



Procurement Policy

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SUMMARY

This is the Procurement Policy for the George Washington Regional Commission (GWRC). GWRC is a planning district commission organized pursuant to the Regional Cooperation Act, Virginia Code § 15.2-4200, et seq. As a public body, the GWRC funds many of its purchases with taxpayer dollars. It is important for the GWRC to be a careful and responsible steward of public monies. The GWRC is required by law to comply with the Virginia Public Procurement Act when it purchases goods and services from nongovernmental sources. In the event that a purchase is funded, in whole or in part, with federal dollars, GWRC is also required to comply with applicable federal laws and regulations.

This Procurement Manual (the “Manual”) sets forth the GWRC’s policies pertaining to the purchase of goods and services, from non-governmental sources, including the appropriate methods for determining the need for goods and services, acquiring appropriate approval to expend funds, finding goods and services, negotiating contract terms, and acquiring goods and services. Collectively, these steps, in total represent the procurement process, often referred to as “procurement”.

The objective of this public procurement policy is to secure the best and most appropriate goods and services at the lowest available price, consistent with quality requirements, delivery needs, and compliance and oversight requirements.

This manual applies to all goods and services purchased by GWRC for themselves or other organizations for which we serve as fiscal agent, staffing agent, support organization, or other similar relationships. A range of procurement methods are described in detail for purchases made via bids and proposals, with any range of price. These methods are consistent with and reflective of applicable state and federal law and guidance.

There are several important notes related to this manual:

- High standards of ethical conduct are required of GWRC employees. Violations of procurement laws, regulations, or policies are subject to penalties, up to and including termination of employment, civil legal claims, and criminal prosecution.
- In order to ensure high quality and to meet all FOIA requirements, each procurement must have a detailed back-up file documenting the steps taken, including Board or Commission approvals, from inception through closeout.
- Although the Manual is intended to be comprehensive, there may be instances where the Manual does not include a particular State or Federal requirement, or where a requirement has changed since the adoption of the Manual. Therefore, the Manual incorporates by reference the following authorities on an on-going basis and as amended:
 - The Virginia Public Procurement Act, Virginia Code § 2.2-4300, et seq.
 - The Virginia State and Local Government Conflict of Interests Act, Virginia Code § 2.2-3100, et seq.
 - The Virginia Agency Procurement Surplus Property Manual

- The United States Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200 (with respect to federally funded purchases only)
 - The Federal Transit Administration (“FTA”) Master Agreement for the most recent year in which the GWRC has received FTA funding (with respect to federally-funded purchases only)
- The Manual should be interpreted in a manner that is consistent with all applicable laws and regulations, including but not limited to the above-listed authorities. However, if any provision of one of the above incorporated documents expressly conflicts with the Manual, the incorporated document shall control.
 - The Manual has been duly adopted by resolution of the GWRC Board of Directors (Board) and supersedes any and all prior purchasing or procurement policies. The Board hereby delegates authority to the Executive Director to amend this document through appendices to the Manual and make clerical changes to the Manual, provided that such amendments and changes are consistent with applicable law and the policies and procedures set forth in the Manual.
 - Exclusions: Travel costs (including lodging and subsistence), as well as shipping and training costs, are not subject to the procedures outlined in this Manual. Travel guidance is generally provided by the General Services Administration (GSA).

I. INTRODUCTION

The George Washington Regional Commission (GWRC) makes a variety of purchases of goods and services on its own behalf, as well as for the Boards and Commissions for which it provides staff support, and other jurisdictions and organizations as requested. Purchases most commonly made are planning services, professional services, advertising, equipment, computer equipment, and computer software programs. Leases, related to both real and personal property, are also a part of GWRC procurement.

Funds used to make purchases are obtained primarily from local governments in the region, key federal and state partners, nonprofit foundations, and private funders.

The GWRC Procurement Policy provides procedures for purchasing practices, which are designed to mirror State procurement policy, if purchases are made without Federal financial participation and Federal rules if Federal funds are involved in the purchase. In every case, the stricter procurement rules will be followed, whether they are governed by the Virginia Public Procurement Act or Federal laws, regulations, or guidance documents.

In general, and depending on the dollar amounts involved, if a procurement is made on behalf of an organization other than GWRC, that Board or Commission has approval authority for funding, identification of goods or services to be purchased, and the contractor to be used. The GWRC must also affirm the contractor to be employed and the contract terms.

II. ETHICAL CONDUCT

Ethical business standards shall govern all procurement transactions. Infractions of GWRC procurement policy are to be reported to the Executive Director. Disciplinary action for those violating ethical business standards will be taken in accordance with applicable GWRC policy, up to and including the termination of employment, pursuit of civil claims, and criminal prosecution.

GWRC personnel shall not solicit any gift or accept any significant gift from any supplier or prospective supplier. A “significant gift” is any item, service, favor, monies, credits, or discounts not available to others and/or which could influence procurement decisions. Questions about the value of a gift or the appropriateness of an invitation should be referred to the Executive Director to ensure compliance with guidelines, who may call upon legal counsel as needed for clarification. In all cases, GWRC and its employees will be subject to the Virginia State and Local Government Conflict of Interests Act (Virginia Code §§ 2.2-3100 – 2.2-3132).

GWRC values its suppliers and assumes that contractors, in turn, value GWRC’s business. No token or display of this appreciation is necessary or encouraged. All contractors are asked to comply with GWRC standards by not offering incentives, gifts, or services to individual personnel.

GWRC’s reputation for impartiality and objectivity, as well as sound business practice, require that employees not make decisions for GWRC if their personal economic interests are directly affected by the outcome. A business entity in which an employee has an economic interest represents a conflict of interest if the employee has any involvement in the selection of that entity as a GWRC vendor or contractor. An economic interest includes the employee’s or a relative’s (as used here, “relative” means any person related to the employee by birth or marriage) ownership or partnership in the business, including serving as stockholder, director or officer in a non-publicly held company. Engaging a relative as an independent contractor is also a conflict of interest for an employee. Conflict of interest may be avoided if the employee brings a supervisor into the decision to engage the contractor. Such a conflict, and the arrangement to avoid it, must be documented and approved by the Executive Director and included in the file.

GWRC asks for and offers confidentiality from/to its suppliers. All quotations, proposals, and proprietary information exchanged during transactions shall be identified and treatment of that information clearly agreed upon by both GWRC and the supplier, within the limits of the Virginia Freedom of Information Act (FOIA).

III. OVERVIEW OF THE STEPS INVOLVED IN A PURCHASE

A. Summary of Steps Involved

This Procurement Policy is structured to reflect the steps involved in a purchase, namely:

- Determination of need for outside goods and services
- Determine funding source(s) for the purchase
- Determine the type of procurement required for a particular purchase
- Determine who has authority to approve the purchase
- Approval of the project by the Board/Commission

- Conduct the procurement
- Approval of the contractor by the Board/Commission
- Contract for the purchase
- Manage/administer the purchase
- Close-out

B. Defined Terms

Defined terms appearing below are as follows:

- **Announcement of the Decision to Award:** This announcement is made at the time the George Washington Regional Commission accepts the recommendation of award for a particular contractor.
- **Board or Commission:** The GWRC Board, or the Board of an organization for which GWRC provides fiscal and/or staffing support. This also includes the FAMPO Policy Committee.
- **Cost Analysis:** An analysis to verify that the cost of the proposed project is reasonable.
- **Director/Manager:** The GWRC Deputy Director, The Director of Transportation Planning (FAMPO Administrator), the Finance Director.
- **Executive Director:** GWRC Executive Director, who also serves as the contracting officer, the person responsible for executing the contract.
- **Goods:** All material, equipment, supplies, printing, and automated data processing hardware and software.
- **Inspection and Acceptance:** The action required at the conclusion of delivery to verify that all the required goods and/or services have been physically received; inspection and acceptance may also occur at various points during a project, as for example, upon receipt of interim products.
- **Nonprofessional services:** Any services not specifically identified as professional services in the definition of professional services.
- **Price Analysis:** An analysis of bids/proposals to determine, in part or in whole, the basis for contract award.
- **Professional services:** Work performed by an independent contractor within the scope of the practice of accounting, actuarial services, architecture, land surveying, landscape architecture, law, dentistry, medicine, optometry, pharmacy or professional engineering. "Professional services" shall also include the services of an economist procured by the State Corporation Commission.

- **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.
- **Written Record of Procurement History:** A summary of the procurement decision-making and events that the manager must prepare for records retention.

IV. DETERMINATION OF NEED FOR OUTSIDE GOODS AND SERVICES

A. Discussion

Purchases should be anticipated to the extent possible in the course of the annual budgeting process, since funding is obviously essential and is certain to be available if the purchase is anticipated by the budget. To this end, each of the Directors/Managers will be asked to identify the scope of anticipated purchases and estimate their costs in the course of each year's budget formulation. These will be a part of the overall staff leadership discussion of needs and funds availability as they work jointly to present a proposed budget to the GWRC Board and other appropriate boards and commissions, including the FAMPO Policy Committee.

Some required purchases, however, will arise without anticipation and will be pursued so long as necessary funding can be found within the budget as a result of new funding, favorable budget variances or approved budget adjustments.

The scope of work for anticipated purchases is critical, since it is the basis for policy decisions on whether the Board/Commission will act to make a purchase. Therefore, the scope of work should provide detail on the steps to be taken, the schedule and the goods, capital improvements, products, or intellectual products the organization can expect from the purchase.

It is equally important that a cost analysis be conducted to confirm the reasonableness of the proposed project price. The cost analysis is designed to answer the question: "Is the probable cost a reasonable price to pay for what the organization desires to purchase?" The cost analysis for professional services, nonprofessional planning services, and nonprofessional services will be conducted by the GWRC professional staff.

In the case of capital improvements, cost indexes, comparable purchases, land valuation, inflation and other factors need to be examined to arrive at a reasonable cost estimate. These capital improvement cost estimates are sometimes referred to as "engineers' estimates," while in other cases, such as computer or advertising purchases, going market rates more directly influence the estimates.

In the case of professional services and non-professional planning services, the analysis is somewhat more subjective. The Director/Manager needs to have an understanding of the scope of work and the desired products. From this understanding the Director/Manager's own knowledge and experience, as well as information obtained from other organizations, consultants and analysis of similar projects around the country can be used to establish an estimated cost.

B. Responsibility

Each Director/Manager is responsible for identifying needed purchases, identifying the funds to be used, a scope and a cost estimate, obtaining approval from the Executive Director, the Board/Commission and conducting the procurement process. These managers are also responsible for determining that the purchase is eligible for reimbursement, and the funding source of that reimbursement.

V. DETERMINATION OF A FUNDING SOURCE FOR THE PURCHASE

A. Discussion

As noted in the previous section, the GWRC staff member makes a preliminary determination of the proposed funding source, and this preliminary determination is either affirmed or amended as part of the Board or Commission's budget approval. The funding source continues to be characterized as a "preliminary determination" even after the Board or Commission adopts the budget, because changes may be necessary if, for example, discretionary funding envisioned for the purchase is not forthcoming or the State's matching ratio turns out to be different than assumed in making the preliminary determination. The actual procurement must await finalization of the funding source so there is assuredly a source of funding to support the purchase.

The preliminary determination made by the Director/Manager must be based on an assessment of the prospects for successful pursuit of reimbursable funding, which in turn must account for eligibility questions, judgments about overall reimbursable funding prospects, and judgments about priorities in the event that reimbursable funding turns out to be less than envisioned.

B. Responsibility

The preliminary determination by the Director/Manager will be made in consultation with the Executive Director, so his/her insight and awareness can be put to good use. Once the preliminary funding source has been identified, it must be sanctioned by the Board or Commission's adoption of the budget or a Resolution modifying the budget and/or Transportation Improvement Program (TIP). The Director/Manager will also be responsible for confirming that funds to support the purchase are actually available before the procurement is started. This is discussed in Section VI.

C. Procedural Steps

- Director/Manager makes a preliminary determination of funding source in consultation with the Executive Director and other GWRC staff, and designates a project manager, as needed, in writing. If no project manager is designated, responsibility rests with the Deputy Director of GWRC or the FAMPO Administrator.
- Budget is adopted by the Board or Commission, and preliminary funding sources are affirmed or amended as such. If the oversight board is an organization other than GWRC, the budget and purchasing information must be shared with the GWRC board of directors. This is not an approval, but rather a recognition that GWRC leadership must be aware of all financial responsibilities.

- Discretionary funding sources are sought as required, following approval of the Board or Commission and continuing thereafter with advocacy efforts.
- Once appropriations have occurred, preliminary funding sources are affirmed in a final sense. If discretionary funding envisioned for a particular purchase is not appropriated, a decision is made by the Director/Manager, in consultation with the Executive Director whether to forego the purchase or substitute another funding source.
- Grant applications are prepared by the contracting officer for Federal funds, assisted by other GWRC staff as required.
- The project manager keeps management apprised of progress on the grant application/award process, and confirms when the grant has been awarded.

VI. DETERMINATION OF THE TYPE OF PROCUREMENT REQUIRED FOR A PARTICULAR PURCHASE

A. Discussion

Under current state and federal law, there are six primary methods of procurement:

- 1) Small Purchase,
- 2) Competitive Sealed Bid,
- 3) Competitive Negotiation (RFP),
- 4) Sole Source Procurement,
- 5) Emergency Source Procurement, and
- 6) Reverse Auctioning.

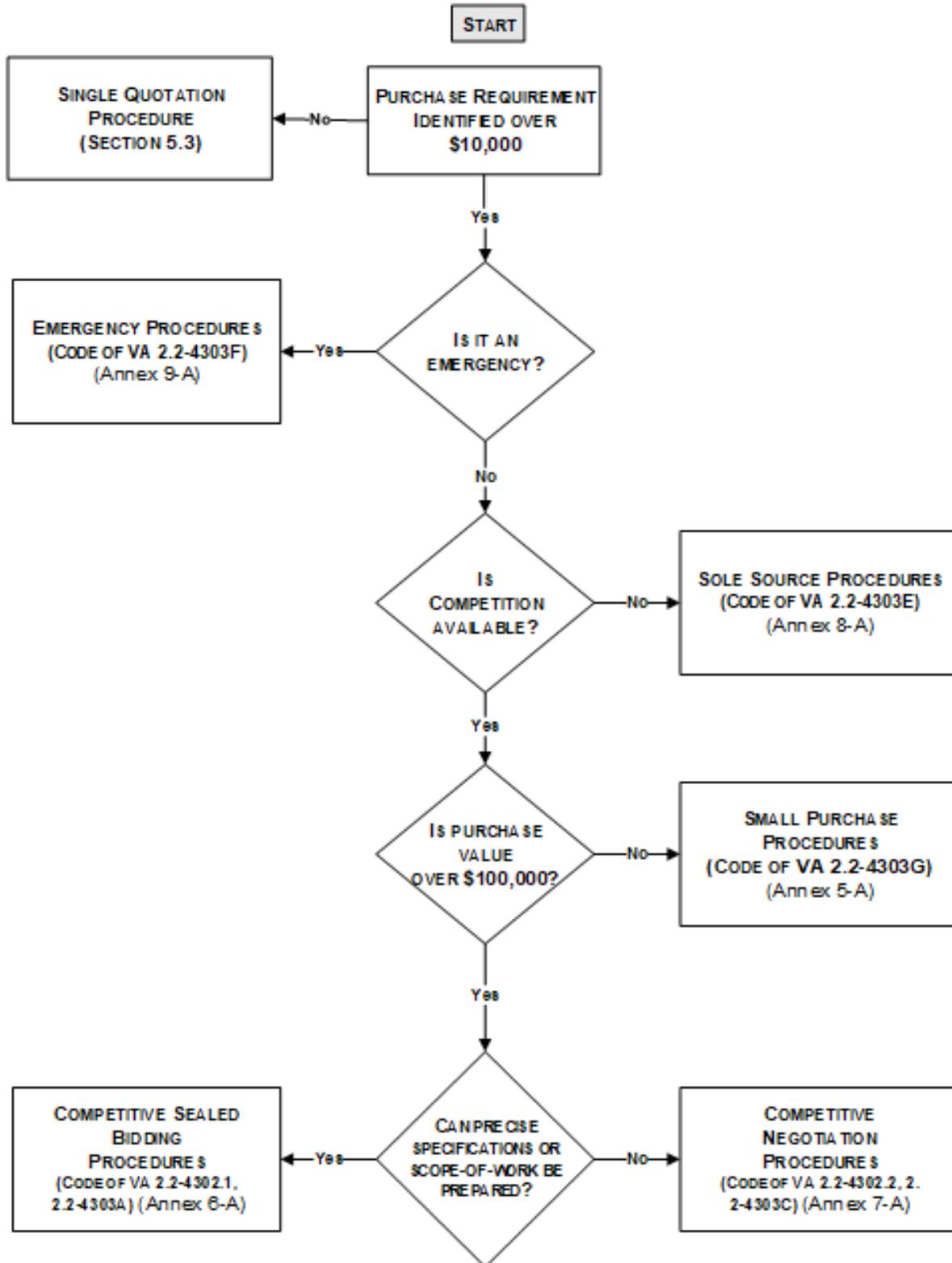
In addition, there are the special requirements related to “on-call” procurement and engineering services procurement. This section will address the first five methods of procurement, as well as these special cases. It is not anticipated that GWRC would participate in Reverse Auctioning. If direction on Reverse Auctioning is required, please see the information provided directly by the Virginia Department of General Services.

In general, three items determine which type of procurement should be used, the dollar amount of the procurement, the type of good or service to be purchased, and the availability of more than a single supplier. In addition, there are special procurement rules for use in the case of an emergency.

The Commonwealth of Virginia’s Agency Procurement and Surplus Property Manual (September 1998 Edition updated to include PIM #98-036, effective July 1, 2019) offers the following flowchart to help determine the best method of procurement to use for any given situation:

PROCUREMENT METHODS FLOWCHART

Commonwealth public procurement process - Basic decisions and procedures



- 1) **Small Purchase.** Under Virginia law, a small purchase is defined as up to and including \$100,000. These can be further divided into purchases of \$10,000 or below and those between \$10,001 and \$100,000.
 - a. Purchases of goods or nonprofessional services with an estimated cost of up to an including \$10,000 can be made “upon receipt of a minimum of one (1) written or telephone (oral) quotation. A record of the quotation(s) must be kept on file. If a telephone quote is solicited, a record must be kept of the name and address of the vendor(s) contacted, the item description or service offered, price quoted, delivery points, names of the persons giving and receiving the prices, and the date the information was obtained. These must be kept in the appropriate vendor file.
 - b. Purchases of goods and nonprofessional services of more than \$10,000 but less than \$100,001 must be procured by unsealed bid or unsealed request for proposal (RFP). If precise specifications on the scope of work can be prepared, an unsealed bid request should be executed. Example of precise specifications include things like office supplies, desks, tables and chairs, etc. A minimum of four sources shall be solicited in accordance with the selected Small Business Enhancement Award Priority. Award should be made to the lowest responsive and responsible bidder in accordance with the Small Business Enhancement Award Priority. Post Notice of Award for 10 days if a Notice of Intent to Award was not issued.
 - c. Purchases of goods and nonprofessional services of more than \$10,000 but less than \$100,001, where the specifications are not as transparent should be procured via an unsealed request for proposal (RFP) or competitive negotiation process. A minimum of four sources shall be solicited in accordance with the selected Small Business Enhancement Award Priority. (i.e. Micro or Small). The solicitation for unsealed proposals should include a cover sheet, a general description of what is being sought, the evaluation criteria and weights to be used in evaluation, current version of the General Terms and Conditions, any Special Terms and Conditions including unique capabilities or qualifications that will be required, award term, and a requirement that under the Small Business Enhancement Award Priority they shall provide their appropriate DSBSD-certified small business (including micro) number, if they are attempting to utilize small business priority. Offers may be opened and evaluated upon receipt. All responses must be received at the designated location by the date and time stated in the solicitation.
 - i. Competitive negotiation will also be used for the procurement of non-professional planning services and other non-professional services, when the George Washington Regional Commission finds that competitive sealed bidding is not practicable or fiscally prudent as a method for obtaining the desired services. The basis for this finding will be that it is impracticable to select planning, analysis, public involvement, other intellectual services and sometimes goods on a low-bid method, because these services are qualitative in nature, and require examination of experience, project knowledge and other factors besides cost, before selecting a contractor. These findings will always be made in writing, in advance of the solicitation, signed by the Executive Director or the FAMPO Chair and retained by the Project Manager in the Written Record of Procurement History.

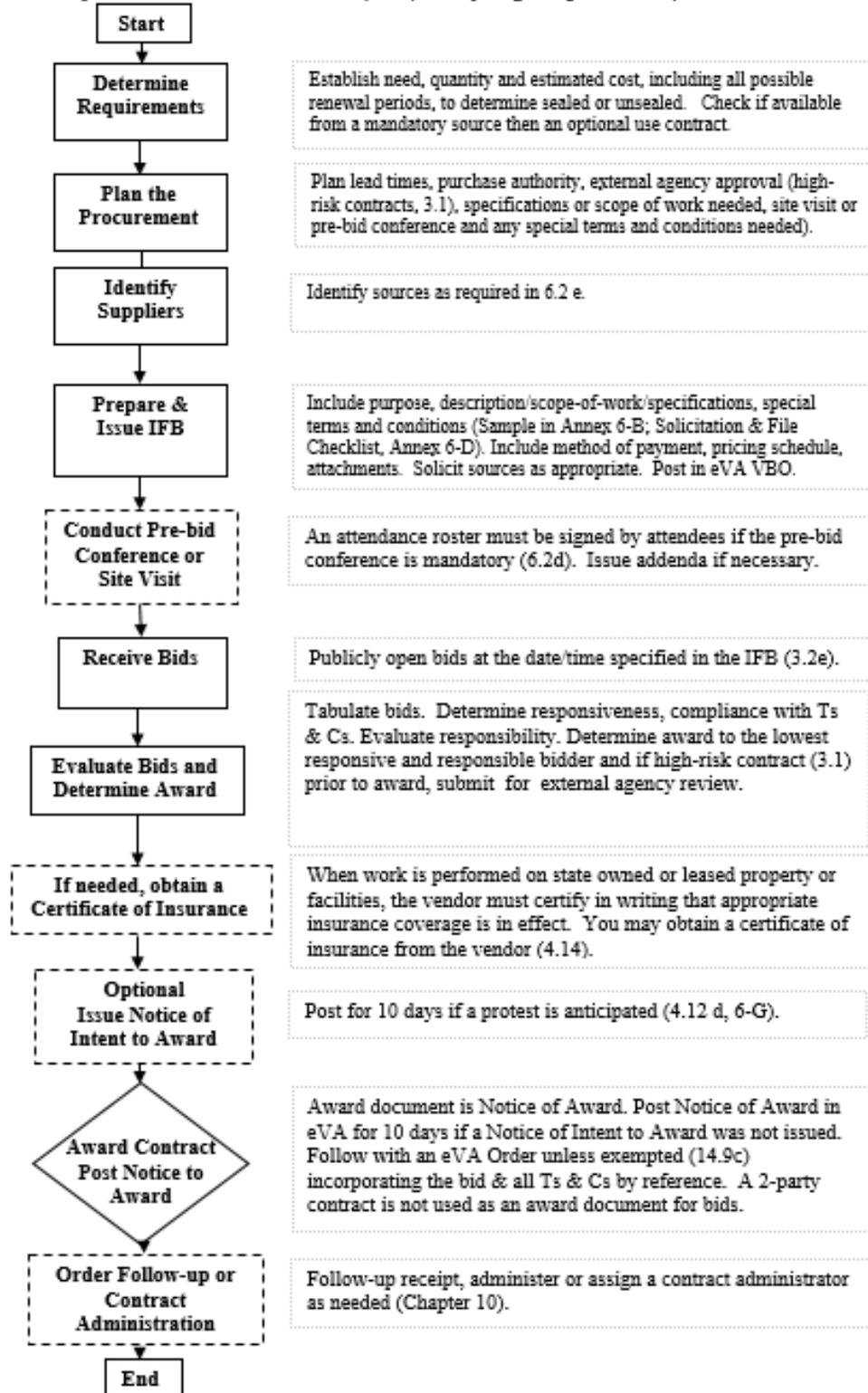
- ii. Competitive negotiation decisions are based on cost and other criteria. The selection criteria for competitive negotiation must be clearly stated in the Request for Proposals (RFP), so would-be contractors know the basis for an “award” decision.
 - iii. In lieu of an evaluation committee, the buyer or end user may solely evaluate and rank offers. Upon completion of the evaluation, negotiations shall be conducted with the offerors selected. Best practices suggest that evaluation should include the selection of two or more offerors deemed best qualified among those submitting proposals on the basis of evaluation factors stated in the RFP. Price shall be considered but need not be the sole determining factor. Negotiations will be conducted simultaneously with each offeror selected, and an award will be made to the offeror making the best proposal in the opinion of the evaluation committee. If provided in the RFP, multiple awards may be made. If determined in writing that one offeror is clearly the best qualified, a contract may be negotiated and awarded to that offeror without conducting simultaneous negotiations.
 - iv. Award should be made to the highest-ranking offeror in accordance with the Small Business Enhancement Award Priority. Post Notice of Award for 10 days if a Notice of Intent to Award was not issued.
- d. Competitive negotiation is the approach used for procurement of all professional services, as defined by the VPPA (i.e. accounting, actuarial services, architecture, land surveying, landscape architecture, law, dentistry, medicine, optometry, pharmacy or professional engineering). In the case of professional services, cost cannot be a factor in the award.
 - e. More detailed guidance on making purchases of goods and nonprofessional services of \$100,000 or less, including a series of helpful flow charts, can be found in Chapter 5: Small Purchases, of the Virginia Agency Procurement and Surplus Property Manual.
- 2) **Competitive Sealed Bid:** Competitive sealed bidding is a method for acquiring goods, printing, non-capital outlay construction and nonprofessional services for public use when the estimated cost is over \$100,000. The goods or service to be procured when using this method must be capable of being described so that bids submitted by potential contractors can be evaluated against the description in the Invitation for Bids (IFB) and an award made to the lowest responsive and responsible bidder.
- a. Competitive sealed bidding includes the issuance of a written IFB containing the specifications or scope of work/purchase description and the contractual terms and conditions applicable to the procurement. The terms or conditions of the solicitation must include how the agency or institution will publicly post the notice of the award or make the announcement of the decision to award the contract. The requirements set forth in the IFB may include special qualifications required of potential contractors, life-cycle costing, value analysis, and any other criteria such as testing, quality, workmanship, delivery and suitability for a particular purpose which may help in determining acceptability.
 - b. IFBs must describe the requirements accurately and completely. Unnecessarily restrictive specifications or terms and conditions that unduly limit competition must be avoided.

- c. In addition to the public notice, bids are to be solicited directly from potential bidders. Any such direct solicitations shall include businesses selected from a list made available by the DSBSD.
- d. In the competitive sealed bid process, bids are publicly opened and read aloud. The bids are evaluated based upon the requirements set forth in the IFB (if multiple awards are so provided in the solicitation, awards may be made to the lowest responsive and responsible bidders).
- e. If the bidder on the contract is a DSBSD-certified small business, the bidder shall indicate. This shall include DSBSD-certified women-owned and minority-owned businesses and businesses with DSBSD service-disabled veteran owned status that have also received the DSBSD small-business certification. If the bidder is not a DSBSD-certified small business, the bidder, to be considered responsive, is required to identify the portions of the contract the bidder plans to subcontract to DSBSD-certified small business.
- f. For purposes of any particular procurement, a bidder or subcontractor shall be considered a Small Business if and only if the bidder or subcontractor holds a certification as such by the DSBSD on the due date for receipt of bids.
- g. A flowchart from the Virginia Agency Procurement and Surplus Property Manual is shown below to clarify the steps in the Competitive Sealed Bid process. For more detail please see the related chapter in the same document.

Annex 6-A

Competitive Sealed Bidding Process

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



- 3) **Competitive Negotiation:** The Virginia Public Procurement Act (VPPA) requires the use of competitive negotiation for the procurement of all professional services. Competitive negotiation may be the procurement method used for goods and nonprofessional services when it is not practicable or fiscally advantageous to use competitive sealed bidding (Code of Virginia, §§ 2.2-4302.2 & 2.2-4303C. Competitive negotiation has the advantage of flexibility for describing in general terms what is being sought and the factors to be used in evaluating responses. It offers the opportunity, through negotiation, to change the content of an offer and pricing after opening. Negotiation is the dialogue that occurs to achieve mutually satisfactory objectives and benefits and to reconcile differences through mediation. This discussion provides the means for both the buyer and seller to reach agreement on a contract's content, terms, and conditions. In the course of negotiation, both parties should be able to reach a mutually acceptable agreement.
- a. This method of procurement requires the issuance of a Request for Proposal (RFP) that describes in general terms the requirement, the factors that will be used to evaluate the proposal, the General Terms and Conditions, plus any special conditions including unique capabilities or qualifications that will be required. In a sealed program, all responses must be held unopened until the date and time specified for their receipt.
 - b. If the method for receiving "Best and Final Offers" (BAFO) is to be used in the negotiation and evaluation process, then this must be stated in the RFP for the offeror's notification and consideration.
 - c. Mandatory requirements should be kept to a minimum and refer only to those areas that are required by law or regulation or are such that they cannot be waived and are not subject to negotiation. The use of "shall" or "must" indicates a mandatory requirement. Specify any optional information desired. The criteria to be used in evaluation shall be stated in the RFP and indicate if a numerical scoring system will be used in the evaluation of proposals. The weights assigned to the evaluation criteria shall also be posted in the location used for public posting of procurement notices prior to the due date and time if the weights were not included in the RFP. A breakout of subcomponent weights need not be listed. Price shall be one of the factors considered, but need not be the determining one.
 - d. In accordance with the Commonwealth's policy of facilitating and maximizing the participation of small businesses, which shall include women-owned and minorities-owned businesses and businesses with DSBSD service disabled veterans-owned status when their business has also received DSBSD small business certification, an evaluation criterion for all contracts in excess of \$100,000 shall be a Small Business Subcontracting Plan.
 - e. The proposals are evaluated by the buyer, contracting officer, or an evaluation team. As an option, evaluators may request presentations or discussions with offerors, as necessary, to clarify material in the offerors proposals, to help determine those fully qualified and best suited. Proposals are evaluated on the basis of the criteria set forth in the RFP, using the scoring weights previously determined. All RFP responses are to be evaluated. Proposals not meeting requirements should be scored lower.
 - f. Negotiations are conducted with each of the offerors so selected. Negotiation allows modification of proposals, including price. Offers and counter-offers may be made as many times with each offeror as is necessary to secure a reasonable contract. After negotiations

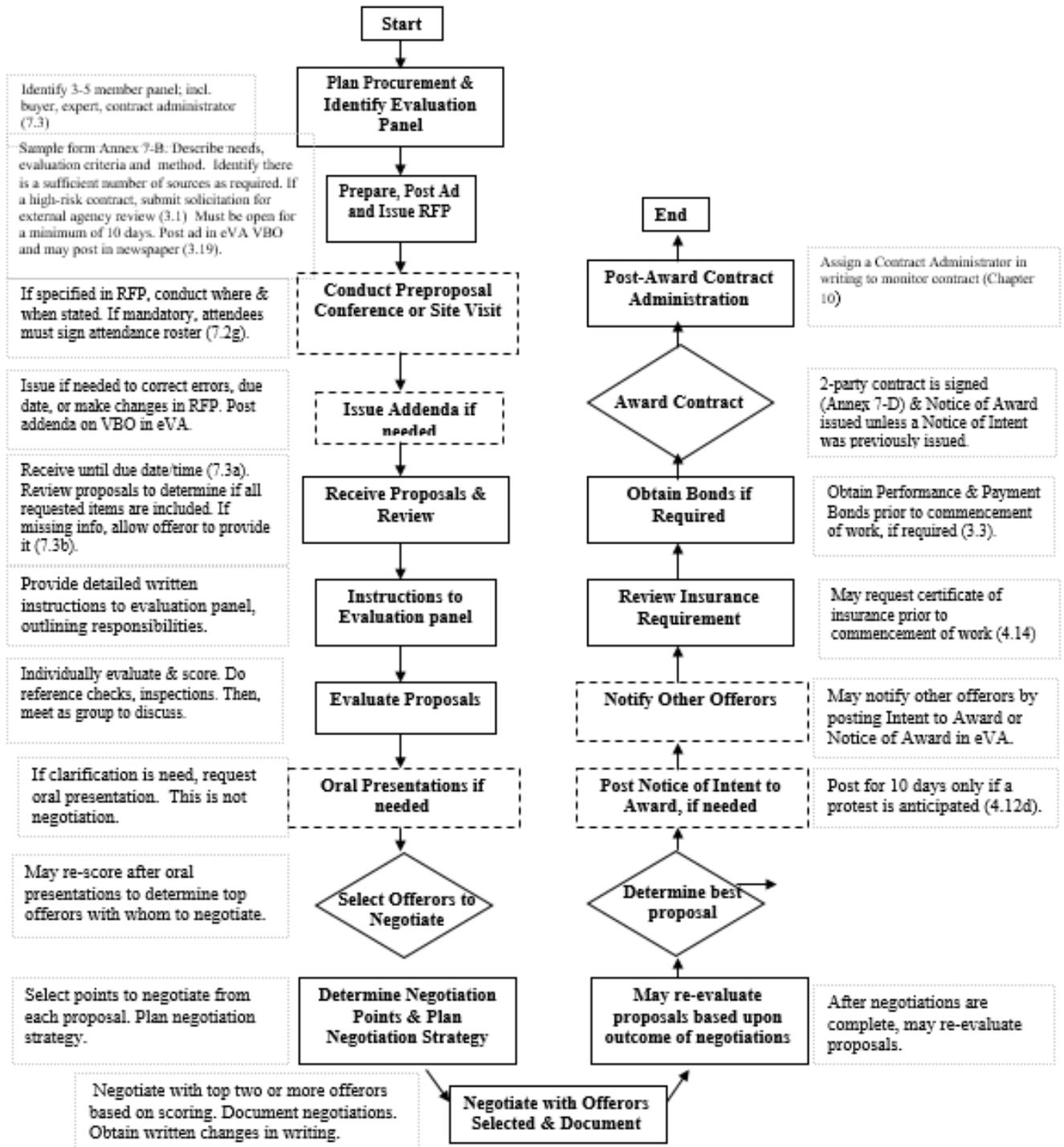
have been conducted with each of the selected offerors, the proposals shall be re-scored unless there have been no changes in any of the items negotiated or only one proposal is under consideration.

- g. For competitively negotiated procurements, once evaluation and negotiations have been completed with selected offeror(s), the agency must prepare a written narrative summarizing the rationale for the ratings that are developed for each proposal negotiated.
- h. A flowchart from the Virginia Agency Procurement and Surplus Property Manual is shown below to clarify the steps in the Competitive Negotiation process. For more detail please the related chapter in the same document.

PJM 98.016

Annex 7-A

Competitive Sealed Proposal Process
For Goods and Non-professional Services over \$100,000 (Code of Virginia §2.2-4302.2)

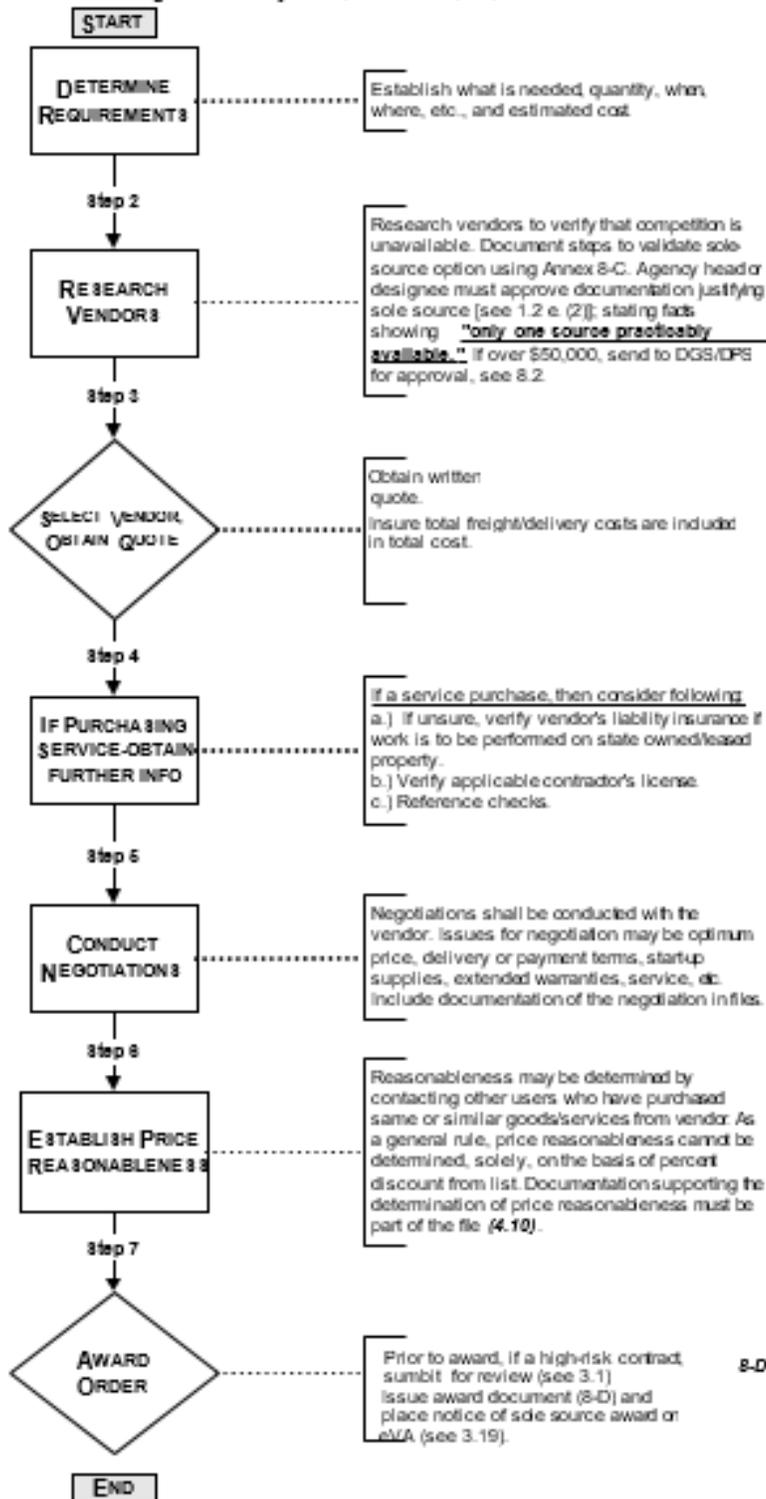


- 4) **Sole Source Procurement:** A sole source procurement is authorized when there is only one source practicably available for the goods or services required. Competition is not available in a sole source situation; thus distinguishing it from a proprietary purchase where the product required is restricted to the manufacturer(s) stipulated, but is sold through distributors and competition between them can be obtained. Sole source justification based solely on a single vendor's capability to deliver in the least amount of time is not appropriate since availability alone is not a valid basis for determining a sole source procurement. Note: For sole source requirements exceeding \$10,000, a written quotation must be obtained from the vendor.
- a. Upon an advance, written determination by the Executive Director that there is only one source practicably available for that which is to be procured, a contract may be negotiated and awarded to that source without competitive sealed bidding or competitive negotiation. The writing shall document the basis for this determination.
 - b. Sole source contracts in excess of \$100,000 require approval by the Board/Commission.
 - c. The Executive Director shall issue a written notice stating that only one source is determined to be practicably available, and identifying that which is being procured, the contractor selected, and the date on which the contract will be awarded. This notice shall be included in the Written Record of Procurement History and posted in the GWRC offices on the day the public body awards or announces its decision to award the contract, whichever occurs first. Public notice shall also be published on the GWRC and FAMPO websites.
 - d. A flowchart from the Virginia Agency Procurement and Surplus Property Manual is shown below to clarify the steps in the Sole Source Procurement process. For more detail please the related chapter in the same document.

Annex 8-A

SOLE SOURCE PROCESS (CODE OF VA § 2.2-4303E)

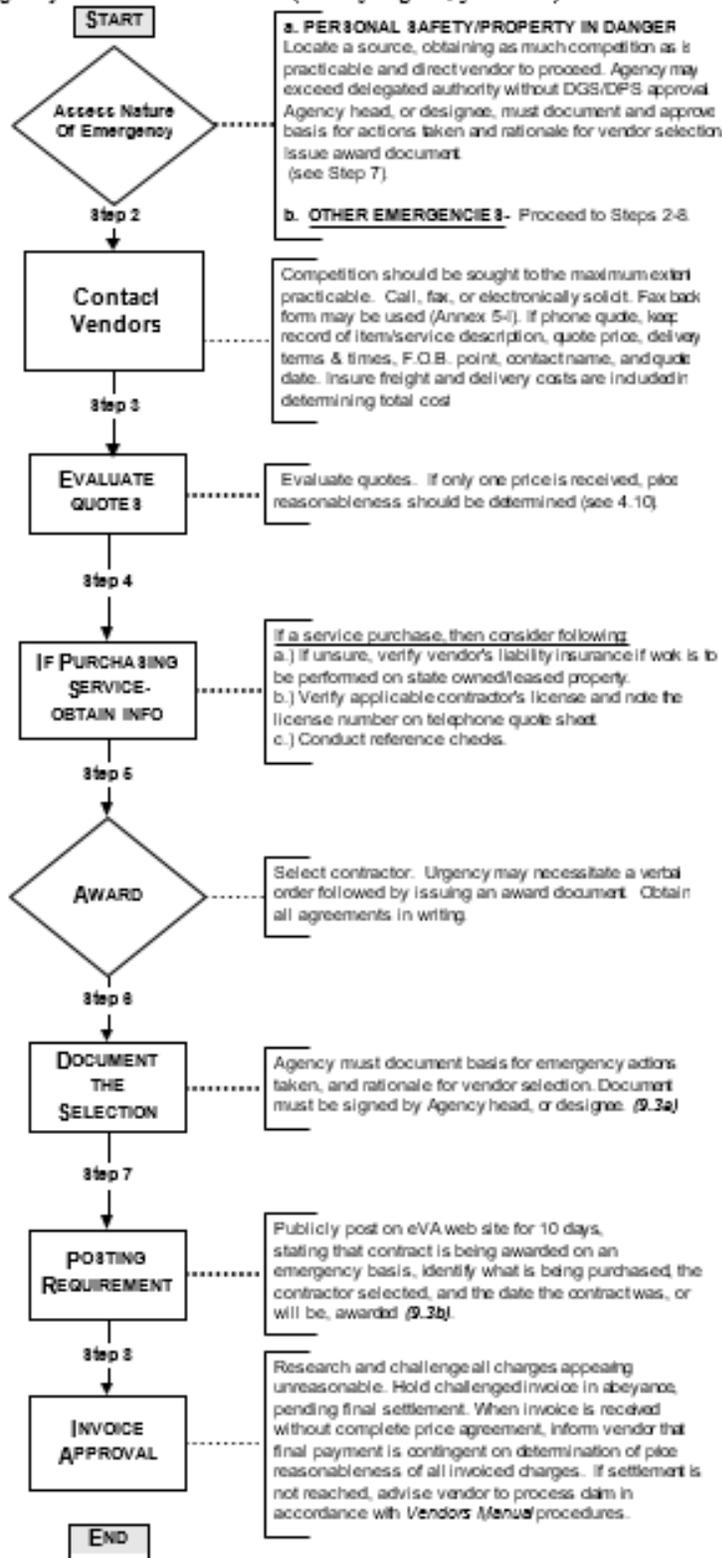
For Goods and Non-professional Services when competition is not practicably available and the cost, including all ancillary fees, exceeds \$10,000.



8-D

- 5) **Emergency Procurement:** An emergency is an occurrence of a serious and urgent nature that demands immediate action. Emergency procedures may be used to purchase only that which is necessary to cover the requirements of the emergency. Subsequent requirements shall be obtained using normal purchasing procedures. The potential loss of funds at the end of a fiscal year is not considered an emergency.
- a. In case of emergency, a contract may be awarded without competitive sealed bidding or competitive negotiation; however, such procurement shall be made with such competition as is practicable under the circumstances.
 - b. A written determination of the basis for the emergency and for the selection of the particular contractor shall be developed by the Executive Director and included in the Written Record of Procurement History. The Executive Director shall issue a written notice stating that the contract is being awarded on an emergency basis, and identifying what is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be included in the Written Record of Procurement History and posted in the GWRC offices on the day the public body awards or announces its decision to award the contract, whichever occurs first. Public notice shall also be published on the GWRC and FAMPO websites.
 - c. A flowchart from the Virginia Agency Procurement and Surplus Property Manual is shown below to clarify the steps in the Emergency Procurement process. For more detail please the related chapter in the same document.

Annex 9-A
Emergency Procurement Process (Code of Virginia, § 22-4310) for Goods and Services



- 6) **On-call Contracting:** An accepted approach to professional or non-professional planning services procurements is to select a professional services firm on an on-call basis for a particular type of service, using a required competitive procurement method. This method will be employed in situations where the same types of services are required for various projects over a period of time.
- a. On-call contracts for professional services may not exceed a term of five years (one initial year, plus four one-year renewals). In addition, VPPA requires that the maximum total fees in on-call contracts for professional services do not exceed \$1 million, and the total fees for a single project within on-call contracts cannot exceed \$200,000.
 - b. On-call contracts for non-professional planning services and other non-professional services will be set for three years, with the option to renew for up to three additional years in one-year increments. The total fees paid under on-call contracts for planning services will not exceed \$2 million.
 - c. Once an on-call contract is in place, scopes and budgets for individually defined work efforts within the realm of this type of service can be sought from the retained firm without further competition, and the retained firm can be tasked to perform these work efforts once an agreed-upon scope and budget has been developed and approved by the Executive Director.
 - d. Board/Commission approval of task orders and budgets will be required when these orders exceed \$100,000.
- 7) **Architectural/Engineering Services:** Cost cannot be a criterion for selecting architectural/engineering services if Federal funds are involved. When federally funded architectural/engineering services are being procured, only non-cost criteria may be used to select the preferred contractor. Costs are then negotiated with the preferred contractor. If an agreement on cost cannot be reached with the preferred contractor, then cost negotiations ensue with the contractor judged to be second best during the evaluation of proposals, continuing in this fashion until an agreement on cost is attained.

B. Responsibility

The Director/Manager, in consultation with the Executive Director, is responsible for determining the type of procurement required for a particular purchase, as well as for confirming that funds are actually available for the purchase, before obtaining authorization from the Board or Commission to begin the procurement.

C. Procedural Steps

- In consultation with the Executive Director, the Director/Manager determines the type of procurement required for a purchase and confirms that funds are actually available for the purchase.
- Director/Manager determines whether the procurement requires Board or Commission approval (see Section VII) and proceeds accordingly.

VII. DETERMINATION OF WHO HAS THE AUTHORITY TO APPROVE THE PURCHASE

A. Discussion

By adopting this Procurement Policy, the GWRC Board and other Boards and Commissions staffed by GWRC stipulate that the Executive Director is delegated authority to contract for purchases of \$100,000 or less; purchases costing more than \$100,000 require prior Board or Commission approval, which may include approval through the budget process. Purchases of less than \$10,000 may be made by staff through negotiations with a preferred contractor, with the approval of the Executive Director.

Proposals may be invited via written hard copy or email. An RFP is not required when a firm has been competitively selected on an on-call basis as discussed above. In addition, in the case of RFPs for non-professional planning services, the funding Board or Commission must include in its authorizing Resolution a statement that employing competitive sealed bidding to purchase non-professional planning services is not practicable or fiscally prudent, and this statement in the Resolution will serve as the basis for utilizing the RFP or competitive negotiation method.

Mindful of the foregoing thresholds, purchase authority can be summarized as follows:

- The issuance of RFPs and IFBs require prior approval by the Board or Commission
- The award of any contract for more than \$100,000 requires prior approval from the Board or Commission, including GWRC
- The Executive Director may award any contract for \$100,000 or less without prior approval

B. Responsibility

The Director/Manager is responsible for determining whom the Responsible Purchase Approval Authority is and whether an RFP or IFB is necessary. The Responsible Purchase Approval Authority is as follows:

- The GWRC Executive Director has the authority to make purchases for goods and services costing \$100,000 or less
- The Board or Commission and/or the GWRC Board must approve the purchases of goods and services with an estimated cost of more than \$100,000

If the contemplated purchase requires prior Board or Commission approval, the Director/Manager is also responsible for preparation of the required Board or Commission action in the form of a Resolution. It may also be addressed in the budget process, as long as the purchase is specifically highlighted in the budget document.

C. Procedural Steps

The Director/Manager determines who has authority to approve the purchase and prepares a Board or Commission action if necessary. Note that two separate Board or Commission actions are required if an RFP or IFB is necessary, the first for the issuance of the RFP or IFB and the second for the recommended award at the conclusion of the procurement process. If a Board or Commission action is not necessary, then the Director/Manager is responsible for preparation of the required purchase transaction.

VIII. CONDUCT OF THE PROCUREMENT

A. Discussion

As noted above, the Director/Manager, in consultation with the Executive Director, is responsible for determining the type of procurement required for transactions. Once this is established and the type of funding being used for the purchase has been confirmed, either the Federal or the State-only requirements will apply to the procurement. Federal procurement requirements are applicable only if Federal funds are being used for the purchase. The intent of this policy is that VPPA, VDOT, and VAGSA procurement policies governing RFPs will be followed, regardless of whether Federal funds are involved.

Amending a Solicitation: If it is necessary to amend a solicitation, prepare, post, and send an addendum to all potential bidders or offerors who received a copy of the solicitation or who attended a prebid or preproposal conference. Signed acknowledgment of addenda must be returned to the project manager prior to the date and time of the opening or with the bid or proposal. Failure to return the addendum may be grounds for declaring the bid nonresponsive. When an addendum is issued that extends the time for the vendor to prepare a solicitation response, the opening date should be extended not less than ten (10) days after the issue date of the addendum. All written materials from the solicitation amendment will be placed in the Written Record of Procurement History by the project manager.

Canceling a Solicitation: An Invitation for Bids, a Request for Proposal, any other solicitation, or any and all bids or proposals, may be canceled or rejected. When canceling a written solicitation, all vendors who have been issued a solicitation must be notified, and the notice must be publicly posted. No cancellation or rejection of an Invitation for Bids, a Request for Proposal, any other solicitation, bid or proposal shall be made solely to avoid awarding a contract to a particular responsive and responsible bidder or offeror. Personnel responsible for opening bids or proposals will be notified of the cancellation to prevent responses from being inadvertently opened. The project manager will return sealed bids or proposals on canceled programs unopened if hard copy bids or proposals were received. If a program is canceled after receipt and opening of bids or proposals, original documents will remain a part of the procurement transaction file. Bidders or offerors will be notified in writing by the project manager that the program has been canceled and that duplicate proposals, if provided, will be destroyed unless the offeror requests their return. All written materials from solicitation cancellation/rejection will be placed in the Written Record of Procurement History by the project manager.

In all cases where the cost of the goods or services exceeds \$10,000, and competitive negotiation is employed as a procurement method, an evaluation committee will be established, consisting of at least three members, at least one of which will be a non-GWRC member.

At a minimum the procurement for a capital improvement costing more than \$100,000 will require that an IFB be advertised in a least one local, general circulation newspaper, at least twice, and providing at least thirty days of response time. At the discretion of GWRC staff, pre-bid conferences may be held. In any event, all information pertaining to the products desired by GWRC is public information, and GWRC staff will respond to inquiries from prospective bidders openly and equally.

At a minimum the procurement for professional services costing more than \$100,000 will entail that an RFP be advertised in a least one general circulation newspaper in the area where the work is to be done, at least twice, and providing at least thirty days of response time. Written proposals will be ranked numerically by the evaluation committee, and, at least the top three scored firms will be invited for interviews, given enough offerors. Scores may be changed during the evaluation committee meeting discussions, but not after the final scores are tallied. After the interviews the evaluation committee will rank the firms using written narratives to justify this final ranking.

Unless the evaluation committee agrees in writing that a contractor proposing for a professional services project is the clear winner, based on stated selection criteria, given enough offerors, discussions will be held with at least three proposing firms in order to review proposals and select a firm for contract negotiation. If the negotiations are successful, a contract is developed in accordance with Section IX. If negotiations are unsuccessful, then negotiations will be terminated with the first ranked firm and held with the second-place firm and so on, until a contract is executed.

In the case of non-professional planning services and other non-professional services, unless the evaluation committee agrees in writing that a contractor proposing for a project is the clear winner, given enough offerors, simultaneous negotiations shall be entered into with at least the top three proposers and continued until the evaluation committee arrives at a recommendation of award. In all cases the evaluation committee will prepare a written narrative to show the basis of its award recommendation. In the unlikely event that no successful negotiations are possible, the project shall be re-advertised or cancelled. In the case of unsuccessful negotiations, the Director/Manager makes the decision of how to proceed in consultation with the Executive Director and notifies the Board or Commission. For all projects costing more than \$100,000, pre-proposal conferences will be held, unless waived in writing by the Executive Director or the FAMPO Chair. In any event, all information pertaining to the products desired by GWRC is public information, and GWRC staff will respond to inquiries from prospective proposers openly and equally.

Receipt of Bids or Proposals: Bids or proposals will be received at the GWRC offices. A clock, publicly displayed, will be used to establish receipt times. When bids or proposals are received, the bids or proposals shall be date stamped and the time noted or stamped on the envelope showing the time of receipt. The bid or proposal receipt time deadline must strictly comply with the date and time stated in the solicitation. The Executive Director shall be responsible for deciding when the receipt deadline has arrived, after which no further bids/proposals will be accepted. It is the responsibility of the bidder or offeror to have the bid or proposal at the specified location by the appointed time.

Sealed Bids: Sealed bids must be held unopened in a secure area until the date and time established for opening in the solicitation. They shall then be publicly opened, and only the following information is read aloud:

- bidders' names;

- unit prices or lot prices, as may be applicable;
- discount terms offered, if discount terms are to be considered in making the award (see 4.7); and
- brand names and model numbers, if requested by the attendees.

Questions on other bid contents should not be answered until after evaluation is complete and an award decision has been made.

Proposals: Public openings are not required by law for proposals. Questions on the proposals of other offerors should not be answered until after evaluation and negotiations are complete and an award decision has been made, except that the names of offerors will be provided to person inquiring.

Late Bids and Proposals: Any bids or proposals received after the date and time specified for receipt in the solicitation, shall not be considered and shall be returned unopened to the offeror(s). The deadline for bids or proposals will always be scheduled to for a date and time during which GWRC is open for business. If an emergency prevents GWRC from being open for business that day, then they will be received on the next day of GWRC business operations.

Single Response to a Solicitation: On occasion only one bid or proposal may be received for a solicitation, even though multiple sources are solicited. When considered to have a significant budgetary impact and competitive sources are known to exist, the project manager shall investigate to determine why other bidders or offerors did not respond and make a recommendation to the Executive Director on whether to award or to reject the bid or proposal and resolicit. If it is determined to make the award based on a single response, the project manager shall make a written determination that the price is fair and reasonable. This written determination shall be placed in the Written Record of Procurement History.

In addition to advertisements, GWRC will maintain a list of bidders and proposers for different types of projects. Any firm wishing to be on the GWRC list of bidders and proposers will be automatically added. All firms on the lists of bidders and proposers will be automatically included as recipients of IFBs/RFPs.

The Director/Manager presents the written narrative recommendations of the evaluation committee to the Board or Commission and the GWRC for acceptance.

The Director/Manager then prepares a contract with the bidder/proposer, and the Executive Director signs the contract, as the Contracting Officer, on behalf of the GWRC.

The Director/Manager then issues a Notice to Proceed to the bidder/proposer.

B. Responsibility

The Director/Manager initiates the procurement process by making (in consultation with the Executive Director) determinations of the type of procurement required, confirming that the purchase has been approved by the responsible Board or Commission, and initiating the contract file. Thereafter, as to the

level of funds involved, the Director/Manager or his designee readies and conducts the procurement, Board or Commission approvals, contract preparation and issuance of a Notice to Proceed.

IX. MANAGEMENT AND ADMINISTRATION OF THE CONTRACT

A. Discussion

The Director/Manager or his designee must produce and maintain the Written Record of Procurement History. The record must address (at a minimum):

- The rationale for the method of procurement
- The selection of the contract type, including documentation of practicability
- Written narrative of the basis for contractor selection/rejection (“the basis for the award”)
- The basis for the contract price (referring to the cost or price analysis performed)

The Written Record of Procurement History shall contain the items above, as well as the following items as appropriate to the type of purchase and source of funds:

- The project scope, cost estimate, funding source and Board or Commission authorization actions
- The actual IFB/RFP
- Advertisements
- List of sources solicited
- List of bids and proposals sent by firm and date, as well as the original bids and proposals received
- Evaluation committee scoring and recommendations, including a written narrative justifying the ranking
- Board or Commission selection actions
- Notice of intent to award
- The project contract and Notice to Proceed
- Notice to unsuccessful contractors and record of any debriefing that one or more of the rejected parties may have requested
- Record of any protest

- Bid, performance, or other bond documents, and notices to sureties
- Required insurance documents; if any

The “basis for the award” documentation must include a tabulation/evaluation of the bids in an IFB situation or simpler “goods” competitive solicitation and a tabulation/evaluation of proposals in an RFP or simpler “services” competitive solicitation. Where bids are the sole basis for the award, the documentation must show which of the bids was deemed “responsive” and “responsible” versus not. Where the basis of the award was a set of criteria, the documentation should include:

- The technical evaluation itself in narrative form

For purchases amounting to more than \$10,000, the project manager must also produce and maintain a set of “post-award” contract administration items, once the contract has been let, to ensure compliance with the terms of the contract. These items shall include the following as appropriate, with detail varying depending upon the cost of the purchase:

- The executed contract and notice of award
- Performance and payment bonds, bond-related documentation, and correspondence with any sureties
- Contract-required insurance documentation
- Post-award (pre-performance) correspondence from or to the contractor or other governmental agencies
- Notice to proceed
- Approvals or disapprovals of contract submittals required by the contract and requests for waivers or deviations from contractual requirements
- Modifications/changes to the contracts including the rationale for the change, change orders issued, and documentation reflecting any time and or increases or decreases from the contract price as a result of those modifications; any modification to contract with a value of greater than \$100,000, must be brought to the Board/Commission for approval
- Documentation regarding settlement of claims and disputes including, as appropriate, results of audits and legal reviews of the claims and approval by the proper approval authority of the settlement amount
- Documentation regarding stop work and suspension of work orders and termination actions (be they for convenience as well as for default)
- Documentation relating to contract close-out as described in Section X

B. Responsibility

All the foregoing information relating to project development, procurement and project administration must be compiled in the Written Record of Procurement History under the direction of the project manager. The Written Record of Procurement History will reside in the project manager's files until project close-out (see below). Once project close-out occurs, the Written Record of Procurement History shall be archived for three years under the direction of the GWRC Finance Director.

X. CLOSE-OUT

A. Discussion

This occurs when the contract is physically and administratively complete. Physical completion means that all deliverable items and services have been delivered and accepted by the project manager, with the approval of the Executive Director. Administrative completion means all payments have been made and all administrative actions have been accomplished.

To verify physical completion, an inspection/acceptance memo must be completed by the project manager and placed in the Written Record of Procurement History. To verify administrative completion, the Written Record of Procurement History must also contain documentation attesting to final payment by the GWRC Financial Specialist. Other close-out documentation which should be included in the Written Record of Procurement History may include the following:

- Resolution of all contract changes, claims, and final quantities delivered
- Settlement of all sub-contracts (if any) by the prime contractor
- Performance of all inspections (and acceptance tests, if any) by the project manager, with necessary documentation
- Conduct of a cost audit for cost-reimbursement contracts and resolution of questioned costs, if any
- A contractor performance report completed by the contract officer
- The submittal of all documentation required by the contract

B. Responsibility/Procedural Steps

The Director/Manager bears complete responsibility for ensuring that all necessary documentation for "close-out" purposes is prepared and properly assembled.

XI. SMALL BUSINESSES, WOMEN-OWNED BUSINESSES AND MINORITY-OWNED BUSINESSES (SWAM)

A. Policy

The leadership of GWRC places significant value on meeting and, when possible, exceeding core requirements as it relates to Title VI, use of Small Business, Women-Owned Businesses and Minority-Owned Businesses (SWAM), Disadvantaged Business Enterprise, and any other state or federal related special provisions. To that end, managers are responsible for assuring that every effort is made to comply with the state and federal provisions related to their particular programs and funding sources. In addition, the Executive Director is responsible for ensuring compliance across all areas of GWRC effort. All GWRC managers are expected to keep up and comply with all special provisions as it relates to their sources of funds.

XII. PROTESTS

From time-to-time unsuccessful contractors may protest the process or outcome of bid awards or proposal selection. Where a protest occurs, the following steps will be followed:

A. Notification of Protests

Protests of contractor selection must be made in writing within ten days of the announcement of the decision to award a contract by the GWRC, as defined in Section III B, above. Protests must be addressed to the GWRC Executive Director, who will provide a written record of receipt of the protest to the protester and the project file. The protest must contain a statement of the basis for the protest and the relief sought.

B. Executive Director Responsibilities

The Executive Director has ten days to rule on the protest and must send the written results of his ruling to the protester, with a copy to the Written Record of Procurement History. The Executive Director's ruling is final.

If the protest is denied, the reasons for the denial must be stated. If the protest is upheld, then the Executive Director is responsible for alerting the other prospective contractors, and the matter must be brought before the GWRC Board at its next regularly scheduled meeting, along with a recommendation for action (e.g. rebid or readvertise the project, change the award, etc.). The sponsoring Board or Commission will be notified and asked to endorse the recommendation.

In all cases the requirements of the Virginia Public Procurement Act (2.2-4360 through 2.2-4365, inclusive) will be followed.