

VA250 COMMISSION PROCUREMENT POLICY

WHEREAS Section E of Item 24.50 of Chapter 725 of the 2025 Acts of Assembly authorizes the American Revolution 250 Commission, also known as the VA250 Commission, (the “Commission”) to adopt its own competitive procurement policy in lieu of the Virginia Public Procurement Act, now therefore the Commission adopts the following policy effective July 1, 2025:

- I. **General Mandate.** The Commission shall procure, with the maximum delegated authority available to any legislative branch agency or institution in the Commonwealth, any goods and services with which there are minimum procurement requirements associated.
- II. **Definitions.**
 - A. **Competitive Negotiation.** A method of Contractor selection that solicits proposals from Offerors followed by negotiation with the best proposal or proposals as determined based on a variety of relevant factors of which price is only one factor to be considered. By way of example, other factors may include without limitation Offeror experience, previous performance on similar contracts, quality of materials used, availability, specialized knowledge, and anticipated timing.
 - B. **Competitive Bid.** Contractors are selected by solicitation of bids from Offerors through the eVA Website. Price is usually the primary factor to be considered.
 - C. **Competitive Sealed Bid.** A bid submitted in a sealed envelope or electronic equivalent to prevent disclosure of its contents before the deadline set for the receipt of all bids.
 - D. **Contractor.** Any Offeror, or other entity in the case of procurements not requiring a bidding process, selected by the Commission to provide goods or services.
 - E. **eVA Website.** The Department of General Services' central electronic procurement website, www.eva.virginia.gov.
 - F. **Offeror.** Any person or entity that submits a bid, proposal, or other submission in response to a solicitation to provide goods or services.
- III. **Methods of Procurement.**
 - A. **Informal Negotiation.** Except as provided for in this Agreement, all Commission public contracts with nongovernmental Contractors for the purchase or lease of goods, or for the purchase of services, insurance, or construction, shall be awarded after informal negotiation and a resulting contract which complies with the requirements of Article IV-XVII of this Policy.

- B. **Competitive Bid**. The Commission may elect to select Contractors by Competitive Bid or Competitive Sealed Bid (collectively, “Competitive Bidding”) or Competitive Negotiation when, in the Commission’s sole discretion, the mission of the Commission would be best served by using this method. Solicitation and bids for Competitive Bidding shall be placed through the eVA Website. In deciding whether to require Competitive Bidding or Competitive Negotiation, the Commission shall take into account the following considerations:
- i. The dollar amount of the intended procurement.
 - ii. The term of the anticipated contract, and
 - iii. The likely extent of competition.
- C. **Exceptions**. The Commission may enter into agreements or contracts with private entities without Competitive Negotiation or Competitive Bidding or any other proscribed method for procurement under the following circumstances:
- i. **Tourism Marketing**. Contracts with private entities for the promotion of tourism through marketing, provided both of the following requirements are met:
 1. A demonstrable cost savings can be realized by the Commission and
 2. The agreement or contract is based on competitive principles.
 - ii. **Single Practical Source**. Upon a determination in writing 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 Bidding or Competitive Negotiation. The Commission shall issue a written notice stating that only one source was determined to be practicably available, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded.
 - iii. **Professional Services**. Due to the subjective and individualized nature of the selection of a Contractor to provide professional services, including without limitation legal services, accounting, or architecture (“Professional Services”), selection of Contractors for Professional Services shall not require Competitive Negotiation, Competitive Bidding or any other proscribed method for procurement, but shall instead be decided in the sole discretion of the Commission.
 - iv. **Emergency**. In case of emergency, a contract may be awarded without Competitive Negotiation or Competitive Bidding so long as:

1. Procurement is made with such competition as is practical under the circumstances and
 2. A written determination of the basis for the emergency and for the selection of the particular contractor is included in the Commission's files.
- v. **De Minimis**. Contracts valued at less than ten thousand dollars (\$10,000.00) may be awarded in the sole discretion of the Commission and need not be publicly reported.
- vi. **Grant Awards**. Grant awards by the Commission, whether or not the grantee is required to furnish reports or incidental goods or services to the Commission or others as part of the grant requirements, shall be exempt from the procurement process.

IV. **Considerations in Contractor Selection.**

- A. **Qualification of Offeror**. The Commission may make such reasonable investigations as deemed proper and necessary to determine the ability of the Offeror to perform the services or furnish the goods and the Offeror shall furnish to the Commission all such information and data for this purpose as may be requested. The Commission reserves the right to inspect Offeror's physical facilities prior to making an award to satisfy questions regarding the Offeror's capabilities. The Commission further reserves the right to reject any proposal if the evidence submitted by, or investigations of, such Offeror fails to satisfy the Commission that such Offeror is properly qualified to carry out the obligations of the Contract and to provide the services and/or furnish the goods contemplated therein.
- B. **Testing and Inspection**. The Commission reserves the right to conduct any test or inspection it may deem advisable to assure goods and services conform to the specifications required.

V. **Anti-Discrimination.**

- A. **By the Commission**. Discrimination in procurement decisions based on race, religion, color, sex, age, disability, national origin, sexual orientation, gender identity, political affiliation, religious affiliation or lack of religious affiliation, veteran status, or any other basis prohibited by state law relating to discrimination shall be prohibited. No Offeror or Contractor shall be discriminated against in the solicitation or award of any Contract based on any of the suspect classifications listed above, or because the Offeror or Contractor employs ex-offenders unless the Commission, department, or institution has made a written determination that employing ex-offenders on the specific contract is not in its best interest. If the award of any Contract is made to a faith-based organization and an individual, who applies for or receives goods, services, or disbursements provided pursuant to the

Contract objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the public body shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursements from an alternative provider.

B. By Contractors.

- i. By submitting their proposal, Offerors certify to the Commonwealth that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians with Disabilities Act, and the Americans with Disabilities Act.
- ii. If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the Contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that Contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the Commission.
- iii. All Contractors must agree that during performance of any contract with the Commission, the Contractor will comply with the nondiscrimination provisions of this policy as follows:
 1. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, sexual orientation, gender identity, political affiliation, veteran status, religious affiliation or lack of religious affiliation, or any other basis prohibited by state law relating to discrimination in employment.
 2. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 3. All solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.

- VI. **Prompt Payment.** All contracts between the Commission and any Contractor shall incorporate the prompt payment principles of §§ 2.2-4350 and 2.2-4354, Code of Virginia.
- VII. **Antitrust.** By entering into a contract, the Contractor conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Commonwealth of Virginia under said contract.
- VIII. **Applicable Laws and Courts.** Contractor contracts shall be governed in all respects by the laws of the Commonwealth of Virginia, and any litigation with respect thereto shall be brought in the courts of the Commonwealth. The Contractor shall comply with all applicable federal, state, and local laws, rules and regulations.
- IX. **Assignment of Contracts.** A contract shall not be assignable by the Contractor in whole or in part without the written consent of the Commission.
- X. **Requirements for Proposals.**
- A. **Price Currency.** Unless stated otherwise in the solicitation, Offerors shall state proposal prices in US dollars.
- B. **Clarification of Terms.** If any prospective Offeror has questions about the specifications or other solicitation documents, the prospective Offeror should contact the buyer whose name appears on the face of the solicitation no later than five working days before the due date. Any revisions to the solicitation will be made only by addendum issued by the buyer.
- C. **Debarment Status.** By submitting their proposal, Offerors certify that they are not currently debarred by the Commonwealth of Virginia from submitting proposals on contracts for the type of goods and/or services covered by the relevant solicitation, nor are they an agent of any person or entity that is currently so debarred.
- XI. **Contractor Default.** In case of failure to deliver goods or services in accordance with the terms and conditions of a Contractor's contract, the Commission, after due oral or written notice, may procure the contracted-for goods or services from other sources and hold the Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the Commission may have.
- XII. **Ethics in Public Contracting.** By submitting their proposal, Offerors certify that their proposals are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other Offeror, supplier, manufacturer or subcontractor in connection with their proposal, and that they have not conferred on any public employee having official responsibility for this procurement transaction any

payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

- XIII. **Immigration Reform and Control Act of 1986.** By entering into a written contract with the Commission, a Contractor certifies that they do not, and shall not during the performance of the contract for goods and or services in the Commonwealth, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.
- XIV. **Information Security Review.** Should the Contractor's obligations involve creating, collecting, or storing Commission information which is deemed sensitive by the Commission, the Commission shall have the right to require such Contractor to participate in any annual information security review or audit conducted by the Commission to ensure that information protection policies and practices of the Contractor are sufficient for the Commission information being created, collected and/or stored.
- XV. **Insurance.** By signing and submitting a proposal under any Commission solicitation, the Offeror certifies that if awarded the contract, it will have the following insurance coverage at the time the contract is awarded and for the duration of the contract:
- A. Workers' Compensation - Statutory requirements and benefits. Coverage is compulsory for employers of three or more employees, to include the employer. Contractors who fail to notify the Commonwealth of increases in the number of employees that change their workers' compensation requirements under the Code of Virginia during the course of a contract shall be in noncompliance with the contract.
 - B. For construction contracts, if any subcontractors are involved, the subcontractors shall also have workers' compensation insurance in accordance with §§ 2.2-4332 and 65.2-800 et seq. of the Code of Virginia. The Offeror further certifies that the Contractor and any subcontractors will maintain this insurance coverage during the entire term of the Contract and that all insurance coverage will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.
 - C. Employer's Liability - \$100,000.
 - D. Commercial General Liability - \$1,000,000 per occurrence. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, products and completed operations coverage. The Commonwealth of Virginia must be named as an additional insured and so endorsed on the policy.

- E. Automobile Liability - \$1,000,000 per occurrence. (Only applicable if a covered motor vehicle is to be used in the contract.)

XVI. **Payment.**

- A. Invoices for items ordered, delivered and accepted shall be submitted by the Contractor or sub-contractor directly to the payment address shown on the purchase order or contract. All invoices shall show the Commission contract number and/or purchase order number; social security number (for individual contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations).
- B. Any payment terms requiring payment in less than thirty (30) days will be regarded as requiring payment thirty (30) days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than thirty (30) days, however.
- C. The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or the date of offset when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act.
- D. Unreasonable Charges. Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, Contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. The Commission reserves the right to research and challenge charges which appear to be unreasonable, in which case that portion of the invoice shall be held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, the Commission shall promptly notify the Contractor, in writing, as to those charges which it considers unreasonable and the basis for the determination. A Contractor may not institute legal action pursuant to this section unless a settlement cannot be reached within thirty (30) days of notification. The provisions of this section do not relieve the Commission of its prompt payment obligations with respect to those charges which are not in dispute.
- E. Payment to Subcontractors:
 - i. All Contractors of the Commission are hereby obligated: to pay any subcontractor(s) within seven (7) days of the contractor's receipt of payment from the Commission for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or to notify the Commission and the subcontractor(s), in writing, of the Contractor's intention to withhold payment and the reason.

- ii. Contractors are obligated to pay any subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of their contract) on all amounts owed by the Contractor that remain unpaid seven (7) days following receipt of payment from the Commission, except for amounts withheld as stated in (i) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier contractor performing work under a primary contract. A Contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Commission.
- iii. The Commission encourages contractors and subcontractors to accept electronic and credit card payments.

XVII. **Taxes.** Sales to the Commonwealth of Virginia are normally exempt from state sales tax. State sales and use tax certificates of exemption, Form ST-12, will be issued upon request. Deliveries against any contract shall usually be free of Federal excise and transportation taxes. The Commonwealth's excise tax exemption registration number is 54-73-0076K.

XVIII. **Virginia Procurement Act No Longer to Apply.** As provided in Section E of Item 24.50 of Chapter 725 of the 2025 Acts of Assembly, the provisions of the Virginia Public Procurement Act shall no longer apply to the expenditure of funds from the Commission.