Chapter 10
General IT Procurement Policies

Chapter highlights

Purpose: This chapter contains general policies applicable to the procurement of IT goods and services.

Key points:

- Under Virginia's Freedom of Information Act, the presumption is that all documents in the possession of any public body or public official and all meetings of state and local public bodies are open to citizens of the Commonwealth.
- To the extent allowed by law, this public body 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, sex, national origin, age, disability, sexual orientation, gender identity or expression, political affiliation, or status as a service disabled veteran or any other basis prohibited by state law relating to discrimination in employment.

Placing multiple orders to one or more suppliers for the same, like or related goods or services in order to avoid having to utilize the appropriate method of procurement or to remain within delegated procurement authority or to avoid competition is prohibited.

Table of Contents

10.0 Introduction

These policies are applicable to all procurements of IT goods and services. These policies were developed to clarify and implement the various provisions and requirements of the Virginia Public Procurement Act and the *Code of Virginia* pertaining to IT procurement.

10.1 Freedom of Information Act

The Virginia Freedom of Information Act (FOIA) (Virginia Code §§ 2.2-3700 *et seq.*) ensures ready access to public records and to meetings of state and local public bodies. All IT procurement professionals should be aware of FOIA and comply with its requirements and their own agency's policies and procedures. In addition, before any agency can procure a system, equipment or software, the agency must consider whether it is capable of producing products that facilitate the rights of the public to access public records under FOIA (Virginia Code § 2.2-2012(B)(4)).

10.2 Confidentiality

Confidentiality of information in the procurement process is vital to ensure fair and open competition for suppliers. The VPPA, in Virginia Code § 2.2-4342, addresses the confidentiality of procurement information before, during, and after procurement processes. Suppliers should note that, pursuant to § 2.2-4342, trade secrets or proprietary information that a supplier wishes to keep confidential must be specifically identified with a statement of the reason(s) the protection is necessary. Refer to Chapter 5, Ethics in Public Procurement, for more information and for a VITA- approved Confidentiality and Conflict of Interest Statement form.

It is critical that procurement professionals preserve appropriate confidentiality for records or information from a supplier's proposal that are marked "Confidential" or "Proprietary," are included in such supplier's redacted proposal, or are responses in the supplier's COV Ramp/Security Assessment, including any security exceptions, if applicable.

10.3 Section 508 Overview

As specified in § 2.2-2012(B) of the *Code of Virginia*, procurement of all IT must be made in accordance with the electronic and information technology accessibility standards of the Rehabilitation Act of 1973 (29 U.S.C. § 794(d)).

Section 508 refers to a statutory section in the Rehabilitation Act of 1973 (found at 20 U.S.C. § 794d). The primary purpose of Section 508 is to provide access to and use of government electronic and information technology (EIT) by individuals with disabilities. Section 508 requires agencies to ensure that their procurement of electronic and information technology takes into account the needs of all end users – including people with disabilities. The statutory language of section 508 is available online by accessing http://www.section508.gov.

Section 508 applies to both goods and services and requires that when agencies develop, procure, maintain or use information technology - (1) individuals with disabilities who are employees have access to and use of information and data that is comparable to the access to and use of the information and data by employees who are not individuals with disabilities; and (2) individuals with disabilities who are members of the public seeking information or services from an agency to have access to and use of information and data that is comparable to the access to and use of the information and data by such members of the public who are not individuals with disabilities. Comparable access is not required if it would impose an undue burden on an agency. The law is not limited to assistive technologies used by people with disabilities, but applies to the development, procurement, maintenance, or use of all electronic and information technologies.

10.3.1 VITA's authority to promulgate regulations pertaining to Section 508

VITA has statutory authority to promulgate regulations to ensure that all procurements of information technology of every description meet electronic and information technology accessibility standards. VITA has chosen to implement the electronic and information technology accessibility standards of Section 508 through policy and is committed to ensuring that all procurements of information technology purchased by VITA or on behalf of other agencies meet, to the greatest extent possible, the electronic and information technology accessibility standards of Section 508. Refer to VITA's IT accessibility compliance websites for detailed guidance at: https://www.vita.virginia.gov/policy--governance/policies-standards--guidelines/it-accessibility-and-website-standards/.

10.3.2 Section 508 standards

Section 508 standards are technical specifications and performance-based requirements which focus on the functional capabilities covered by technologies. These standards are organized into six sections:

- Software applications and operating systems
- Web-based intranet and internet information and applications
- Telecommunications goods and services
- Video and multimedia goods and services
- Self-contained, closed goods and services
- Desktop and portable computers

Section 508 affects what the Commonwealth acquires (i.e., the requirements development process) but not how the information technology is acquired (source selection). Section 508 does not require suppliers to manufacture EIT products that meet the Access Board, standards. However, by requiring the federal government to purchase EIT products that meet the Access Board's standards, Section 508 provides an incentive for EIT manufacturers and designers to ensure that their products are usable by people with disabilities.

10.3.3 Defining requirements under Section 508

When developing requirements for any IT procurement, the agency should be familiar with Section 508 requirements and determine which technical provisions apply to the IT goods or services being procured. In addition, market research should be performed to determine the availability of products and services that meet the applicable technical provisions. The agency should determine if Section 508 products or services are available in the marketplace or if the product or service would be eligible for an exception such as non- availability or undue burden.

10.3.4 IT Procurements not applicable to Section 508

Section 508 does not apply to all IT goods and services which may be procured for the Commonwealth or public bodies. These exemptions may apply:

- *Built-in assistive technology is not required where it is not needed*. Section 508 does not require that every IT product to be fully accessible for persons with disabilities. Products such as desktop computers do not have to have refreshable Braille displays but must be compatible with refreshable Braille displays so that a blind individual can use the agency's standard workstation if needed as a reasonable accommodation.

- *Undue burden*. Agencies do not have to procure IT products that satisfy the Section 508 standards if doing so would create an undue burden on the agency. "Undue burden" generally means "significant difficulty or expense." If an agency invokes the undue burden exception, Section 508 requires that information and data be provided to individuals with disabilities by an alternative means of access. Agencies should not alter their technical requirements to comply with Section 508 if the alteration would result in the agency procuring IT that did not meet its needs.
- *Non-availability*. This refers to circumstances where no Section 508 commercial items are available to meet the agency's IT procurement needs.

10.3.5 Section 508 exception

All IT goods and services procured by the Commonwealth must comply with the accessibility standards of Section 508. The one exception to IT accessibility is if the agency includes a written explanation in the procurement file signed by the agency head which explains why, and to what extent, the standards impose an undue burden or exception. All contracts for IT goods and/or services should contain the term and condition which requires that any goods or services provided by the contractor under the contract are Section 508-compliant.

10.3.6 Suggested solicitation language to ensure Section 508 compliance

The following statement is recommended to be included in all RFPs: "All electronic and information technology (EIT) procured through this Request for Proposal (or Invitation for Bid) must meet the applicable accessibility standards of Section 508 of the Rehabilitation Act of 1973, as amended, and is viewable at the following URL: http://www.section508.gov."

10.3.7 Suggested contractual language to ensure Section 508 compliance

Contracts signed with information technology suppliers should contain the provision set forth below or substantially similar language: "Supplier hereby warrants that the products or services to be provided under this agreement comply with the accessibility requirements of section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794d), and its implementing regulations set forth at Title 36, Code of Federal Regulations, part 1194. Supplier agrees to promptly respond to and resolve any complaint regarding accessibility of its products or services which is brought to its attention. Supplier further agrees to indemnify and hold harmless the Commonwealth of Virginia or any agency thereof using the supplier's products or services from any claim arising out of its failure to comply with the aforesaid requirements. Failure to comply with these requirements shall constitute a breach and be grounds for termination of this agreement." This language puts the burden and expense of Section 508 compliance on the supplier supplying IT goods and services to the Commonwealth.

10.4 Technology Access Clause

10.4.1 Procurement Requirements

Pursuant to the Information Technology Access Act (§§ 2.2-3500 *et seq.* of the *Code of Virginia*), all contracts for the procurement of information technology by, or for the use of, agencies all covered entities as defined by § 2.2-3501, shall include a technology access clause which requires compliance with the non-visual access standards established in § 2.2-3503(B).

10.4.2 Exceptions to nonvisual access standards

Compliance with the nonvisual access standards shall not be required if the head of the procuring agency determines that (i) the information technology is not available with nonvisual access because the essential elements of the information technology are visual and (ii) nonvisual equivalence is not available. Visit these VITA websites: https://www.vita.virginia.gov/policy--governance/policies-standards--guidelines/it-accessibility-and-website-standards/ for more information.

10.4.3 Executive Order 47 – Expanding Opportunities for Virginians With Disabilities (2020)

Executive Order 47 reaffirms and expands upon the Commonwealth's commitment to the increased inclusion of, and expansion of opportunities for, individuals with disabilities. This includes ensuring that the Commonwealth's websites are readily accessible to individuals with disabilities.

VITA supports the effort set forth in Executive Order 47 and continues to work with other state agencies to improve the accessibility of the Commonwealth's websites for Virginians with disabilities. VITA encourages Suppliers to support the advancement of opportunities for disabled Virginians by expanding and improving upon accessibility of the Commonwealth websites.

10.5 Commonwealth security requirements for IT solicitations and contracts

Section 2.2-2009 of the *Code of Virginia* mandates that the CIO is responsible for the development of policies, standards, and guidelines for assessing security risks, determining the appropriate security measures and performing security audits of government electronic information. Such policies, standards, and guidelines shall apply to the Commonwealth's executive, legislative, and judicial branches and independent agencies. Further, it requires that any contract for information technology entered into by the Commonwealth's executive, legislative, and judicial branches and independent agencies require compliance with applicable federal laws and regulations pertaining to information security and privacy. While agencies are required to comply with all security policies, standards and guidelines (PSGs), these PSGs are located at this URL: https://www.vita.virginia.gov/policy--governance/itrm-policies-standards/

For any procurements of third-party (supplier- hosted) cloud services (i.e., Software as a Service), there is a distinct process for obtaining VITA approval to conduct the procurement. Your agency's Information Security Officer or AITR can assist you in understanding this process and in obtaining the required documentation to include in your solicitation or contract. There are specially required Cloud Services terms and conditions that must be included in your solicitation and contract, and a questionnaire that must be included in the solicitation for bidders to complete and submit with their proposals. You may also contact: enterpriseservices@vita.virginia.gov.

10.6 Discrimination Prohibited

The *Code of Virginia* prohibits discrimination based on race, religion, color, sex, age, disability, or national origin in procurement transactions as well as discrimination against ex-offenders, small, women and minority-owned businesses and faith-based organizations. All businesses and citizens are to have equal access to the Commonwealth's procurement opportunities. See the Virginia Human Rights Act, Virginia Code § 2.2-3900 *et seq*.

10.6.1 Small Business Enhancement Program

Section 2.2-4310 of the *Code of Virginia* provides that any enhancement or remedial measure authorized by the Governor for state public bodies may allow for small businesses certified by the Department of Small Business and Supplier Diversity or a subcategory of small businesses established as a part of the enhancement program to have a price preference over noncertified businesses competing for the same contract award, provided that the certified small business or the business in such subcategory of small businesses does not exceed the low bid by more than five percent

10.6.2 Ex-offenders

In the solicitation or awarding of contracts, no agency shall discriminate against a bidder or offeror because the bidder or offeror employs ex-offenders unless the state agency, department or institution has made a written determination that employing ex-offenders on the specific contract is not in its best interest.

10.6.3 Faith-based organizations

Virginia Code§ 2.2-4343.1 provides that agencies may enter into contracts with faith-based organizations on the same basis as any other nongovernmental source without impairing the religious character of such organization, and without diminishing the religious freedom of the beneficiaries of assistance provided under this section, and provides for displaying a nondiscrimination statement in procurement and contract documents. Agencies procuring IT goods or services or making disbursements shall comply with § 2.2-4343.1.

10.7 Posting IT Solicitations and Awards

All IT solicitations, addenda and notices of award (including emergency and sole source awards) for IT goods and services over $30,000 shall be posted on eVA. When a solicitation is cancelled or amended, the notice of cancellation or amendment must be publicly posted on eVA. Written solicitation notices up to $30,000 are not required to be posted. Invitation for Bids notices over $30,000 may be also published in a newspaper of general circulation for ten (10) days prior to the date for receipt of bids.

When an RFP is issued for an amount in excess of $30,000, the solicitation shall be posted on eVA for at least 10 days and may also be published in a newspaper of general circulation in the area in which the contract is to be performed. If the RFP is cancelled or amended, a copy of the cancellation notice or addendum must be publicly posted on eVA.

Award notices for all IT contracts in excess of $30,000 must be posted for ten (10) days following the date of the award.

Emergency contract awards must state that the contract is being issued on an emergency basis. Sole source awards must state that only one source was determined to be practicably available. Both emergency and sole source award postings should state what is being procured, the contractor selected, and the date on which the contract was or will be awarded. All award notices shall be posted on eVA for ten days following the date of the award.

10.8 Subsequent/Additional Bid or Proposal for Same Procurement

A supplier who submits a subsequent bid or proposal before the due date that is not specifically identified as an amendment to a previously submitted bid or proposal, shall be treated as having submitted a new bid/proposal in response to the original solicitation.

10.9 Prohibited Participation

Section 2.2-4373 of the *Code of Virginia* places limitations on who may submit a bid after participating in the bid preparation for that same procurement.

10.10 Contract and Purchase Order Modification Restrictions

A contract or purchase order may not be renewed, extended or otherwise modified unless provided for in the original contract. The contract price may not be increased, nor additional consideration given because of a contract renewal or extension, unless such increase is specifically authorized under the original contract. Virginia Code § 2.2-4309 provides specific requirements for modifications, including increases in fixed price contracts. Additionally, if the contract renewal must undergo certain VITA approvals, the agency must obtain those approvals prior to issuing a contract renewal. See this link for more guidance: https://www.vita.virginia.gov/supply-chain/scm-policies-forms/. Refer to section 10.13 which discusses prohibited contracts. The same prohibitions will apply for any contract renewals.

10.11 Contract Pricing

VITA may award IT contracts on a fixed price or cost reimbursement basis, or on any other basis not prohibited by Virginia Code § 2.2-4331.

10.12 Order Splitting Prohibition

Placing multiple orders to one or more suppliers for the same IT goods or services in order to avoid conducting a competitive procurement or to purchase such items to remain within an agency's delegated procurement authority limit is prohibited.

10.13 Prohibited contracts

The *Code of Virginia* prohibits the Commonwealth from entering into certain types of contracts and to contract with individuals or businesses who have defaulted on some obligation to the Commonwealth. These prohibitions are as follows:

Section 2.2-4331 of the *Code of Virginia* provides that no contract shall be awarded by the Commonwealth on the basis of cost plus a percentage of cost except in the case of emergency affecting the public health, safety or welfare.

Virginia Code § 2.2-4321, § 2.2-4321.1, and § 2.2-4311.2 prohibit agencies from contracting with any supplier or affiliate of the supplier who:

- Fails or refuses to collect and remit sales tax
- Fails or refused to remit any tax due unless the supplier has entered into a payment agreement with the Department of Taxation to pay the tax and is not delinquent under the terms of the agreement or has appealed the assessment of the tax and the appeal is pending.
- Is not authorized to transact business in the commonwealth.
- Is included on the Commonwealth of Virginia's Debarment List at the time of award.

Additionally, an agency may not award a contract to a supplier, including its affiliates and all subcontractors if they are excluded on the federal government's System for Award Management (SAM) at: https://www.sam.gov/SAM/, or who is not registered in eVA at time of award.

Virginia Code § 2.2-5514 prohibits agencies from using, whether directly or through work with or on behalf of another public body, any hardware, software, or services that have been prohibited by the U.S. Department of

Homeland Security for use on federal systems.

Except for the § 2.2-5514 prohibitions specified above, agencies may contract with these sources in the event of an emergency or if contractor is the sole source of needed goods and services.

10.14 Mandatory Contract Terms andConditionsfor Public IT Contracts

Certain contractual terms are required by statute to be included in every public IT contract. A complete list of these terms, the VITA Mandatory Contract Terms, is available on VITA's website at: https://www.vita.virginia.gov/supply-chain/scm-policies-forms/mandatory-contract-terms/.

10.14.1 Employment discrimination by contractor prohibitedr

In any contract of more than $10,000, all public bodies are required to incorporate the employment discrimination prohibition provisions set forth in Virginia Code § 2.2-4311.

10.14.2 Drug-free workplace to be maintained by contractor

In any contract of more than $10,000, all public bodies are required to incorporate the drug-free workplace requirements of Virginia Code § 2.2-4312.

10.14.3 Payment clauses

Any contract awarded by any state agency, or any contract awarded by any agency of local government shall include a payment clause obligating the contractor to pay its subcontractors in accordance with Virginia Code § 2.2-4354.

10.14.4 Insurance

In order to mitigate risks to the Commonwealth, contractors are required to carry certain types of insurance coverage throughout the term of the contract. All contractors are required to maintain current workers' compensation, employer's liability, commercial general liability and automobile liability insurance policies when work is to be performed on state owned or leased property or facilities. The Commonwealth of Virginia must be named as an additional insured when requiring a contractor to obtain commercial general liability coverage.

In some specific cases, workers' compensation insurance and employer's liability insurance may not be required. Workers' compensation insurance is required when the contractor has three (3) or more employees. If work is performed by a sole proprietor, the person does not need workers' compensation insurance, as they do not have employees. Employer's Liability Insurance is required if an employer has employees who are paid a wage or salary. Employer's liability insurance is not required for persons in business together, e.g., husband and wife, siblings or parents and children, as these persons would be considered owners not employees.

All agreed upon and statutorily mandated insurance must be obtained by the supplier prior to commencing work and must be maintained during the entire term of the contract.

Additionally, in IT services and solutions contracts, Errors and Omissions Insurance should always be required by Suppliers, except for simple computer-off-the-shelf (COTS) software products. This insurance covers a Supplier's performance errors and intentional or accidental omissions in their performance obligated by the contract's technical/functional requirements. The coverage amount is based on the complexity of the specific procurement. Typical language to include in a contract is: "Supplier shall carry errors and omissions insurance coverage in the amount of $5,000,000 per occurrence."

For cloud service procurements, it is recommended to require the contractor to also provide coverage for Cyber Security Liability Insurance to assist in data loss or security breach, which can result in losses valued in excess of millions of dollars. Typical language to include in a contract is: "Supplier shall carry Cyber Security Liability insurance coverage in the amount of $5,000,000 per occurrence." This coverage amount can be increased based on your risk factor and project complexity and data/security sensitivity. The minimum coverage amount required by VITA Security remains at $5,000,000. Any reduction must be approved by VITA Security and/or the CIO.

10.15 Computer Equipment Performance Specifications

Virginia Code § 2.2-2012(E) provides that if VITA, or any executive branch agency authorized by VITA, may elect to procure personal computers and related peripheral equipment pursuant to a blanket purchasing arrangement under which public bodies may purchase such goods from any supplier following competitive procurement provided that the agency first establishes performance-based specifications for the selection of the equipment.

10.16 Taxes

10.16.1 Excise tax

The Commonwealth of Virginia is generally exempt from paying federal excise taxes.

10.16.2 State sales tax

The Commonwealth of Virginia is generally exempt from paying Virginia's sales taxes on purchases of tangible personal property for its use or consumption. Agencies may receive requests for a tax exemption certificate or exemption number. When taxes are improperly included on the face of a bid, the bidder will be given the opportunity to delete them. Requests for exemptions from state sales taxes should be routed to: scminfo@vita.virginia.gov.

10.16.3 Sales and use tax for state government and political subdivisions

Virginia's sales and use tax does not apply to sales of tangible personal property to the Commonwealth of Virginia or to its political subdivisions, for their use or consumption, if the purchases are pursuant to required official purchase orders to be paid for out of public funds. The tax applies when such sales are made without the required purchase orders and are not paid for out of public funds. No exemption is provided for state or local government employee purchases of meals or lodging whether purchases are pursuant to required official purchase orders or not.

10.16.4 Sales and use tax for contractors

Persons who contract with the Commonwealth or its political subdivisions to perform an IT service and in providing the service also provide some tangible personal property are the consumers of such property and are not entitled to a sales or use tax exemption. This is true even though title to the property provided may pass to the Commonwealth and/or the supplier may be fully and directly reimbursed by the government.

10.17 Commodity Codes

The list of commodity codes for IT products and services is posted on the VITA web site at the following link: https://www.vita.virginia.gov/media/vitavirginiagov/supply-chain/pdf/VITA-IT-Consumables-List.pdf.

10.18 Freight

Freight and delivery charges shall be included in the pricing schedule, if needed, in all bids and proposals. When necessary, freight and delivery charges are used in the evaluation and award and should be clearly reflected on all documentation in the procurement file.

By signing an IFB, suppliers certify that the bid prices offered for F.O.B destination include only the actual freight rate costs at the lowest available rate and such charges are based upon the actual weight of the goods to be shipped.

10.19 Used Equipment

Used equipment can be a viable source of technology provided it is certified acceptable for manufacturer's maintenance. All such costs for certification must be borne by the seller and must be included in the bid or proposal pricing. The same VITA review and approval that applies to new IT equipment (refer to Chapter 1 of this manual) also applies to used IT equipment.

10.20 Evaluation Products andTesting

Evaluation products may be requested to verify quality levels or to test equipment to determine conformance with the specifications stipulated in a solicitation and/or to determine ability to interface with existing equipment. Evaluation products may only be requested when conducting a formal solicitation. A request for an evaluation product must be clearly indicated in the solicitation. Return of evaluation products submitted will be at supplier's risk and expense. Evaluation products required in a bid or proposal must be submitted prior to the solicitation due date. Failure to submit requested evaluation products may result in rejection of bid or proposal. Evaluation products should be properly labeled, stored and controlled by the receiving public body until no longer needed. All evaluation products submitted are subject to testing. Those not destroyed during testing may be returned at the bidder's or offeror's expense. Evaluation products of the successful supplier may be held for comparison with deliveries.

If, after 30 days, the evaluation products have not been picked up and suppliers fail to provide disposition instructions, evaluation products may be offered to other agencies or internal operating departments for use. Evaluation products not picked up by bidder within 30 days of award will become the property of the Commonwealth. If the items have significant reusable utility value, they should be disposed of using established property disposal procedures. The procurement file must be documented as to disposition of all evaluation products.

10.21 Guarantees and Warranties

The following guidelines should be taken into account when deciding the appropriate warranty or guarantee terms and conditions to include in IT solicitations and the final negotiated contract:

- Determine if procuring agency wants to specify the length of time the warranty is to run;
- Determine if warranty is needed to prevent damage to existing resource information from computer viruses or shut down devices;
- Select the guarantee or warranty special term and condition that best suits the needs of the agency for the particular solicitation; and
- When considering a non-industry standard warranty, the agency should obtain the appropriate cost associated with the desired warranty; a written justification for the desired warranty and any additional cost to be included in the procurement file.

Many IT suppliers will agree to provide greater than 90-day warranty periods during negotiation, or even a 12-month for solution/development type contracts. Computer-off- the-shelf manufacturers generally offer 30 or 60-day warranty periods. Larger IT companies often provide 90-day warranty periods. Agencies should not have to reimburse a supplier for errors corrected or fixes made during a warranty period. The warranty period should start after final acceptance by the agency, while any procured annual maintenance or support would begin once the warranty period is over. For a more in- depth discussion of warranties refer to Chapter 25 of this manual, IT Contract Formation:

10.22 Procurements Which Require FCC Licensing

All facilities, equipment and services that require Federal Communications Commission (FCC) licensing (e.g., uplinks, television and radio broadcast frequencies, microwave, two- way radio), etc., are the responsibility of VITA to coordinate and acquire. All agencies, whether in scope or not, must submit all supporting documentation to the agency or institution's assigned agency telecom coordinator (ATC) or submit a request through VCCC prior to any acquisition of telecommunications equipment or service. There is no dollar amount associated with this requirement. Any device requiring FCC authorization or licensing must be approved by VITA. If the equipment or services are on a current VITA state contract, VITA will approve the procurement and return the request with the appropriate written approval. If the equipment or services are not currently available through an existing contract process, VITA will acquire the requested goods or services on behalf of the requesting agency or institution.

10.23 Unsolicited Proposals

VITA encourages its suppliers to submit new and innovative technology ideas by submitting unsolicited proposals. The submission of these proposals allows for VITA to consider unique and innovative ideas or approaches that have been developed in the private sector and to bring those innovations into state government. Any supplier who is considering submitting an unsolicited proposal to VITA for IT should adhere to the following rules:

- The IT idea or concept being proposed must be innovative and unique.
- The technology concept or idea must be independently originated and developed by the offeror submitting the unsolicited proposal.

- All unsolicited proposals must be prepared without Commonwealth assistance, endorsement, direction or involvement.
- The unsolicited proposal must include sufficient detail to permit a determination if it would be worthwhile for the Commonwealth to study and/or consider.
- The unsolicited proposal cannot be an advance proposal for a known agency or Commonwealth requirement that can be acquired through competitive methods. The proposal should not address a previously published agency requirement or need.
- All solicited and unsolicited proposals and all solicited and unsolicited ideas for innovation or improvement are submitted at the risk of and expense of the offeror and create no financial or legal obligation on the part of the Commonwealth.
- Any ideas or information contained in an unsolicited proposal may be used freely by the Commonwealth and no restriction on the Commonwealth's use of such ideas, proposals or the information contained therein shall arise in connection with such submission.
- A favorable comprehensive evaluation of an unsolicited proposal by VITA does not, in itself, justify awarding a contract without providing for competition. No preference shall be given to any offeror that initially offers the unsolicited proposal. If it is determined by the evaluation that goods or services required by the agency and offered in an unsolicited written proposal are practicably available from only one source, a buyer may negotiate and award a contract following the VITA's sole source procedures. The buyer shall post a notice of award for ten (10) calendar days.

All unsolicited proposals for IT and are submitted to VITA with the following proviso(s):

- All unsolicited proposals are submitted at the risk of and expense of the offeror and with no obligation on the part of the VITA or the Commonwealth.
- Unsolicited proposals must contain no restrictions on the Commonwealth's or VITA's use of any ideas, proposals or the information contained in such proposals.
- VITA may charge a fee for review of an unsolicited proposal.
- A minimum fee of $1,000 (or greater) may be charged for review of unsolicited proposals under a specified amount ($50,000) and an increased fee schedule over that amount. Proposals requiring technical review would be billed on an hourly basis as appropriate for time spent in review.
- All unsolicited proposals will be evaluated for their participation and encouragement of small businesses including women and minority-owned businesses and businesses owned by service-disabled veterans.

Unsolicited proposals shall be submitted in writing directly to SCM at scminfo@vita.virginia.gov.

10.24 Use of Brand Names

Use of a brand name or equal specification should only be used to indicate a desired quality level and should be based upon one or more supplier's commodity description(s), model number(s) and quality level. The supplier's commodity numbers should be easily identifiable in a current publication that is available to most suppliers.

Commodity descriptions must be sufficiently detailed and specify only the required features needed as provided for in Virginia Code § 2.2-4315.

10.25 Supplier Advertising Prohibition

Without the express written consent of VITA, IT suppliers are prohibited from advertising or utilizing sales material which states that a Commonwealth agency has purchased a supplier's IT product or service.

10.26 Public-Private Education Facilities and Infrastructure Act (PPEA) Procedures for State Agencies and Institutions

The Public-Private Education Facilities and Infrastructure Act of 2002 (PPEA), §56-575.1 e*t seq.* of the *Code of Virginia*, allows VITA to create public-private partnerships for the development of a wide range of projects for public use if VITA determines the project serves a public purpose and that private involvement may provide the project in a timely or cost-effective fashion. The PPEA serves as an alternative procurement method for IT in certain circumstances. The PPEA is designed to bring private funding and/or private risk to public projects in the Commonwealth. The PPEA is intended to provide a faster mechanism for the funding and completion of projects that are time sensitive. Like the Public Private Transportation Act, the PPEA allows for creative financing and allows private entities to bring innovative thinking and vision to public projects.

The PPEA authorizes responsible public entities to use the PPEA procurement process. These entities include state agencies, public educational institutions, counties, cities and town and public authorities.

In order for a project to be eligible under the PPEA, it must meet the definition of a qualifying project. For IT, the PPEA establishes the following as qualifying projects: "… (vi) 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; (vii) any services designed to increase productivity or efficiency through the direct or indirect use of technology, (viii) any technology, equipment, or infrastructure designed to deploy wireless broadband services to schools, businesses, or residential areas. . ." (Virginia Code § 56-575.1) The PPEA establishes requirements for the review and approval of proposals received pursuant to the PPEA. In addition, the PPEA specifies the criteria that must be used to select a proposal and the contents of any comprehensive agreement between VITA and the private entity.

10.26.1 PPEA Process

The PPEA process can be initiated in two ways. An agency may issue a solicitation for PPEA proposals, like a traditional RFP, or an agency may receive an unsolicited proposal (see subsection 10.23 above) where a private entity submits a proposal not in response to a solicitation or notice. When an agency is considering issuing a notice for solicited proposals, it must first make a determination that it reasonably expects the PPEA process to be more beneficial than traditional procurement processes under the VPPA. A public notice soliciting PPEA proposals must allow for at least forty-five (45) days for proposals to be submitted. Notice must be posted on eVA.

If an agency receives an unsolicited PPEA proposal, it must make a threshold decision as to whether the proposal fits with the agency's business objectives and should be pursued. If the agency decides to accept the unsolicited PPEA proposal, it must post a public notice for at least forty-five (45) days which details the subject matter of the proposal and requests that competing proposals be submitted. Notice must be posted on eVA. If the agency decides not to accept the unsolicited PPEA proposal, the agency should return the proposal to the private entity.

The PPEA may be a useful tool to achieve certain objectives, but it is just another procurement method. Most PPEA proposals involve costly, high-profile projects so it is imperative that agencies closely follow the PPEA procurement procedures to ensure a fair competitive process. See Commonwealth of Virginia PPEA Guidelines and Procedures. https://dgs.virginia.gov/globalassets/business-units/deb/documents/ppea-adminstration-guidelines-2008.pdf.