



### Chapter Highlights

- **Purpose:** This chapter covers both policies and guidance for competitive sealed bidding and the invitation for bid (IFB) procurement method used in the acquisition of information technology (IT) goods and services, excluding professional services.
- **Key points:** In competitive sealed bidding, it is important that the IT goods or services being procured are capable of being specifically described so that bids can be evaluated against the description in the IFB. Terms and conditions in an IFB are nonnegotiable. It is imperative that the IFB include all mandatory, statutory, special IT and other terms and conditions required by the Commonwealth and by the procuring agency.
  - Public opening and announcement must be made of all bids received.
  - Award is made to the lowest responsive and responsible bidder.

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## 22.0 Introduction

Competitive sealed bidding is a method of bidder selection, other than for professional services ([§ 2.2-4302.1](#)). The types of IT contracts resulting from competitive sealed bidding are usually those that provide for one-time purchases that are agency-specific and term contracts that reflect repetitive purchases of IT goods by agencies over a period of time. An invitation for bid selection (IFB) process should not be used for procuring Cloud/Software as a Service (SaaS) solutions. IFBs can also be used to solicit multiple award contracts that list more than one bidder of similar IT items. Refer to [Chapter 1](#), Purpose and Scope, of this

manual, for VITA authority and delegation approval requirements for the IFB procurement method.

[§ 2.2-4302.1](#) of the VPPA includes the following elements in competitive sealed bidding:

- Issuance of a written IFB containing, or incorporating by reference, the specifications and contractual terms and conditions applicable to the procurement.
- Unless bidders have been prequalified for the procurement, the IFB shall include a statement of any requisite qualifications of potential bidders.
- State public bodies must post IFBs on eVA for at least 10 days prior to the date set for the receipt of bids. Public bodies may elect to publish IFBs in a newspaper of general circulation and bids may be solicited directly from potential bidders. Local public bodies are encouraged to post IFBs on eVA in addition to their other postings.
- Public opening and announcement of all bids received.
- Evaluation of the bids based on the requirements set forth in the invitation, which may include special qualifications of potential bidders, life-cycle costing, value analysis and any other criteria such as inspection, testing, quality, workmanship, delivery and suitability for a particular purpose which are helpful in determining acceptability.
- Award is then made to the lowest responsive and responsible bidder.

In competitive sealed bidding, it is important that the IT goods or services being procured are capable of being specifically described so that bids can be evaluated against the description in the IFB. After evaluation, an award is made to the lowest responsive and responsible bidder, or if multiple awards are so provided in the IFB, awards may be made to the lowest responsive and responsible bidders. Award may be made to a reasonably priced Department of Small Business and Supplier Diversity (DSBSD)-certified small businesses, including those small businesses owned by women, minorities, service-disabled veterans and micro businesses, that is other than the lowest priced bidder when the provision for such an award is specifically included in the IFB.

## **22.1 Preparing and issuing an IFB**

Competitive sealed bidding includes the issuance of a written IFB containing IT specifications, scope of work/purchase description and the contractual terms and conditions applicable to the procurement. Before developing an IFB, agencies are urged to first check the VITA website for available statewide contracts which may serve their procurement need(s). These are available at this URL: <http://vita.cobblestonesystems.com/public/>. Each agency may have and use its own preferred IFB document template. Subsections below highlight special areas of consideration when developing an IT IFB.

### **22.1.1 Terms and conditions**

Terms and conditions in an IFB are non-negotiable. It is imperative that the IFB include all mandatory, statutory and other terms and conditions required by the Commonwealth and by the procuring agency. Additionally, the IFB must include any special IT a terms and conditions required by VITA or any Federal grant mandatory flow down. The terms or conditions must also include how the agency will publicly post the notice of award or announce a decision to award the contract. IFBs should include a statement that "Any

vendor-supplied terms that are in addition to or at variance with the Commonwealth's will be of no effect." It is recommended NOT to issue any IFB for cloud services solutions, since IFBs are non-negotiable and the required Additional Cloud Services Terms and Conditions are often negotiated.

### **22.1.2 Small business requirements**

As part of the Commonwealth's commitment to promote and encourage the participation of small businesses in public procurement, procurements of IT goods and services up to \$100,000 shall be set aside for qualified DSBSD-certified IT small business participation to achieve the Commonwealth's goal that 42% of its purchases be made from small businesses. Further, VITA is committed to enable a minimum of three percent (3%) participation by service disabled veteran businesses as defined in [§ 2.2-2000.1](#) and [§ 2.2-4310](#) of the *Code of Virginia* when contracting for goods and services. If available, four (4) qualified DSBSD-certified small business sources including at least one micro business. If two or more DSBSD-certified small businesses cannot be identified as qualified to set aside the procurement under \$100,000, the procurement file shall be documented with VITA's efforts through eVA to obtain the number of required sources. An award may be made to a qualified, reasonably ranked small business, including a service-disabled veteran, minority- or women-owned small business or micro business offeror, if available, that is other than the highest-ranking offeror if the price submitted is fair and reasonable and does not exceed 5 percent (5%) of the lowest responsive and responsible noncertified bidder.

All procurements between \$0 and \$10,000 are to be set aside for micro businesses. A minimum of one quotation from a qualified DSBSD-certified micro business, if available, is required and the award shall be made to that DSBSD-certified micro business if the price is fair and reasonable and does not exceed 5 percent (5%) of the lowest responsive and responsible noncertified bidder. If more than one quote is solicited, the award will be made to the lowest responsive and responsible qualified DSBSD-certified micro business bidder. If the agency or institution receives no acceptable bids or offers from micro businesses, the procurement may be awarded to the lowest responsive and responsible small business bidder if the price is fair and reasonable. If there is no small business bidder available, the procurement shall be awarded to the lowest responsive and responsible non-small business bidder.

IT IFBs over \$100,000 shall include a requirement for offerors to submit, as part of their bid, a Supplier Procurement and Subcontracting Plan (see Appendix B).

If a bidder is a DSBSD-certified small business, the bidder shall so indicate in its bid response. DSBSD-certified small businesses include DSBSD-certified women-, minority-, service disabled veteran-owned businesses, and micro businesses that meet the small business definition and have received the DSBSD small-business certification. If the bidder is not a DSBSD-certified small business, the bidder is required to identify the portions of the contract the bidder plans to subcontract to DSBSD-certified small business by completing and returning the Supplier Procurement and Subcontracting Plan. Refer to Virginia Public Procurement Act (VPPA) [§ 2.2-4310\(E\)](#) for definitions of small, women-, minority- and service disabled veteran-owned businesses. A micro business is defined in Executive Order 35 (2019) at: <https://www.governor.virginia.gov/executive-actions/>

If the bidder is not a DSBSD-certified small business, small woman-owned, minority-owned, service disabled veteran-owned business, or a micro business, and will not have an opportunity to subcontract any portion of the requirements being solicited, the bidder still must complete the Supplier Procurement and Subcontracting Plan and designate that there will be no small business subcontracting.

For more detailed policy requirements refer to the following VITA policies: Small Purchase Policy and IT Procurement Policy for Enhancing Opportunities for Small, Women- and Minority-Owned Businesses, found at this location:

<https://www.vita.virginia.gov/supplychain/scm-policies-forms/scm-policies/>

### **22.1.3 Technical and functional requirements and specifications**

The IT IFB may include special requirements including life-cycle costing, value analysis and other criteria such as testing, quality, workmanship, delivery and suitability for a particular purpose to help determine acceptability. These requirements should be described accurately and completely. Unless the public body has provided for prequalification of bidders, the IT IFB shall also include any requisite qualifications of potential bidders. The following guidelines apply when writing IFB technical and functional requirements:

- Verify that the requirements/specifications accurately define the IT goods or services being procured. An error or omission can be costly, so it is important to validate them before the IFB is posted.
- Perform a requirements/specifications validity check. Do the goods or services specified provide the functions which best support the business owner's needs?
- Perform a requirements/specifications consistency check to ensure there are no conflicts.
- Requirements and specifications should be checked for completeness. Are all functions required by the business owner included? Are all federal, Commonwealth or VITA IT requirements, standards or specifications included?
- Perform a reality check. Can the requirements be implemented given the project's or business owner's available time, budget, resources and technology? Are the requirements realistically testable?
- Are the requirements written so that they can be properly understood?
- Can the requirements be changed without a large impact on other requirements?

An IFB for technology goods or services should include requirements that are broad enough to encourage free and open competition and that are compatible with industry-standard technology products and services. The bidder has a responsibility, however, to advise the procuring agency if the requirements restrict or limit the procurement to a single source. Such notification should be provided in writing at least five business days before the official bid opening date.

### **22.1.4 Used or new products**

A bid must offer new items of new or current design unless the IFB specifies that used, reconditioned or remanufactured products are acceptable.

### **22.1.5 Prohibition on the use of certain products and services**

[§ 2.2-5514](#) of the *Code of Virginia* provides that no "public body" may use, 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 in federal systems.

### **22.1.6 Use of brand names/substitutions**

When a bid contains a brand name, trade name, catalog number, "or equal" or "as per sample" other than that specifically named in the IFB's specifications and the bidder proposes to furnish this equal substitute commodity, such fact shall be noted on the bid sheet or on a separate page attached to the bid. Information or descriptive literature explaining the substitution item must be attached to the bid. Failure to provide literature for substitutions may be grounds for rejection of the bid. When the IFB's specified item(s) must be compatible with or fit into an existing installation, or due to other essential reasons, the business owner may decide that a substitution cannot be accepted. However, the bulleted directives below must be adhered to when developing the IFB's requirements/specifications and for making a determination that a substitute is unacceptable.

- **Brand name or equivalent specifications:** [§ 2.2-4315](#) of the *Code of Virginia* directly addresses the use of brand names in specifications: "Unless otherwise provided in the Invitation to Bid, the name of a certain brand, make or manufacturer shall not restrict bidders to the specific brand, make or manufacturer named and shall be deemed to convey the general style, type, character, and quality of the article desired. Any article that the public body in its sole discretion determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted." Brand name or equivalent specifications may be used when it is determined that:
  - No other design, performance, or qualified product list is available.
  - Time does not permit the preparation of another form of specification or purchase description which does not include a brand name specification.
  - The nature of the product or the nature of the requirements makes use of a brand name or equivalent specification suitable for the procurement.
  - Use of a brand name or equivalent specification is in the Commonwealth's best interests.
- **Designation of several brand names:** Brand name or equivalent specifications shall seek to designate three or as many different brands as practicable, as "or equivalent" references and shall state that substantially equivalent products to those designated may be considered for award.
- **Required characteristics:** If the procuring activity determines the essential characteristics of the brand name included in the specifications are commonly known in the industry or trade, the brand name or equivalent specifications shall include a description of the particular design, functional, or performance characteristics required.

- **Nonrestrictive use of brand name or equivalent specifications:** When a brand name or equivalent specification is used in an IFB, the IFB shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance and characteristics desired and is not intended to limit or restrict competition.
- **Determination of equivalents:** Any prospective bidder may apply in writing to the procuring agency for a pre-bid determination of brand name equivalence. If sufficient information is provided by a prospective bidder, the agency may make written determination prior to the bid opening time that the bidder's proposed product would be equivalent to the brand name used in the IFB.
- **Specifications of equivalents required for bid submittal:** Bidders proposing equivalent products must include in their bid submittal the manufacturer's specifications for those products. Brand names and model numbers are used for identification and reference purposes only.

Performance-based specifications when procuring personal computers and related peripheral equipment pursuant to any type of blanket purchasing arrangement shall be established without regard to brand name.

[§ 2.2-2012\(E\)](#) of the Code of Virginia provides as follows:

“If VITA, or any executive branch agency authorized by VITA, elects to procure personal computers and related peripheral equipment pursuant to any type of blanket purchasing arrangement under which public bodies, as defined in [§ 2.2-4301](#), may purchase such goods from any vendor following competitive procurement but without the conduct of an individual procurement by or for the using agency, it shall establish performance-based specifications for the selection of equipment. Establishment of such contracts shall emphasize performance criteria including price, quality, and delivery without regard to ‘brand name.’ All bidders meeting the Commonwealth's performance requirements shall be afforded the opportunity to compete for such contracts.”

#### **22.1.7 Price**

Unless the IFB specifies otherwise, a bidder shall submit a firm, fixed price for the goods and services being purchased for the term of the contract. Net unit prices, including transportation and delivery charges, F.O.B. destination, must be provided as they will prevail during evaluation and any award. Bidders must extend unit price to fractions. The price a bidder submits in response to an IFB shall include all travel expenses for the bidder to perform the contract in accordance with the Commonwealth's authorized per diem rates published by the Department of Accounts and available at: <http://www.doa.virginia.gov/>. The Commonwealth will not pay travel expenses that are not included in the bid price. Also, unless otherwise specified in the IFB, all items are bid F.O.B. destination.

If price negotiations may be a possibility due to budget constraints, such negotiations may be undertaken with the apparent low bidder only under conditions and procedures described in writing in the IFB and approved by the public body prior to issuance of the IFB.

### **22.1.8 Reporting, inspection and testing requirements**

The IFB should clearly state requirements for reporting, inspection, testing, examination, etc.; for example, "all items are subject to inspection and testing." Items that do not meet specifications or requirements will be rejected. Failure to reject upon receipt, however, does not relieve the bidder of liability. When subsequent tests are conducted after receipt and reveal failure to meet the specifications, the purchasing body may seek damages regardless of whether a part or all of the items have been consumed.

### **22.1.9 Pre-bid conferences/site visits**

All pre-bid conferences and/or site visits shall be described in the IFB. If attendance at such a conference or site visit is a prerequisite for bidding, the public notice period shall be long enough to provide adequate opportunity for potential bidders to obtain a copy of the IFB and attend. Mandatory pre-bid conferences scheduled during a period of suspended State business operations should be rescheduled to a date and time which will permit notification to all potential bidders.

### **22.1.10 Bidder samples**

Bidders generally shall not be required to furnish bid samples unless there are characteristics of a product that cannot be described adequately in the IFB's specifications. Bid samples will only be used to determine the responsiveness of the bid and will not be used to determine a bidder's ability to produce the required items. Samples may be requested to verify quality levels or to test equipment to determine conformance with the specifications stipulated in an IFB and/or to determine ability to interface with existing equipment. When bidders are requested by language included in the IFB or by request during the evaluation process to provide sample supplies or equipment or examples of work, they should be advised that it is at their own expense. Such requests shall fully describe the samples required; state the number of samples required; if appropriate, the size of the samples to be submitted; state that examination or testing will be conducted; and, list all the characteristics for which the samples will be examined or tested. All samples are subject to test. Submitted samples must clearly identify the bidder's name, the bid number and the item the sample represents in the bid.

Samples required in the IFB must be submitted prior to the bid opening date and be accompanied by a descriptive invoice indicating if bidder desires return of sample(s) not used or made useless through tests. Samples should be properly labeled, stored, and controlled by the receiving agency until disposal or return to the bidder. Failure to submit samples when requested may result in rejection of a bid. Bids will be rejected as nonresponsive if the samples fail to conform to each of the characteristics listed in the invitation. Unsolicited samples submitted in response to an IFB will not be evaluated and the agency may dispose of these samples.

Return of submitted samples that are not destroyed in testing will be at bidder's risk and expense upon the bidder's request. Samples belonging to bidder(s) awarded a contract(s) may be retained by the procuring agency for comparison with deliveries until the completion of the contract(s). Samples not picked up by non-awarded bidders within 30 days of award will become the property of the purchasing body. If, after 60 days of award, non-awarded bidders have not picked up their samples or provided disposition instructions, samples may



be offered to other agencies or internal operating departments for use. If the items have significant reusable utility value, they should be disposed of using established property disposal procedures.

#### **22.1.11 Descriptive literature**

Bidders should not be required to furnish descriptive literature unless it is needed before award to determine whether the product(s) offered meet the specification and to establish exactly what the bidder proposes to furnish. If required for bid response, however, the IFB should clearly state what descriptive literature the bidders must furnish, the purpose for requiring the literature, the extent of its consideration in the evaluation of bids and the rules that will apply if a bidder fails to furnish the literature before the specified closing date of the IFB.

The procuring agency should document in the procurement file the reasons why product acceptability cannot be determined without the submission of descriptive literature.

#### **22.2 Validity period of bids**

Unless stated otherwise in the IFB, once opened all bids are irrevocable for 90 calendar days. Beyond 90 days, bidders will have the option to honor their bid or to make a written request to withdraw their bid from consideration.

#### **22.3 IFB sources**

Sources for IFBs can be located from conducting an industry market analysis as well as by performing a "Small, Women and Minority (SWaM) Vendor Search" from the list made available by DSBSD (refer to <https://www.sbsd.virginia.gov/>).

IT solicitations up to \$100,000 shall be set aside for qualified DSBSD-certified small businesses including those small businesses owned by women, minorities, service-disabled veterans and micro businesses. If available, four (4) qualified DSBSD-certified small business sources including at least one micro business should be solicited. In estimating the total cost of the procurement, all possible renewal periods on a term contract must be considered to determine if the procurement will exceed \$100,000. Set asides do not apply to orders placed against an optional use or mandatory use statewide contracts.

If two or more DSBSD-certified small businesses cannot be identified as qualified to set aside the procurement under \$100,000, the procurement file shall be documented with efforts made through eVA and DSBSD to obtain the number of required sources. An award may be made to a qualified, reasonably ranked small business, including a minority-disabled veteran-owned or women-owned small business offeror, if available, that is other than the highest-ranking offeror if the price submitted is fair and reasonable and does not exceed five percent (5%) of the lowest responsive and responsible noncertified bidder. If the set-aside is withdrawn and the procurement awarded to other than a DSBSD-certified small business, the reason shall be documented in the procurement file.

An eVA quick quote will normally be used to solicit bids for IT goods and services (with the exception of telecommunications) for purchases up to \$10,000. If available, two or more qualified DSBSD-certified microbusiness sources should be solicited in writing or via eVA

Quick Quote. The agency is responsible for determining price reasonableness; refer to [Chapter 9](#) of this manual, Determining Fair and Reasonable Pricing. If no acceptable bids or offers are received, the set-aside may be withdrawn and the requirement re-solicited using competitive, non-set-aside, procedures. If the agency is unable to proceed with the planned set-aside for a micro business, the agency shall document the procurement file to that effect, including stating the basis for that determination.

Purchases over \$100,000, unless delegated, shall be conducted by VITA. These procurements may be set-aside, in whole or in part, for qualified DSBSD-certified small businesses. If these procurements are set aside, a minimum of six (6) qualified DSBSD-certified small businesses, if available, shall be solicited. If the procurement is set aside and the agency receives no acceptable bids or offers, the set-aside may be withdrawn and the procurement re-solicited utilizing non-set-aside procedures.

In addition to the public notice, bids may be solicited directly from potential bidders. Any such direct IFBs shall include businesses selected from a list made available by DSBSD (refer to <https://www.sbsd.virginia.gov/>).

### **22.3.1 Modifications, clarifications, and revisions to the IFB**

#### **22.3.2 Modifications to the IFB**

When it becomes necessary to issue an amendment to a posted IFB, the amendment must be made by written amendment, which will be posted in eVA. Amendments should be issued to make any modifications to the original IFB including quantity, purchase descriptions, delivery schedules, opening dates or to correct defects or ambiguities in the IFB. Amendments should furnish to other bidders information given to one bidder if the information will assist other bidders in submitting bids or if the lack of information would be inequitable to other bidders. When an addendum is issued that extends the time for the bidder to prepare an IFB response, the opening date should be extended not less than 10 days after the issue date of the addendum. Any amendments to an IFB should meet the following guidelines:

- Be a legitimate change that is necessary due to unforeseen circumstances or predicaments which occur as the procurement progresses. This change must have been unforeseen at time of the IFB posting and not be an attempt to evade competition.
- Be within the scope of the original IFB.

#### **22.3.3 Bidder requested IFB clarifications**

If a bidder discovers an inconsistency, error or omission in the IFB, the bidder should request clarification from the issuing agency. Such clarification request should be made to the agency single point of contact (SPOC). Bidders should make their requests for clarification a minimum of five (5) working days before the date of the bid opening unless otherwise noted in the IFB. No other form of clarification request is acceptable. Failure of a bidder to comply may result in the bidder being deemed non-responsive.

#### **22.3.4 Extension of bid acceptance period**

Should difficulties be encountered by an agency after bid opening which may delay award beyond bidders' acceptance periods, the several lowest bidders should be requested, before expiration of their bids, to extend the bid acceptance period (with consent of sureties, if any) in order to avoid the need for re-advertisement.

#### **22.4 Postponement of bid opening**

If it becomes necessary to postpone a bid opening, the agency shall issue the appropriate amendments postponing or rescheduling the bid opening. When the procuring agency is closed due to force majeure, the bid opening will be postponed until the same time on the next official business day.

##### **22.4.1 Cancelling an IFB**

An IFB may be canceled or rejected at any time prior to contract award. An agency may cancel any IFB before or after the due date of the bid responses, and may cancel before or after receiving bids. Nothing can compel the award of a contract. The reason for cancellation of the IFB must be documented and made a part of the procurement file. A public body may not cancel or reject an IFB, a request for proposal, any other IFB, bid or proposal to avoid awarding a contract to a particular responsive and responsible bidder or offeror. ([§ 2.2-4319](#) of the *Code of Virginia*)

##### **22.4.2 Cancelling an IFB before receipt of bids**

If the IFB has been issued but the due date specified in the IFB has not arrived, the agency may cancel the IFB. The issuing agency shall utilize the following procedure in such instances:

- A cancellation notice must be posted promptly in eVA. If the IFB was advertised in a newspaper, the cancellation should also be published in the same newspaper. Notice shall also be provided to agency personnel responsible for receipt and opening of bids to prevent responses from being unintentionally opened.
- Any bids received should be returned unopened to the bidder.
- The reasons for cancellation or rejection of the IFB shall be documented and be made part of the procurement file.

##### **22.5 Cancelling an IFB after receipt of bids**

When it is determined after bid opening and prior to award that the requirements relating to the availability and identification of specifications have not been met by any bidder(s), the IFB shall be cancelled. Such determination by the agency should be based on one or more of the following criteria:

- Inadequate or ambiguous specifications were cited in the IFB.
- Specifications have been revised.
- The supplies or services being procured are no longer needed.
- The IFB did not provide for consideration of all factors of cost.
- Bids received indicate that the agency needs can be satisfied by a less expensive article differing from that on which the bids were invited.
- All otherwise acceptable bids received are at unreasonable prices.

- The bids were not independently arrived at in open competition, were collusive or were submitted in bad faith.
- For other reasons, cancellation is in the agency best interests.

If the determination is made to cancel the IFB, the bids may be rejected and the IFB canceled using the following procedures:

- A cancellation notice must be posted promptly in eVA and all websites displaying the IFB at the time the decision to cancel the IFB has been reached.
- Bidders should be notified in writing that the IFB has been cancelled and that duplicate bids, if provided, will be destroyed unless the bidder requests their return, at the bidder's expense.
- The opened bids will remain as part of the procurement file.
- The reasons for cancellation or rejection shall be made part of the procurement file.

## **22.6 Receipt and opening of sealed bids**

If bids are scheduled to be received during a period of suspended State business operations, schedule the receipt and opening for the same time on the next regular business day. All sealed bids received by the procuring agency in response to an IFB must be held unopened in a secure area until the specified date and time for opening. All sealed bids shall be publicly opened at the date, time and location specified in the IFB. Facsimile bids shall not be considered unless permitted by the IFB. The bidder is responsible for arranging the third party involvement and for faxing the complete bid to the third party, not just a summary or the cover sheet. The agency may request the original bid be provided. If the original bid is requested, it must be received within five (5) business days of the request. No employee or agent of an agency should accept a facsimile bid on the bidder's behalf and offer to place the bid in a sealed envelope. The SPOC assigned for the procurement shall only read the following information from each bid aloud:

- Names of bidders.
- Unit prices or lot prices.
- Brand names and model numbers, if specifically requested by the attendees.
- Discounts but only if the IFB specifically asks for bidders to include discounts in their bid and the discount will be used to determine the award.

Other questions or bid concerns should not be answered until the evaluation phase is complete and the award decision has been made.

## **22.7 Late bids**

Sealed bids received after the date and time specified for receipt in the IFB cannot be accepted or considered and must be marked "late" and returned unopened to the bidder.

### **22.7.1 Bid responses**

Agencies assume no responsibility for costs incurred by the bidder prior to the award of any contract resulting from an IFB. In addition, an agency will not compensate a bidder for damages arising from inaccurate or incomplete information in the IFB specifications or from

inaccurate assumptions based on the specifications. An agency will not be liable for any damages incurred by a bidder based on inaccurate or incomplete information in the IFB.

### **22.7.2 Acceptable bid signatures**

The bid and all addenda submitted by the bidder by facsimile or any other means must be signed. The original bid must be signed by a person authorized by the bidder's company to do so. Typewritten or stamped signatures are not acceptable. The person signing must include his or her title, and if requested, must verify his or her authority to bind the company to a bid and contract. Failure to sign the face of the bid in the space provided will result in rejection of the bid unless the unsigned bid is accompanied by other signed documents indicating the bidder's intent to be bound.

### **22.7.3 Responsiveness of bids**

To be considered for award, a bid must comply in all material respects with the IFB. Such compliance enables bidders to stand on an equal footing and maintain the integrity of the sealed bidding system. Bids should be filled out, executed and submitted in accordance with the instructions in the IFB. Acknowledgment of receipt of any IFB addenda must be returned prior to the time set for receipt of bids, or accompany the bid. Failure to acknowledge receipt of any addendum may be cause for rejection of the bid.

Bidders are required to comply with all terms and conditions in the IFB, regardless of whether the bidder has knowledge of the terms and conditions or not, or has included any statement or omission in its bid that indicates a contrary intention. The agency cannot agree to any additional or inconsistent terms or conditions proposed by the bidder as the terms and conditions of the IFB are non-negotiable.

## **22.8 Alternate bids**

Unless the IFB specifically prohibits alternate bids, a bidder may submit alternate bids. An alternate bid is a bid submitted in knowing variance from the IFB's specifications and may provide opportunity for a bidder to incorporate the latest in technology or suggest alternative pricing and efficiencies. An alternate bid must be clearly distinguished and marked by the bidder as an alternate bid. The alternate bid must be a complete bid and not refer to information in the bidder's primary bid or any other alternate bid. The agency will decide whether or not to accept alternate bids. It may be discovered that an alternate bid suggests a revised specification or additional features that should be included in the original IFB. In this case, the agency may decide to reject all bids and rebid the requirement with a revised specification incorporating features of the alternate.

### **22.8.1 Evaluating bids**

Following public opening and announcement of bids received, the agency shall evaluate the bids received based upon the requirements set forth in the IFB. (See [§ 2.2-4302.1](#) of the *Code of Virginia*.) During the evaluation period, bidders are not allowed to contact the procuring agency. The designated SPOC may contact a bidder for clarification, if needed, during the evaluation period. Any resulting contract must be awarded to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the IFB. No bid shall be evaluated for any requirements or criteria that are not disclosed

in the IFB. Bid responses are evaluated to determine compliance with all specifications and the ability of the bidders to perform.

### **22.8.2 Determining a responsive bidder**

A responsive bidder is defined in the VPPA as “a person who has submitted a bid that conforms in all material respects to the Invitation to Bid.” (Refer to [§ 2.2-4301](#) of the *Code of Virginia*.) A bidder is responsive if its bid responds to the bid specifications in all material aspects and contains no irregularities or deviations from the specifications in the IFB that would affect the amount of the bid or otherwise give the bidder an unfair competitive advantage. When evaluating a responsive bid, consideration is given to price, technical acceptability, conformity with specifications, purposes for which the technology goods and/or services were required and the quality of the goods or services offered.

### **22.8.3 Determining a responsible bidder**

A bidder who is responsible and submits a responsive bid is one who clearly indicates compliance with the IFB without deviation from the IFB’s terms and conditions and who possesses the experience, facilities, reputation and financial resources to perform the requirements of the IFB at the time of contract award. A responsible bidder is defined in the VPPA as a “a person who has the capability, in all respects, to perform fully the contract requirements and the moral and business integrity and reliability that will assure good faith performance, and who has been prequalified, if required.” (See [§ 2.2-4301](#) of the *Code of Virginia*.) Agencies utilizing IFBs to purchase technology goods and services should use the following factors to determine whether a bidder is responsible:

- experience
- financial condition
- conduct and performance on previous contracts
- facilities
- management skills
- ability to execute the contract properly
- whether bidder has ever been disbarred by the federal government or Commonwealth.
- records of evaluation of performance as well as verifiable knowledge of agency business, contracting or audit personnel.
- determinations of violations of federal, state or local law or regulation.
- information supplied by the bidder, including bid or proposal information or financial data
- pre-award survey or information reports
- any other publicly available information

Failure of bidder to provide specifically requested relevant information may be grounds for a determination of non-responsiveness.

### **22.8.4 Determining the lowest bidder**

The lowest bidder is the bidder who offers the lowest-cost goods or services in comparison to all other bidders. Discounts and incentives should not be considered in determining the lowest bidder unless the IFB specifically asked bidders to propose discounts and incentives

and bidders are informed that the discount or incentive offered will be used to determine the award. Prompt payment discounts should normally not be considered in determining the lowest responsive bidder. After it is determined that the apparent low bidder is also responsive and responsible, the agency may proceed with an award to that lowest priced, responsive and responsible bidder. (See [§ 2.2-4301](#) and [§ 2.2-4302.1](#) of the *Code of Virginia*.) The agency may determine that the apparent low bidder is not responsive or responsible and thus not eligible for award.

- **If only one bid received in response to an IFB:** If only one responsive bid is received in response to an IFB, award may be made to the single bidder if the agency determines that the submitted price is fair and reasonable, and that either other prospective bidders had reasonable opportunity to respond, or the agency does not have adequate time for reissuing the IFB. Otherwise, the bid may be rejected by the agency, the procurement cancelled and a new IFB may be posted. If the agency received only one or no bids due to the IFB being set aside for the participation of small businesses, the procurement file should be documented accordingly. The IFB can then be reissued as a non-set aside procurement. The receipt of only one bid in response to an IFB undermines the Commonwealth's commitment to competition. To ensure competitive pricing and bidders, bids should be received from a number of qualified bidders consistent with the size and nature of the procurement. In order for competition to operate effectively, responsive bids should be received from at least two responsive and responsible bidders.
  
- **If tie bids are received:** If two or more bidders offer the same price for the IT goods or services being procured and both bidders have been determined to be responsive and responsible, the agency may do the following. (Refer to [§ 2.2-4324](#) of the *Code of Virginia*.)
  - Give preference to goods produced in Virginia or goods and services provided by Virginia persons, firms or corporations.
  - Award to a resident bidder if the identical low bids are submitted by a resident bidder and a nonresident bidder.
  - In the case of a tie bid in instances where goods are being offered, and existing price preferences have already been taken into account, preference shall be given to the bidder whose goods contain the greatest amount of recycled content.
  - If identical low bids are submitted by two resident bidders, the issuing agency should perform a coin toss. The coin toss must be witnessed and the results recorded by a supervisor above the level of the buyer.
  - Award(s) are to be made in favor of the Virginia bidder for tie line items and multiple purchase orders or contracts placed as required. Copies of tie bids resulting from competitive sealed bidding shall be forwarded to the Anti-Trust Section of the Office of the Attorney General.
  - Award by lottery to one of the identical low bidders.
  - Reject all bids and issue and new IFB.
  - Where identical low bids include the cost of delivery, award the contract to the bidder with the lowest delivery cost.

- Award the contract to the identical bidder who received the previous award and continue to award succeeding contracts to the same bidder as long as all low bids are identical.
- If price is considered excessive or for other reason the bids are unsatisfactory, reject all bids and re-solicit.

Preference for Virginia bidders: For this section, a resident of Virginia bidder is a Virginia person, firm or corporation that is organized pursuant to Virginia law or maintains a principal place of business within Virginia. Whenever the lowest responsive and responsible bidder is a resident of any other state and such state under its laws allows a resident bidder of that state a percentage preference, then a like preference shall be allowed to the lowest responsive and responsible bidder who is a resident of Virginia and is the next lowest bidder. If the lowest responsive and responsible bidder is a resident of any other state and such state under its laws allows a resident contractor of that state a price-matching preference, a like preference shall be allowed to responsive and responsible bidders who are residents of Virginia. If the lowest bidder is a resident bidder of a state with an absolute preference, the bid shall not be considered. The *Code of Virginia* requires the Department of General Services to post and maintain an updated list of state-by-state reciprocal preference data on its website, (select the section titled "State by State Reciprocal Preference Data.") on the eVA page at: <https://eva.virginia.gov/pages/eva-i-buy-forvirginia.htm>.) For purposes of compliance with this section, all public bodies may rely upon the accuracy of the information posted on this website.

Award may be made to other than the lowest responsive and responsible bidder when the provision for such an award is included in the IFB. For procurements over \$100,000 such awards must be approved in writing by VITA's Supply Chain Management Director or designee before issuance of such award. In those instances, where an award is made to other than the lowest price bidder or highest ranked offeror, the award shall be made to the lowest responsive and responsible bidder or highest ranking, qualified DSBSD-certified small business offeror. If the IFB is a set-aside for small business participation only, award to other than the lowest bidder clause would not be necessary.

#### **22.8.5 Determining a bidder is non-responsible and protests of non-responsibility determinations**

After evaluation of criteria, an agency may determine that the apparent low bidder is not responsible (refer to [§ 2.2-4359](#), *Code of Virginia*). If a bidder who otherwise would have been awarded a contract is found to be non-responsible, a written determination of non-responsibility setting forth the reasons for the finding shall be prepared by the agency and included in the procurement file. Prior to the issuing a written determination of non-responsibility, the agency shall notify the low bidder of this finding, disclose the factual support for the finding and allow the low bidder an opportunity to inspect any documents that relate to the finding of non-responsibility.

The bidder will have five (5) business days after receipt of the notice to request an opportunity to inspect any documents that relate to the finding of non-responsibility. Within ten (10) business days after receipt of the notice, the bidder may submit rebuttal information to the agency challenging the non-responsibility determination.



Within five (5) business days of receiving the rebuttal information from the bidder, the agency shall issue its written determination of responsibility based on all information in its possession, including any rebuttal information provided by the bidder. The agency shall notify the bidder in writing of its determination. Such writing shall be delivered to the bidder by the agency through electronic means and through a certified mailing with return receipt requested.

The agency's written determination of a bidder's non-responsibility shall state the basis for the determination. The agency's determination of non-responsibility shall be final unless the bidder appeals the agency's or determination within 10 days after receipt of the notice. Bidder may appeal the agency's non-responsibility determination by invoking VITA's alternative dispute resolution procedures (<https://www.vita.virginia.gov/supply-chain/sellto-vita/alternative-dispute-resolution-procedure/>) which is an administrative appeals procedure meeting the standards of [§ 2.2-4365](#) of the *Code of Virginia* or in the alternative by instituting legal action against the agency as provided in [§ 2.2-4364](#) of the *Code of Virginia*.

[§ 2.2-4365](#) does not apply to procurements involving prequalification of bidders and the rights of any potential bidders under such prequalification to appeal a decision that such bidders are not responsible.

If, upon appeal pursuant to [§ 2.2-4364](#) or [§ 2.2-4365](#), it is determined that the agency's determination of non-responsibility was not an honest exercise of discretion but was arbitrary and capricious or not in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the IFB, and the award of the contract has not yet been made, the sole relief shall be a finding that the bidder is a responsible bidder for the contract in question or directed award as provided in [§ 2.2-4364\(A\)](#) or both.

If the award has been made when it is determined that the agency's determination of a bidder's non-responsibility was not an honest exercise of discretion but arbitrary and capricious (refer to [§ 2.2-4360](#) of the *Code of Virginia*), the agency can choose between several available options under the VPPA:

- If the award has not been made, the bidder's sole relief shall be that the bidder is a responsible bidder for the contract in question.
- If the award has been made but performance not yet begun, performance may be enjoined.
- If the award has been made and performance has begun, the agency may declare the awarded contract void upon a finding that to do so is in the public body's best interest. Where a contract is declared void, the performing bidder will be compensated for the cost of performance up to the time of contract termination but in no event shall the performing bidder be entitled to lost profits.

If an agency determines or it is determined through the alternative dispute resolution process that there is probable cause to believe that the agency's decision to award was based on fraud or corruption or a violation of Ethics in Contracting, the agency may enjoin the award of the contract to a particular bidder.

If the bidder institutes legal action in the appropriate circuit court challenging the agency determination of non-responsibility and the court finds the bidder to be a responsible bidder, the court may direct the public body to award the contract to such bidder in accordance with the [§ 2.2-4364](#) of the *Code of Virginia* and the Invitation to Bid. [§ 2.2-4364](#) of the *Code of Virginia* provides that a court can reverse an agency's finding of nonresponsibility only if the bidder is able to establish that the decision was not (i.) an honest exercise of discretion but rather was arbitrary and capricious; (ii) in accordance with the Constitution of Virginia, applicable state law or regulation or consistent with the terms and conditions of the IFB

### **22.9 Bidder ineligibility**

Any bidder who is refused permission to participate or disqualified from participation in public contracts shall be notified by the agency in writing ([§ 2.2-4357](#), *Code of Virginia*). Prior to the issuance of a written determination of disqualification or ineligibility, the agency shall:

- Notify the bidder in writing of the results of the evaluation.
- Disclose the factual support for the determination.
- Allow the bidder an opportunity to inspect any documents that relate to the determination, if bidder requests within five (5) business days after receipt of the notice.

Any bidder may challenge the agency's determination by submitting rebuttal information within ten (10) business days after receipt of the determination notice. The agency shall issue its written determination of disqualification or ineligibility based on all information in its possession, including any rebuttal information, within five (5) business days of the date the agency received such rebuttal information.

If the agency's evaluation reveals that the bidder should be allowed to participate in the procurement, the agency will cancel the disqualification action. If the agency's evaluation reveals that the bidder should be refused permission to participate, or should be disqualified from participation in the procurement, the agency shall notify the bidder. The notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within ten (10) days of receipt of the notice by invoking VITA's alternative dispute resolution procedures (<https://www.vita.virginia.gov/supply-chain/sell-to-vita/alternativedispute-resolution-procedure/>) which meet the standards of [§ 2.2-4365](#) of the *Code of Virginia*, or in the alternative by instituting legal action as provided in [§ 2.2-4364](#) of the *Code of Virginia*. If upon appeal, it is determined that the agency's determination of a bidder's ineligibility was arbitrary and capricious or not in accordance with the Constitution of Virginia, applicable state law or regulations, the sole relief shall be restoration of eligibility.

### **22.10 Rejection of bids**

[§ 2.2-4319](#) of the *Code of Virginia* provides: "An Invitation to Bid, a Request for Proposal, any other solicitation, or any and all bids or proposals, may be canceled or rejected. The reasons for cancellation or rejection shall be made part of the contract file. A public body shall not cancel or reject an Invitation to Bid, a Request for Proposal, any other solicitation,

bid or proposal pursuant to this section solely to avoid awarding a contract to a particular responsive and responsible bidder or offeror." An agency may reject any bid, in whole or in part, if any of the following circumstances exist:

- Bid offers supplies or services not in compliance with the requirements, specifications, or terms and conditions stated in the IFB.
- The price of the lowest responsive and responsible bid is excessive in comparison with market conditions or with the agency's available funds.
- The agency determines that awarding any item is not in its best interest.
- Forms required in the IFB do not contain complete information and the bid may be considered non-responsive. Information supplied by the bidder is not provided in the format specified in the IFB.
- The bid fails to acknowledge receipt of or comply with any IFB amendment(s).
- Bidder states in its IFB response that it will not accept an award unless the IFB terms and conditions are modified or altered.
- Bidder states it will only accept an award for all line items when the IFB allows award by line item or aggregate grouping of line items.
- The offer and award sheet of the IFB is not signed and there is no indication that the bidder is officially responding.
- A bid item does not meet the stated specifications in the IFB and the bidder has not indicated the item bid is an alternate.

#### **22.10.1 Withdrawal of bids and bid mistakes, alterations and amendments**

Refer to [§ 2.2-4330](#) of the *Code of Virginia* for additional guidance on withdrawal of bids.

#### **22.10.2 Withdrawal of bid before bid opening**

A bidder may withdraw its bid, by written request, any time after the agency receives the bid and before the bid opening.

#### **22.10.3 Withdrawal of bid after bid opening**

A bidder may withdraw its bid within two business days after conclusion of the bid opening by written request if there is reasonable proof that an inadvertent mistake was made and the correction cannot be determined with reasonable certainty. Inadvertent means inattentive or unobservant, due to oversight or without intention. If the agency suspects that the lowest bid contains a mistake, the SPOC may ask the bidder for written confirmation of its bid. If the lowest responsive bid is 25% (or more) lower than the next low bid, the bidder should be contacted to confirm the bid price. This does not relieve a bidder from the responsibility for the submission of a correct bid. If the bidder then alleges a mistake in bid and can verify to the agency satisfaction that it was a nonjudgmental mistake, the bid may be withdrawn.

#### **22.10.4 Appeal of denial of withdrawal of bid**

[§ 2.2-4358](#) of the *Code of Virginia* provides: "A decision denying withdrawal of bid under the provisions of [§ 2.2-4330](#) shall be final and conclusive unless the bidder appeals the decision within ten days after receipt of the decision by invoking administrative procedures meeting the standards of [§ 2.2-4365](#), if available, or in the alternative by instituting legal action as

provided in [§ 2.2-4364](#)." [§ 2.2-4364](#) of the *Code of Virginia* addresses the use of legal action:

"A bidder denied withdrawal of a bid under [§ 2.2-4358](#) may bring an action in the appropriate circuit court challenging that decision, which shall be reversed only if the bidder establishes that the decision of the public body was not (i.) an honest exercise of discretion, but rather was arbitrary or capricious or (ii.) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid."

Any bidder who requests in writing that a bid be withdrawn in accordance with [§ 2.2-4358](#) will receive a written notice from the public body if that request is denied. The denial of bid withdrawal will be final unless the bidder, within ten (10) days after receipt of the notice denying withdrawal, institutes an appeal by invoking VITA's alternative dispute resolution procedures (<https://www.vita.virginia.gov/supply-chain/sell-to-vita/alternative-disputeresolution-procedure/>) or appeals to the appropriate circuit court in accordance with *Code of Virginia*, [§ 2.2-4364](#). If after VITA's Alternative Dispute Resolution procedures are implemented, it is determined that the decision refusing withdrawal of the bid was arbitrary or capricious, the sole relief shall be withdrawal of the bid.

If no bid bond was posted, prior to appealing, the bidder must deliver to the agency a certified check payable to the Treasurer of Virginia, or a cash bond naming the Commonwealth of Virginia as obligee, in the amount of the difference between the bid sought to be withdrawn and the next low bid. The bid bond shall be released only upon the final determination that the bidder was entitled to withdraw the bid or upon acceptance of the awarded contract by the appealing bidder. The security shall be forfeited to the Commonwealth if the final decision is adverse to the appealing bidder who then fails to accept and enter into the contract or to appeal to a circuit court. In the event the bidder appeals to a circuit court and that court issues a decision adverse to the bidder upholding the Board's decision, the security shall be forfeited.

### **22.10.5 Minor informalities or irregularities in bids**

[§ 2.2-4319](#) (B): A public body may waive informalities in bids. A minor informality or irregularity is one that is merely a matter of form and not of substance. It also pertains to some immaterial defect in a bid or variation of a bid from the exact requirements of the invitation that can be corrected or waived without being prejudicial to other bidders. The defect or variation is immaterial when the effect on price, quantity, quality, or delivery is negligible when contrasted with the total cost or scope of the supplies or services being acquired. The agency either shall give the bidder an opportunity to cure any deficiency resulting from a minor informality or irregularity in a bid or waive the deficiency. Examples of minor informalities or irregularities include:

- Failure to return the number of copies of signed bids required by the invitation.
- Failure to furnish required information concerning the number of its employees.
- Failure to sign its submitted bid, but only if—
  - The unsigned bid is accompanied by other material indicating the bidder's intention to be bound by the unsigned bid (such as the submission of a bid guarantee or a letter signed by the bidder, with the bid, referring to and clearly identifying the bid itself); or

- The firm submitting a bid has formally adopted or authorized, before the date set for opening of bids, the execution of documents by typewritten, printed, or stamped signature and submits evidence of such authorization and the bid carries such a signature.

### **22.11 Occurrence of bid change**

A bidder who desires to change a bid already submitted shall withdraw the submitted bid and submit another bid before the closing date.

- **Correction of bid before bid opening:** If a bidder withdraws its bid and resubmits it with revisions, the revisions should be clearly identified and signed or initialed by the bidder. The omission of a bidder's signature or initials to a modification may result in the bid being determined non-responsive. Prior to submission of a bid, alterations may be made, but must be initialed by the person signing the bid. A single line must be drawn through the information to be changed, insert the desired information and initial the change. Smudged and smeared erasures, strikeovers or opaque fluid on the bid that affects unit price, quantity, quality or delivery may result in the rejection of the line item or information involved in the bid. A bidder may correct mistakes, amend and/or withdraw a response if the procuring agency receives a written request before the due date and hour. The request must be signed by a person authorized to represent the firm or entity that submitted the bid.
- **Correction of bid after bid opening but before award:** A public body may permit a bidder alleging an inadvertent error to correct its bid after bid opening only if the mistake and the correction do not affect the amount of the bid or otherwise give the bidder an unfair competitive advantage. Examples of inadvertent, minor informalities are provided in subsection 22.10.4 above. A minor defect or variation of a response from the exact requirements of the IFB, which does not affect the price, quality, quantity, or delivery schedule for the goods, and services, being procured, may, in the sole discretion of the issuing agency, be waived or the bidder may be permitted to correct it, whichever procedure is in the best interest of the Commonwealth. Examples of minor defects, mistakes or variations include but are not limited to: failure to return the number of pages requested in the IFB or failure to sign, as instructed, in the space provided, but only if the unsigned response is accompanied by other signed documents indicating the bidder intent to be bound. Responses may not be withdrawn if the mistakes are attributable, such as the following:
  - **Judgment errors:** Where errors are attributed, in the sole discretion of the issuing agency, to be errors in judgment, such errors may not be corrected.
  - **Errors where the intended correct response is evident:** Errors and mistakes such as typographical errors, errors extending unit prices, transposition, and arithmetical, or instances where the mistake and the intended correct response are clearly evident in the response document. Such errors shall be corrected to the intended correction and may not be withdrawn. Responses may be withdrawn if the intended correct response is not evident. A bidder may be permitted to withdraw a response if a mistake, in the sole discretion of the issuing agency, is clearly evident in the response document submitted and/or in comparison with other responses.

- **Bid mistakes discovered after award:** Bids containing mistakes shall not be corrected or withdrawn after award of a contract or issuance of an order. No plea or claim of mistake in a bid or resulting contract shall be available as a defense in any legal proceeding brought upon a contract or purchase order awarded to a bidder as a result of the breach or nonperformance of such contract or order. Mistakes shall not be corrected after award of the contract.

### **22.12 Request for clarification information from bidders**

The agency may request additional information to evaluate a bidder's responsiveness to the IFB or to evaluate a bidder's responsibility. If a bidder does not provide the requested information, it may adversely affect the evaluation of the bidder's responsiveness and responsibility.

### **22.13 Negotiation with the lowest bidder**

After the agency has evaluated the technology product or service for acceptability as set forth in the IFB, the bids are then evaluated to determine which bidders offer the lowest cost in accordance with the evaluation criteria set forth in the IFB. Only objectively measurable criteria that are set forth in the IFB shall be applied in determining the lowest bidder. Examples of such criteria include, but are not limited to, transportation cost and ownership or life-cycle cost formulas. Evaluation factors need not be precise predictors of actual future costs, but such evaluation factors shall be reasonable estimates based upon information the agency has available concerning future use and shall provide for the equitable treatment of all bids. Pricing for optional supplies or services or for renewal terms may not be considered, particularly when the pricing for such items or terms is unbalanced when compared to other pricing in the bid.

In accordance with the *Code of Virginia*, [§ 2.2-4318](#), unless canceled or rejected, a responsive bid from the lowest responsible bidder shall be accepted as submitted, except that if the bid from the lowest responsible bidder exceeds available funds, the public body may negotiate with the apparent low bidder to obtain a contract price within available funds. However, the negotiation may be undertaken only under conditions and procedures described in writing and approved by the public body prior to issuance of the IFB and summarized therein.

### **22.14 Posting of award**

After evaluation, award is made to the lowest responsive and responsible bidder. When the terms and conditions of multiple awards are so provided in the IFB, awards may be made to more than one bidder. Awards are to be posted on eVA for a minimum of ten (10) calendar days, but should only be posted after all required written approvals are received by the agency from a federal sponsor, Office of Attorney General and/or Commonwealth Chief Information Officer.

### **22.15 Cancellation of award prior to performance**

When an agency determines after an award has been made but before performance has begun that its requirements for the technology goods and services have changed since the IFB was issued, the award or contract may be canceled and either re-awarded or a new IFB

may be issued if it is determined in writing that one or more of the following circumstances occurred:

- Inadequate or ambiguous specifications were cited in the IFB.
- Specifications included in the original IFB have since been revised.
- Supplies or services being procured through the original IFB are no longer required.
- The IFB did not provide for consideration of all factors of cost.
- The bids received in response to the IFB indicate that the needs of the agency can be satisfied by a less expensive article differing from the specifications included in the original IFB.
- The bids received did not appear in the agency's opinion to be not independently arrived at or in open competition. The bids were collusive or were submitted in bad faith.
- An administrative error of the issuing agency was discovered prior to performance.
- The agency has decided that cancellation of the award is in the best interest of the public.

### **22.16 Procurement file documentation requirements**

The procurement file for competitively sealed bid procurements should contain:

- A copy of the printed IFB document
- Proof of posting – eVA
- Bid tabulation
- Signed, original tabulation sheet
- Identification of date, time and place of bid opening and attendees
- List of all bids received
- List of bids ranked numerically with the lowest bidder at number one
- Documentation of any negotiations
- Any bid protest correspondence
- Documentation to support the inability to set-aside the procurement for a small business or a small business owned by a disabled veteran.  
Documentation of factual support explaining why a bidder is determined to be nonresponsive or non-responsible, including any protest/decision documentation and evidence of having supplied written notification to bidder
- Documentation showing verification of non-debarred status with the DGS Commonwealth debarred list and with the federal EPLS system
- Documentation covering receipt and disposition of samples
- Documentation as to any amendments, cancellations, denial of bid withdrawals, etc.

**Appendix A**  
**IT IFB Process Overview**

If you prefer that VITA conduct any particular technology procurement on your behalf contact: <mailto:scminfo@vita.virginia.gov>. Otherwise, please refer to VITA's Authority and Delegation Policy at: <https://www.vita.virginia.gov/supply-chain/scm-policies-forms/scmpolicies/> for IT procurement authority delegation and approval thresholds and compliance requirements. The following table provides a step-by-step reference for the IFB procurement process:

STEP	PROCESS
1	Review the statewide technology contracts available on VITA's website ( <a href="https://vita.cobblestonesystems.com/public/">https://vita.cobblestonesystems.com/public/</a> ) to determine that there is no statewide technology contract available for the particular technology good or service to be procured. Statewide contracts can offer significant price discounts over individual procurements.
2	Prepare the IFB document and include IT terms and conditions, technical and functional requirements and specifications, reporting or inspection requirements and any bidder qualifications.
3	Post the IFB in <a href="#">eVA</a> , and if desired, a newspaper of general circulation for at least 10 days prior to due date set for receipt of bids. Bids may be solicited directly from potential bidders.
4	Host a pre-bid conference, if applicable.
5	Issue any amendments that are necessary in eVA and answers to all questions received during bid period.
6	Receive and keep sealed bids until date and time stated in the IFB. Late bids shall not be considered.
7	Publicly open the bids on the specified date and time given in the IFB.
8	Read the bids aloud, including announcement of all bids received. Log the respondents' names and bid totals.
9	Responsiveness of bids based upon the requirements set forth in the solicitation
10	Determine if bids responsive, bidders responsible. The lowest responsive bidder is then evaluated to determine if the firm is responsible.
11	Award to the lowest responsive and responsible bidder. If the provision for award to other than the lowest priced bidder was included in the IFB, the award may be made to a reasonably priced DSBSD-certified small business bidder that is other than the lowest responsive and responsible bidder so long as it does not exceed 5 percent (5%) of the noncertified bidder. If the award is made to other than the lowest priced bidder, the award shall be made to the next lowest responsive and responsible DSBSD certified small business bidder.
12	Issue award.
13	Post award in <a href="#">eVA</a> .
14	Await 10-day protest period.
15	Manage and administer the contract.



**Appendix B**  
**Small Business (SWaM) Procurement Plan or**  
**Supplier Procurement and Subcontracting Plan**

For agencies, the plan may be called Small Business (SWaM) Subcontracting Plan. VITA calls the plan Supplier Procurement and Subcontracting Plan. This form is available on VITA SCM's website at the following URL:

<https://www.vita.virginia.gov/supply-chain/scm-policies-forms/scm-policies/>

