

### Chapter highlights

- **Purpose:** This chapter includes procurement policies that ensure that IT procurement and contracting practices in the Commonwealth are consistently executed in a manner that promotes fair and open competition.
- **Key points:**
  - VITA is committed to fair and open competition through the implementation of procurement policies and procedures that are transparent to agencies, suppliers and the public.
  - Fair and open competition creates and drives value, reduces costs, and enables greater choices as increased supplier participation necessitates delivery of innovative solutions and improved supplier performance.

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## 6.0 Introduction

In alignment with the Virginia Public Procurement Act (VPPA), all Commonwealth information technology (IT) procurements must be based on the principles of fair and open competition, neutrality in contracting and the effective and efficient use of tax dollars. IT procurement decisions should be neutral and geared toward seeking the highest quality IT goods and services at the best price, thus ensuring that the Commonwealth is a responsible steward of citizens' tax dollars. IT procurement in the Commonwealth must be fair and open to ensure that all suppliers, including small businesses and small businesses owned by women, minorities and service-disabled veterans can compete for business on a level playing field. VITA promulgates competitive market procurement policies and standards that drive IT value for the Commonwealth through sourcing technology goods and services from a range of suppliers and which encourage suppliers to be innovative and invest in the Commonwealth's technology success while helping smaller firms overcome barriers to competition.

The Commonwealth spends more than \$1 billion on IT goods and services annually. Competitive pricing, product innovation and performance improvements are some of the benefits that come from fair and open procurement practices. Open procurement ensures that state government gets the best value and maximizes taxpayer dollars. The VPPA reinforces the goal of fair and open competition: [§ 2.2-4300\(C\)](#) of the *Code of Virginia* states “[t]o the end that public bodies in the Commonwealth obtain high quality goods and services at reasonable cost, that all procurement procedures be conducted in a fair and impartial manner with avoidance of any impropriety or appearance of impropriety, that all qualified vendors have access to public business and that no offeror be arbitrarily or capriciously excluded, it is the intent of the General Assembly that competition be sought to the maximum feasible degree, that procurement procedures involve openness and administrative efficiency, that individual public bodies enjoy broad flexibility in fashioning details of such competition, that the rules governing contract awards be made clear in advance of the competition, that specifications reflect the procurement needs of the purchasing body rather than being drawn to favor a particular vendor, and that the purchaser and vendor freely exchange information concerning what is sought to be procured and what is offered. Public bodies may consider best value concepts when procuring goods and nonprofessional services, but not construction or professional services. The criteria, factors, and basis for consideration of best value and the process for the consideration of best value shall be as stated in the procurement solicitation.”

VITA is committed to fair and open competition through the implementation of IT procurement policies, procedures and processes that are transparent to its IT suppliers and the public. All VITA IT procurement professionals and those given delegated IT procurement authority from VITA should understand and accept their accountability to the taxpayers. All IT suppliers should be provided the opportunity to do business with the Commonwealth.

VITA will use and encourage the use of competition as much as possible to achieve maximum value for the Commonwealth’s IT dollars.

## 6.1 VITA’s competition principles

The following principles facilitate fair and open competition and should be used in the sourcing of all VITA and VITA-delegated IT procurements:

Promote full and open competition to the maximum extent practicable.
Allow acquisitions without competition only when authorized by law or policy.
Restrict competition only when necessary to satisfy a reasonable public requirement.
Provide clear, adequate and sufficiently defined information about public needs to allow offerors to enter the solicitation process on an equal footing.
Publicize requirements and provide timely access to solicitation documents (including amendments, clarifications and changes to requirements) for all suppliers.
Solicitations should state the basis to be used for evaluating bids and proposals and for making the award.
Evaluate bids and proposals and make award(s) based on the criteria in the solicitation and applicable law. Enable transparency and public access to procurement information consistent with the protection of trade secrets, proprietary or confidential source selection information and person privacy rights.
Ensure that all parties involved in the procurement process participate fairly, honestly and in good faith.

Recognize that adherence to the principles of competition is essential to the maintenance of the integrity of the IT procurement process.

Promote the expansion of contracting opportunities for small businesses, including small businesses owned by women, minorities, and service-disabled veterans (SWaM), and micro-businesses.

Competition enables the Commonwealth to achieve value in its IT purchases through:

- Increasing the quantity, quality and diversity of IT suppliers. Fair and open competition incentivizes IT suppliers to submit bids and/or proposals that meet the Commonwealth's needs.
- Creating incentives for suppliers to deliver IT projects with emphasis on time, quality and cost.
- Motivating suppliers to innovate and invest in Commonwealth IT projects.

VITA operates on the premise that fair and open competition in IT procurement achieves the following objectives for the Commonwealth:

- Instills public and supplier confidence about the integrity and cost effectiveness of public sector procurement.
- Maximizes the most economically beneficial outcome for the taxpayers ensuring that the procurement process produces an optimal solution at a reasonable price.
- Ensures that all IT suppliers desiring to conduct business with the Commonwealth are given a reasonable opportunity to do so.
- Guards against favoritism, fraud and collusion and allows qualified suppliers an opportunity to obtain Commonwealth business.
- Ensures that all solicitation documents reflect the requirements and desired outcome of the Commonwealth and that all bidders and offerors are subject to equivalent terms, conditions and requirements.

## 6.2 Promoting competition

To achieve maximum value for its IT dollars, the Commonwealth needs a sufficient number of strategic suppliers to ensure competition. Procurement officials should attempt to understand the marketplace to identify and promote the involvement of the maximum number of eligible suppliers to promote maximum competition. Knowledge of the marketplace also helps identify and minimize any barriers to participation that suppliers may face. Some states have been successful in identifying factors that might prevent suppliers from bidding by establishing "communities of practice"—a network of buyers and suppliers that actively seeks to work more effectively together. This forum supports obtaining market intelligence about suppliers, the solutions they are delivering, and their reputation in the eyes of other buyers. The greater the number of suppliers participating in the IT procurement process—the greater the competition. Agency requests for assistance in obtaining sourcing information may be sent to: [scminfo@vita.virginia.gov](mailto:scminfo@vita.virginia.gov).

### 6.3 Enabling competition

VITA utilizes the following guidelines to promote competition and increase the number of participating suppliers willing to compete for the Commonwealth’s IT spend:

- Requesting source information from VITA SCM at: [scminfo@vita.virginia.gov](mailto:scminfo@vita.virginia.gov) and conducting a search of VITA statewide contracts at: <https://vita.cobblestonesystems.com/public/>
- Requesting source information about DSBSD-certified suppliers through [eVA](#)
- Consulting with suppliers during the procurement planning stage to understand the range of services and options available in the market and to learn of projects that have already been successfully delivered.
- Issuing a Request for Information (RFI) when little market information exists or when unsure of what exactly is being procured but knowing the business objectives that need to be met.
- Publicizing long-term IT project and expenditure plans and listening to feedback from suppliers on potential constraints.
- Staggering, rather than delaying, work (or phases of a technology project) where IT suppliers may face delivery or capacity constraints. Staggering and/or phasing may remove performance barriers for overloaded suppliers who want to participate. When the actual value of future demand is uncertain, it is often helpful to clarify the nature and amount of that demand with potential suppliers who are already participating in that marketplace.
- Developing solicitations that are designed to result in performance-based contracts where agency/project objectives are met, rather than those where detailed how-to requirements are provided. Solutions-based solicitations and performance-based contracts promote supplier innovation and limit constraints or barriers to suppliers.
- Recruiting DSBSD-certified small businesses, including small businesses owned by women, minorities, and service-disabled veterans (SWaM), and micro businesses, to compete for state contracting opportunities.
- Providing feedback to suppliers on their past performance, including why they were not selected for a particular award and what they need to do to increase their chances of future success. This will help to maintain interest among suppliers for future projects and increase the pool of competitive bidders.
- Asking for objective feedback from suppliers on the state’s performance as a client and learning lessons from this feedback.

### 6.4 Aggregating or disaggregating IT procurements

Aggregating or disaggregating IT procurements can provide benefits and maximize competition in a number of different ways. Aggregation of business requirements occurs when multiple public bodies combine their individual requirements to procure common goods and services to achieve increased buying power and value.

Aggregation benefits	Aggregation disadvantages
Enable suppliers to be more efficient.	Increases difficulty for smaller specialist suppliers who only have the required expertise for part of the aggregated contract.

Increase the number of bidders.	Removes the ability of the Commonwealth to benchmark the performance of different suppliers providing similar services.
Attract different types of suppliers.	Creates incumbency advantages.
	Results in an over-dependency on a limited number of suppliers in the longer term.

Disaggregating IT procurements can benefit smaller or specialist suppliers by allowing them to participate in only a portion of the solicitation when they might not otherwise be able to compete. Disaggregation can be used to motivate suppliers into participating in future solicitation opportunities by linking their past or current contractual performance to opportunities for future awards.

### 6.5 When waiver of competition is necessary

Competition may be waived only in certain circumstances and only when deemed to be in the best interest of the Commonwealth as specified below:

- When competition is not practical for an IT purchase. The procurement request, along with the justification, must be signed by the agency head or designee and sent to VITA for review and approval prior to the agency taking any further action.
- When a needed product is only available from one source. For additional information refer to [Chapter 16](#) of this manual, Sole Source Procurement Method.
- When standardization or compatibility is the overriding consideration. Proprietary procurements are those in which there is only one solution available to meet an agency’s needs; however, multiple suppliers may be able to provide the IT goods and/or services required for the solution. Competition may or may not be available for proprietary procurements; therefore, the sole source process does not always apply to these procurements.
- When the amount of the purchase is too small (less than \$10,000) to justify the issuance of a solicitation or where a purchase is being made and a satisfactory price is available from an existing contract.
- Competition is waived for purchases less than \$10,000 as they are set aside for small businesses including micro-businesses. In addition, purchases less than \$100,000 are set aside for small businesses including small businesses owned by women, minorities and service-disabled veterans.
- When an emergency procurement is needed to remedy a situation to protect the health, welfare or safety of the Commonwealth’ citizens and there is no time for a competitive procurement; although competition should be sought to the maximum degree possible. An emergency is a serious or urgent situation requiring immediate action to protect persons or property. (The potential loss of funds at the end of a fiscal year or grant year is not considered an emergency.) Refer to VITA’s IT Emergency Procurement Policy, located on our website at: <https://www.vita.virginia.gov/supply-chain/scm-policies-forms/scm-policies/>.
- When purchases from joint and cooperative contracts available through the federal government; other states, their agencies; and public bodies are available and such purchase has been pre-approved by the Commonwealth’s CIO. Refer to VITA’s [IT Procurement: Joint and Cooperative Procurement Policy](#), located on our website at: <https://www.vita.virginia.gov/supply-chain/scm-policies-forms/scm-policies/>.

- When purchases are under \$50,000 and for **used** materials and equipment, if the purchase is pre-approved by the Commonwealth's CIO.
- When procurements are made from competitively procured VITA statewide IT contracts. These contracts have been through the competitive procurement process. Purchases from these contracts are allowed in any amount without further competition being required.

## **6.6 Specific non-competitive actions prohibited by the *Code of Virginia***

[§ 2.2-4310](#) of the *Code of Virginia* specifically prohibits discrimination against any bidder or offeror because of race, religion, color, sex, national origin, age, disability or other basis and encourages the inclusion of DSBSD certified small, women-owned, minority-owned, service-disabled veteran-owned businesses, or micro businesses in the Commonwealth's procurement opportunities. 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. These prohibitions against discriminatory procurement practices and barriers to procurement participation are designed to encourage all suppliers interested in doing business with the Commonwealth to do so freely.

## **6.7 Small Business Enhancement Program**

[§ 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 DSBSD 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.