s):	
Manufacturer/supplier:	
City and State:	

Competition is precluded for the following reason(s):

- a. Request is for unique supplies or services available from only one source or only one supplier with unique capabilities. For example, (1) an accessory or addition to existing equipment, (2) replacement parts or components of equipment for which technical data is not available or adequate, or (3) must not be used for standard commercial products. Provide the following:

What makes this material or service unique? (BE SPECIFIC)	
Make and model of equipment that parts, components, accessories, or additions are for:	
Make:	Model:

- b. Manufacturer/supplier has possession of limited rights data, patent rights, copyrights, secret processes, license, etc., making the supplies or services available from only one source. Provide the following:

Legal document number:	
Title:	Expiration date:

- c. Emergency Repair or Procurement. (BE SPECIFIC)

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Any additional justification/documentation should be attached to this form.

I CERTIFY THAT THE STATEMENTS GIVEN ABOVE ARE APPLICABLE AND TRUE.

ORIGINATOR'S SIGNATURE/TITLE	DATE
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DEPUTY EXECUTIVE DIRECTOR'S SIGNATURE	DATE
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EXECUTIVE DIRECTOR'S SIGNATURE	DATE
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Memorandum



To: Board of Directors
From: Liesl R. DeVary
Date: October 23, 2019
Re: Contract Award or Renewal

Pursuant to § 15.2-5102.1 subsection 11, the Executive Director of the Authority shall not be permitted to execute or commit the Authority to any contract, memorandum of agreement or memorandum of understanding without an informed vote of approval by the Board, except as otherwise provided in or contemplated by such subsection.

BID:		PROJECT:	
ISSUED:		OPENED:	
Budgeted: Vendor (s): _____ Price: _____			
STAFF RECOMMENDS AWARD TO:			
PROCEED WITH CONTRACT AWARD:		Signature _____ Chairman Board of Directors Date _____	
HOLD UNTIL FURTHER NOTICE:		Signature _____ Chairman Board of Directors Date _____	

COMMENTS:



Date: _____ Change Order No. _____

Project Name:		Purchase Order No:	
Southeastern Public Service Authority of Virginia (SPSA) 723 Woodlake Drive Chesapeake, VA 23320		Date of Contract/Issuance:	
Project Contractor: (Name, Address)			
CHANGE REQUEST			
Description of Changes:			
Reason for Change:			
Additional Information:			
Change in Contract Price		Change in Contract Times (Number of Days)	
Original Contract Price		Original Contract Time	
Net Increase (Decrease) of Prior Change Orders		Net Increase (Decrease) of Prior Change Orders	
Net Increase (Decrease) of this Change Order		Net Increase (Decrease) of this Change Order	
Revised Contract Price with all approved Change Orders		Revised Contract Time with all approved Change Orders	
The changes included in this Change Order are to be accomplished in accordance with the terms and conditions of the original contract as though included therein.			
Accepted for Contractor by:			Date:
Approved for SPSA by:			Date:

Distribution: _____ Owner _____ Contractor _____ Office _____ Other

Purchase Order Terms and Conditions

1. This purchase order is subject to the laws of the Commonwealth of Virginia and the SPSA Procurement Policy, as amended, and shall take precedence over any other contract document.
2. Goods or services delivered must be strictly in accordance with the referenced quote, proposal, bid or contract and shall not deviate in any way from terms, conditions or specifications of the bid or proposal. All goods and services shall comply with reasonable standards of quality if no specifications have been provided and they must comply with all federal, state, and local laws relative thereto. SPSA reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications. If rejected, same shall remain the property of the contractor, vendor, or supplier (collectively, the "Contractor").
3. All prices, unless specified otherwise, are net F.O.B. Destination with transportation charges prepaid. If shipment is made by freight or express and charges added to invoice, the original bill of lading properly receipted shall accompany the invoice. All charges must be prepaid. SPSA will not pay transportation charges unless the Contractor received prior written approval from SPSA.
4. The Contractor must indicate this purchase order and or/ any contract number on all related invoices, delivery tickets, bills of lading, packages and/or correspondence. All invoices shall be in the same legal name of the Contractor as indicated on this purchase order.
5. Invoices for items ordered, delivered and accepted shall be submitted by the Contractor directly to the payment address shown on this purchase order and/or any contract. All invoices shall show the SPSA contract number and/or purchase order number.
6. All payment terms shall be due 30 days after receipt and approval of proper invoice, or materials/services, whichever is later. Any term that requires payment in less than 30 days, will be regarded as requiring payment 30 days after an approved invoice or accepted delivery, whichever occurs last. SPSA shall be eligible for any discount offered for payments that are made in less than 30 days, however SPSA shall not be in default of any agreement or contract if payment does not occur in less than 30 days.

7. The Contractor is obligated to pay any subcontractor within seven (7) days of the contractor's receipt of payment from SPSA the proportionate share of payment, and interest on any amount unpaid, for work performed under this purchase order and/or any contract.
8. No substitution, change or deviation shall be made without an authorized change order or contract amendment issued by SPSA.
9. In case of default by the Contractor, or the failure to deliver the supplies or services ordered by the time specified, SPSA, after due written or oral 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 SPSA may have.
10. Any Contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership (collectively referred to as "business entity") shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the Code of Virginia or as otherwise required by law. Any business entity described above that enters into a purchase order and/or any contract with a public body pursuant to the Virginia Public Procurement Act shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of this purchase order and/or any contract. SPSA may void any purchase order and/or any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.
11. Contractor is required to adhere to SPSA's Contractor Safety Requirements at all times. A copy of which may be obtained at https://spsa.com/download_file/308/0.
12. SPSA is exempt from State sales and use tax, a certificate of exemption from ST-12 will be issued upon request. Deliveries against this purchase order must be free of excise or transportation taxes. Federal Excise Tax exemption registration may be used when required.
13. Contractor agrees to indemnify, defend and hold harmless SPSA, 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 and/or any services of any kind or nature furnished by the contractor, unless such liability is solely attributable to the gross negligence or willful misconduct of SPSA.

14. In the absence of other contractual terms, for work performed on SPSA-owned or leased facilities or property, the Contractor and subcontractor shall certify and maintain the following insurance coverage and that all insurance coverage will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.: Workers Compensation - statutory requirements and benefits; Employer's Liability - \$100,000; Commercial General Liability - \$1,000,000 per occurrence and \$2,000,000 in the aggregate.; Automobile Liability - \$2,000,000 combined single limit.
15. Any dispute concerning a question of fact as a result of this purchase order and/or any related contract which is not disposed of by agreement shall be decided by the Executive Director, in accordance with Virginia Code § 2.2-4363(C).
16. SPSA does not discriminate against faith-based organizations, in accordance with the Code of Virginia, § 2.2-4343.1, or against a bidder or offeror because of race, religion, color, sexual orientation, gender identity, national origin, age, disability, status as a service-disabled veteran or any other basis prohibited by state law relating to discrimination in employment in the performance of its procurement activity.
17. During the performance of any SPSA purchase order and/or contract over \$10,000, the Contractor agrees to not discriminate against the Contractor's employees or applicants for employment in accordance with the requirements of Virginia Code § 2.2-4311, as amended, said requirements are incorporated herein as if stated in their entirety.
18. Contractor certifies that it does not, and shall not during the performance of this purchase order and/or any related contract for goods and/or services in the Commonwealth, knowingly employ an unauthorized alien as defined in the Federal Immigration Reform and Control Act of 1986.
19. During the performance of any SPSA purchase order and/or contract over \$10,000, the Contractor agrees to maintain a drug-free workplace in accordance with Virginia Code §2.2-4312, as amended, said requirements are incorporated herein as if stated in their entirety.
20. By submitting a quote, bid, or proposal, the Contractor certifies that their quote, bid, or proposal is made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other contractor or subcontractor in connection with their quote, 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.

21. This purchase order and/or any related contract and its terms, including but not limited to, the parties' obligations, the performance due, and the remedies available to each party, are governed, construed, and interpreted in accordance with the laws of the Commonwealth of Virginia, without regard to principles of conflicts of laws. Any and all disputes, claims, and causes of action arising out of or in any way connected with this purchase order and/or any related contract or its performance must be brought in the applicable court of City of Chesapeake, Virginia.