



THE
FORT MONROE AUTHORITY
FMA-P-001

Procurement Policies
and Procedures

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INTRODUCTION

The enclosed policies and procedures represent the Fort Monroe Authority (“FMA”)’s commitment to prudent business practices when purchasing goods and services. All purchasing will be done to support the mission of the FMA and will be in the best interest of the Commonwealth of Virginia. The FMA will continue to consider the benefits of established State contracts to procure certain goods and services. The FMA management is responsible for determining the appropriate and most desirable source of procurement.

As an authority created to plan for and manage the reuse of Fort Monroe, a BRAC closure, the FMA is subject to the Virginia Public Procurement Act (“VPPA”), which can be found in Code of Virginia § 2.2-4300 et seq. However per Code of Virginia § 15.2-6314.1, the closure of Fort Monroe authorizes the FMA to use “emergency” procurement procedures under subsection F of § 2.2-4303 of the VPPA. Additionally as a political subdivision, the FMA is not required to follow the policies and procedures issued by the Department of General Services (“DGS”) or other procurement-related agencies. All procurement policies and procedures are established by the Executive Director within the authority granted him/her by the FMA Board of Commissioners.

Specifically, this Procurement Policies and Procedures Manual is intended to guide all the FMA procurements and ensure that the Authority:

- Obtains high quality goods and services at a reasonable cost
- Conducts all procurements in a fair and impartial manner, avoiding any impropriety or appearance of impropriety
- Provides all qualified vendors reasonable access to public business and neither arbitrarily nor capriciously excludes or discriminates against any viable offeror
- Seeks competition, consistent with the business needs of the FMA
- Allows flexibility in fashioning details of such competition
- Provides clear rules, in advance of competition, governing contract awards
- Draws specifications that reflect the procurement needs of the FMA, rather than being drawn to favor a particular vendor
- Freely exchanges information between purchasers and vendors, inasmuch as such exchange does not negatively affect the business objectives of the FMA, or violate associated confidentiality requirements
- Procures services that, where applicable, ensure conformity with national and state standards for the preservation and treatment of historic properties and artifacts
- Complies with the applicable requirements of the VPPA

This manual provides instruction to all employees of the FMA as they identify and pursue the procurement of goods and services to fulfill the business needs of the FMA.

However, as indicated herein, specific responsibilities and authorities have been defined for purchasing goods and services on behalf of the FMA. All employees are therefore directed to the FMA responsible party, as defined herein, prior to pursuing any procurement.

Certain procedures and forms referenced in this manual are subject to change, as the FMA continues to grow and evolve its procurement operations and systems. For example, there may be positions referenced in this manual that have not yet been created, but which are planned for creation as reuse of Fort Monroe progresses. *In cases where this manual appears to contradict instructions on forms or other materials, the policies and procedures documented herein will take precedence.*

The Deputy Director of Operations and his/her staff in the Operations Department are available to assist in any purchasing activity and to interpret and apply these policies and procedures. The provisions of this manual have been developed at the discretion of management and may be amended or canceled at any time at the FMA's sole discretion. These provisions supersede all previously issued purchasing policies and procedures and may not be amended or added to without the express written approval of the Executive Director of the FMA within the authorization granted him/her by the FMA Board of Commissioners (the "Board").

No member of management or representative of the FMA has any authority to enter into any agreement contrary to these policies and procedures relative to contracts, purchases or other areas included in this manual.

SECTION 1 - ETHICS IN PUBLIC PROCUREMENT

1.1 POLICY

It is important that FMA employees conducting procurements on behalf of the FMA avoid improprieties as well as the appearance of such improprieties. The integrity and credibility of the procurement program requires FMA employees to be impartial, fair and free of any relationships that may cause them to be unduly partial to any vendor or product. It is up to each individual to ensure they do not violate the spirit of procurement ethics.

1.2 PROCEDURE

Procurement ethics will always include but may not be limited (depending on the circumstances) to the following considerations:

A. Legitimate Business Need

The procurement of goods and services will be limited to those necessary to the operation and mission of the FMA and its business interests. Purchasing of goods and services through the FMA procurement process for non-FMA use is prohibited.

B. Conflicts of Interest

A FMA employee is prohibited from participating in a procurement transaction if he/she (or in some cases his/her spouse or family) has an interest in the potential vendor's business.

C. Gifts

No FMA employee having official responsibility for a procurement transaction shall solicit, demand, accept or agree to accept from a bidder, offeror, contractor or subcontractor any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised.

D. Disclosure of Subsequent Employment

No current or former FMA employee having official responsibility for a procurement transaction shall accept employment with a bidder, offeror or contractor with whom he/she has dealt in any official capacity concerning procurement transactions for a period of one (1) year from the cessation of employment by the FMA unless the employee or former employee provides written notification to the FMA prior to commencement of employment by that bidder, offeror or contractor.

E. Kickbacks

Kickbacks involve getting something of value from a bidder, offeror, contractor or subcontractor in an attempt to influence the award of business and are prohibited.

F. Order Splitting

Order splitting is the practice of unreasonably placing multiple orders for the same, like, or related goods and services in order to avoid using the appropriate method of procurement or to remain within a specific employee's delegated purchasing authority and is prohibited.

G. Misrepresentations

Any FMA employee having official responsibility for a procurement transaction is prohibited from knowingly falsifying, concealing or misrepresenting material facts concerning procurement.

H. Insufficient Authorization

No employee shall obligate the FMA to procurement without having received prior written authorization from an approved official. To do so, is a misrepresentation of authority and is prohibited.

Questions regarding the above or other procurement ethics issues, or the interpretation thereof, should be directed to the Deputy Director of Operations or his/her designated representative.

The willful violation of any of the above provisions may lead to disciplinary and/or legal actions.

SECTION 2- PROCUREMENT OFFICE

2.1 POLICY

The FMA will establish and maintain a central Procurement Office in its Operations Division, which will have overall responsibility for developing, interpreting and enforcing all FMA purchasing policies and procedures. In some cases (as specified herein), approval from the Deputy Director of Finance will be required prior to pursuing the purchase of goods and services on behalf of the FMA. Otherwise, the Executive Director may delegate procurement authority to Department Directors or their designated Purchasing Agents (“Agents”), as long as such delegated procurements are conducted in accordance with all applicable FMA policies and procedures.

2.2 PROCEDURE

- A. The Procurement Manager will maintain this Procurement Policies and Procedures Manual (the “Manual”) by issuing updates or amendments as necessary. These updates or amendments will be reviewed by the Finance Committee and approved by the Executive Director. The Procurement Manager will provide copies of the Manual to the staff, Agents and other parties as appropriate.
- B. The Procurement Manager will support the FMA with its purchasing activities and will maintain purchasing documentation and related files, as specified herein, in good order.
- C. The Procurement Manager will provide and/or coordinate training as needed to approved personnel to ensure continued compliance with FMA policies and adherence to sound procurement practices.
- D. The Procurement Manager will coordinate with the Deputy Director of Finance to ensure that payments for goods and services (or credits due) are processed timely and in accordance with all FMA policies and procedures.
- E. The Finance Office will coordinate any inquiries, reviews or audits which may be requested and conducted from time to time by the Finance Committee, the Executive Director, the Board of Commissioners or other state entities.
- F. The Director of Operations must be advised and will coordinate all vendor disputes, appeals and resolutions.

SECTION 3- TYPES OF PROCUREMENT

3.1 POLICY

Procurement of goods and services (professional or nonprofessional) shall conform to the FMA Procurement Table in Appendix I.

3.2 PROCEDURE

A. GOODS

Procurement of goods, such as office supplies, furniture, equipment, computers and printing will be purchased in accordance with the rules established in this Procedure.

In order to ensure the consistency and quality of furnishings, the Procurement Office will be responsible for procurement of all furniture. If a division identifies a need for furniture, it must contact the Procurement Office.

B. SERVICES – NONPROFESSIONAL

Nonprofessional services are services not specifically identified as professional services including maintenance services, research services (unless conducted by one of the professionals listed below), marketing and promotional items.

Because the FMA often schedules its work in phases, it may issue continuing contracts when authorized by the initial contract for nonprofessional services if each phase of work builds on another. Such contracts must be approved by the Executive Director.

The Director of Human Resources must also authorize all staff augmentation ("temporary staff") services regardless of expenditure level or procurement method.

C. SERVICES – PROFESSIONAL

Professional services include work which must be performed by an entity licensed in the practice of accounting, actuarial services, architecture, land survey, landscape architecture, law, medicine, optometry, pharmacy or engineering.

Because the FMA often schedules its work in phases, it may issue continuing contracts when authorized by the initial contract for nonprofessional services if each phase of work builds on another. Such contracts must be approved by the Executive Director.

It should be noted that all legal services will be approved by the Commonwealth of Virginia Office of the Attorney General ("OAG"). The FMA is precluded from obtaining other legal representation without prior approval of the OAG.

SECTION 4 – PROCUREMENT METHODS

4.1 POLICY

Due to the unique historic nature of Fort Monroe, it is normally not practicable or fiscally advantageous for the FMA to obtain goods or services, including construction by competitive sealed bidding. Unless documented otherwise in the procurement file, goods and services, which do not qualify as an emergency, small purchase or sole source shall be procured through competitive negotiation and shall conform to the FMA Procurement Table in Appendix I.

4.2 PROCEDURE

It is important to select the proper procurement method. The estimated or anticipated value of the contract must be determined first, unless the purchase is an emergency. For emergency procurement see Section 5. The anticipated value of the contract includes the dollar value for the initial period of the contract and all possible renewal periods. The expected trade-in value of equipment should not be considered when determining the anticipated value of a contract. When determining the total value of a contract, include all cost elements such as travel related expenses (e.g., travel, lodging and meals) and direct bill expenses (e.g., copying costs, postage, shipping and handling costs and long distance charges). If purchases under \$50,000 are required, then the small purchase procedures in Section 6 shall be used. If over \$50,000, then the competitive negotiation procedures in Section 7 shall be used. For purchases where there is only one source practicably available, see Section 8. For competitive sealed bidding, see Section 9.

SECTION 5 – EMERGENCY PROCUREMENT

5.1 POLICY

The closure of Fort Monroe authorizes the FMA to use “emergency” procurement procedures under subsection F of § 2.2-4303 of the VPPA per Code of Virginia §15.2-6314.1. Procurement through emergency procedures shall conform to the FMA Procurement Table in Appendix I.

5.2 PROCEDURE

A. In case of emergency, a contract may be awarded without competitive negotiation; however if practical, competition should be solicited through informal bids before issuing a Purchase Order (“PO”). If competition is not practical, utilize the most direct and least time-consuming method to procure the goods or services.

B. Emergency purchases require justification and authorization by the Executive Director. Authorization of an emergency purchase indicates that in management’s judgment, the benefits of an immediate and direct purchase of goods or services outweigh the drawbacks of limited competition.

C. If an emergency purchase is deemed necessary, complete the Emergency Procurement Authorization Form, also known as the Sole Source-Emergency Justification Form provided in Appendix II, documenting the basis for this determination.

D. The FMA shall issue a written notice stating a contract is being awarded on an emergency basis, identifying what is being procured, the contractor selected and the date on which the contract was or will be awarded.

E. The notice shall be posted in a designated public area or published in a newspaper of general circulation on the day the public body awards or announces its decision to award the contract, whichever occurs first, or as soon thereafter as is practicable. The notice may also be published in the DGS’ central electronic procurement website (eVA) and other appropriate websites.

SECTION 6 – SMALL PURCHASE PROCEDURES

6.1 POLICY

Small Purchases shall conform to the FMA Procurement Table in Appendix I. Small Purchase procedures may be used for the purchase of goods and services (professional and non-professional) not expected to exceed \$50,000.

6.2 PROCEDURE

- A. Procurement of goods and services not expected to exceed \$50,000 do not require competitive negotiation.
- B. Any purchase expected to exceed \$30,000 shall require the written informal solicitation of a minimum of four (4) bidders or offerors.

6.3 EXEMPTIONS TO COMPETITION

The FMA has determined that competition normally is either not practicable or available for purchases up to and including \$5,000 and the following goods or services up to and including \$50,000:

- A. Academic/research consulting services
- B. Honoraria and entertainment (e.g., speakers, lecturers, musicians or performing artists)
- C. Books, pre-printed materials, reprints and subscriptions (e.g., print or electronic), pre-recorded audio and video cassettes, compact discs, slide presentations, etc. when only available from the publisher/producer

6.4 CORPORATE CREDIT/DEBIT CARD

The FMA corporate credit or debit card may be used for small purchases not requiring competition. Use of the corporate credit or debit card is restricted to official FMA purchases only. Use of the card for personal items, cash advances or unauthorized expenses relating to business travel is not permitted.

Employees who cannot produce documentation showing proof of purchase may be held responsible for payment. The Executive Director may establish waivers from this regulation.

Corporate credit cards have a maximum of a \$5,000 credit limit. Corporate debit cards have a maximum daily limit of \$3,000.

- A. Credit/Debit Card users may order products or services directly from participating suppliers.

- B. Once the supplier has processed and delivered the order, the card members shall verify all items have been received in good order.

- C. Credit/Debit card users shall record the purchase/receipt onto the personal card log form (including expenditure coding.)

- D. The credit card company issues a monthly report for each credit card and an account statement, including debit card charges, to the Finance Office detailing all expenditures.

- E. Each card member is responsible to reconcile their monthly report and return to the Finance Office with all receipts and supporting documentation. When reconciled, the Finance Office pays the credit card company.

6.5 TRAVEL – SUSTENANCE, LODGING AND PUBLIC TRANSPORTATION

Policies and procedures for arranging airline tickets, hotel rooms, public transportation and other travel for business purposes by FMA employees are described in the FMA Employee Handbook (Section V: Fiscal Control Policies). Procurement of sustenance, lodging and public transportation shall conform to the Small Purchase Procedures herein.

SECTION 7 – COMPETITIVE NEGOTIATION

7.1 POLICY

Procurement of goods and services (professional and nonprofessional) by competitive negotiation shall conform to the FMA Procurement Table in Appendix I.

7.2 PROCEDURE

This method of procurement requires the issuance of a Request for Proposal (“RFP”) that describes in general terms the requirements, the factors that will be used to evaluate the proposal, the FMA General Terms and Conditions, plus any special conditions including unique capabilities or qualifications that will be required.

Competitive negotiation has the advantage of flexibility for describing in general terms what is being sought and the factors to be used in evaluating responses. It offers the opportunity, through negotiation, to change the content of an offer and pricing after opening. Negotiation is the dialogue that occurs to achieve mutually satisfactory objectives and benefits and to reconcile differences through mediation. This discussion provides the means for both the buyer and seller to reach agreement on a contract’s content, terms, and conditions. In the course of negotiation, both parties should be able to reach a mutually acceptable agreement.

A. FORMAT

FMA shall issue a written RFP indicating in general terms that which is to be procured. The RFP must specify and list the specific requirements to be addressed by the offerors that will be used in evaluating the proposals. The RFP will include or incorporate by reference the specifications, drawings, and contractual terms and conditions applicable to the procurement, including any unique capabilities or qualifications required of the contractor. The RFP shall include a copy of FMA’s standard General Terms and Conditions.

FMA shall establish a proposal submission due date and time which provide sufficient time for potential offerors to develop a proposal. The minimum time period is ten (10) days from issue date of the RFP. The time period used may be greater than the required ten (10) days based on the complexity of the requirement and whether or not a pre-proposal conference is required. The RFP shall be posted in a designated public area normally used for posting of public notices, by publication in a newspaper or newspapers of general circulation in the area in which the contract is to be performed so as to provide reasonable notice to the maximum number of offeror that can be reasonably anticipated to submit proposals in response to the particular request and may be published on the DGS’ central electronic procurement website (eVA) and other appropriate websites at least ten (10) days prior to the date set for receipt of proposals.

If the method for receiving Best and Final Offers (“BAFO”) is to be used in the negotiation and evaluation process, then this must be stated in the RFP for the offerors’ notification and consideration.

Mandatory requirements should be kept to a minimum and refer only to those areas that are required by law or regulation or are such that they cannot be waived and are not subject to negotiation. The use of “shall” or “must” indicates a mandatory requirement. Specify any optional information desired. The factors for use in evaluation shall be stated in the RFP, and the weights assigned to them must be included in the RFP. Price shall be one of the factors considered, but need not be the determining one. Include a pricing schedule in the RFP if applicable.

B. CONFERENCES/SITE VISITS

All pre-proposal conferences or site visits must be mentioned in the RFP and any advertisement. If attendance at such a conference or site visit is a prerequisite for submitting a proposal, the public notice period must be at least ten (10) days after issuance to provide adequate opportunity for potential offerors to obtain a copy of the RFP and attend.

C. RECEIPT AND EVALUATION

Public opening of proposals is not required.

The proposals are evaluated by an evaluation team approved by the Executive Director. As an option, evaluators may request presentations or discussions with offerors, as necessary, to clarify material in the offerors proposals and to help determine those fully qualified and best suited.

Proposals are evaluated on the basis of the criteria set forth in the RFP, using the scoring weights previously determined. All RFP responses are to be evaluated. Proposals not meeting requirements should be scored lower.

Offerors may be given an opportunity to correct a deficiency in their proposals, within an appropriate period of time, as determined by the Purchasing Office. Offerors who fail to submit required documentation or meet mandatory requirements, in such time for evaluation purposes, may be eliminated from further consideration. Two or more offerors determined to be fully qualified and best suited are then selected for negotiation. Price is considered, but need not be the sole determining factor.

During the evaluation phase, it may be determined by the evaluation panel that only one offeror is fully qualified or that one offeror is CLEARLY more highly qualified than the others under consideration. A written determination shall be prepared and retained in the contract file to document the meaningful and convincing facts supporting the decision for selecting only one offeror and negotiating with that offeror. The determination shall be signed by the FMA Executive Director.

D. NEGOTIATION

FMA shall engage in individual discussions with two or more offerors deemed fully qualified, responsible and suitable on the basis of initial responses.

Negotiation allows modification of proposals, including price. Offers and counter-offers may be made as many times with each offeror as is necessary to secure a reasonable contract. After negotiations have been conducted with each of the selected offerors, the FMA selects the offeror which, in its opinion, has made the best proposal. Written confirmation shall be obtained from the offeror on any modifications of the original proposal.

When a provision for receiving BAFO is included in the RFP, after negotiations, offerors are given the opportunity to submit a BAFO. After the offeror submits a BAFO, no further negotiation shall take place with that offeror. The offeror's proposal, if already received and scored, may be re-scored to combine and include the information contained in the BAFO with the technical evaluation score previously assigned and the award decision made. The contract file shall be documented to show the basis for the award and include the final rescoring of the proposals following negotiation and receipt BAFOs.

E. AWARD

Agencies may cancel a RFP or reject proposals at any time prior to making an award.

The award documents shall incorporate, by reference, the terms and conditions of the RFP and the contractor's proposal, together with all written modifications thereof.

After negotiations, FMA shall award the contract to the offeror, which in its opinion, has made the best proposal based on the criteria identified for evaluation in the RFP.

Awards may be made to more than one offeror when the terms and conditions of multiple awards are so provided in the RFP.

7.3 BEST VALUE ACQUISITION (OVER \$50,000)

The FMA may obtain required goods or nonprofessional services using best value concepts. A written determination for the use of Best Value Acquisition ("BVA") is required when using BVA under competitive negotiation. 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.

SECTION 8 – SOLE SOURCE PROCUREMENT

8.1 POLICY

A purchase of goods or services is considered sole source if there is only one source practicably available. Procurement through a sole source shall conform to the FMA Procurement Table in Appendix I.

8.2 PROCEDURE

Sole source must not be confused with proprietary purchases where only a specific brand, make or model is acceptable but may be obtained from several sources (e.g. dealers, resellers, distributors).

- A. Sole source purchase requires justification and authorization by the Executive Director. Authorization of a sole source indicates that, in management's judgment, no other viable source is practicably available that can supply the required goods or service in an adequate, efficient and timely manner.

- B. If a sole source is deemed necessary, complete the Sole Source Justification Form, also known as the Sole Source-Emergency Justification Form provided in Appendix II, documenting the basis for this determination.

- C. The FMA shall issue a written notice stating a contract is being awarded as a sole source, identifying what is being procured, the contractor selected and the date on which the contract was or will be awarded.

- D. The notice shall be posted in a designated public area or published in a newspaper of general circulation on the day the public body awards or announces its decision to award the contract, whichever occurs first, or as soon thereafter as is practicable. The notice may also be published on the DGS' central electronic procurement website (eVA) and other appropriate websites.

- E. Sole source documentation is not required for any procurement that would ordinarily not be competitively bid. Such purchases include postal replenishment, marketing, trade shows and conventions (which are held at specific locations out of the FMA's control and not subject to alternatives); sales, marketing and advertising sponsorships (which by their very nature are sole source because they are associated with specific shows, events, or advertorial programs with specific providers of those programs and cannot be completed otherwise).

8.3 USE OF PROPRIETARY PRODUCTS

Proprietary purchases involve goods where only a specific brand, make or model is acceptable, but they usually can be obtained from several sources (e.g. dealers, resellers, distributors). By definition, some level of competition is available for procuring proprietary products, and the FMA will strive to utilize such competition to its advantage. If only one source is practically available, it is considered a sole source purchase.

The FMA will strive to define its needs in a non-proprietary fashion where multiple brands, makes and models can be considered. However in the case where only one is practicable (e.g. computer software upgrades, historic preservation materials), the FMA will specify the manufacturer, make and model within the specification. Any article that the FMA, in its sole discretion, determines to be the equal of that specified, considering quality, workmanship, economy of operation and suitability for the purpose intended, may be accepted.

SECTION 9 – COMPETITIVE SEALED BIDDING

9.1 POLICY

Competitive sealed bidding is a method of contractor selection for goods and nonprofessional services. Procurement by competitive sealed bidding shall conform to the FMA Procurement Table in Appendix I.

9.2 PROCEDURE

Competitive sealed bidding includes the issuance of a written Invitation for Bid (“IFB”) containing the specifications, scope of work and the contractual terms and conditions applicable to the procurement. The goods or service to be procured by competitive sealed bidding must be described so that bids submitted by potential contractors can be evaluated against the description in the IFB and an award made to the lowest responsive and responsible bidder.

The requirements set forth in the IFB may include special qualifications required of potential contractors, life-cycle costing, value analysis, and any other criteria such as testing, quality, workmanship, delivery and suitability for a particular purpose which may help in determining acceptability. IFBs must describe the requirements accurately and completely. Unnecessarily restrictive specifications or terms and conditions that unduly limit competition must be avoided.

A. FORMAT

The FMA shall establish a due date that will allow sufficient time for potential bidders to seek clarification and for the issuance of an addendum, if necessary. The due date shall not be less than ten (10) days from the issue date of the IFB.

The IFB shall specify in detail the materials, equipment, and supplies to be furnished or the scope of work to be performed by the contractor, including or incorporating by reference the specifications, drawings and contractual terms and conditions applicable to the procurement.

B. CONFERENCES/SITE VISITS

All pre-bid conferences and/or site visits shall be mentioned in both the IFB and any advertisement. 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. Any changes in the requirements of the solicitation must be made by written addendum. The due date for receipt of bids should not be less than ten (10) days after the issue date of the addendum.

C. BID RECEIPT AND OPENING

Bids shall be received until the date and time specified in the IFB. Late bids shall not be considered.

Bids shall be publicly opened. Bidders' name, price, discount terms if offered, brand names and model numbers shall be read aloud. The public opening of bids for construction type contracts shall be held twenty-four (24) hours after the date and time set for submission of bids, Code of Virginia, § 2.2-4330A(ii).

D. EVALUATION AND AWARD

After bid opening, each bid is evaluated to determine if it is responsive to the IFB. The responsive bids are then evaluated according to the criteria and/or evaluation procedure described in the IFB to determine which bid is the lowest.

The bids are evaluated based upon the requirements set forth in the IFB. Best value concepts may be applied when procuring goods and nonprofessional services, but not construction. Solicitations may include criteria, factors and the process for the consideration of best. (Best Value, defined in Paragraph 7.3.)

The contract is awarded to the lowest responsive and responsible bidder. Awards may be made to more than one bidder when the terms and conditions of multiple awards are so provided in the IFB.

F. NEGOTIATION WITH THE LOWEST RESPONSIBLE BIDDER

If the bid from the lowest responsible bidder exceeds available funds, the agency may negotiate with the apparent low bidder to obtain a contract price within available funds if the IFB contains conditions and procedures for such negotiation, Code of Virginia § 2.2-4318.

If the buyer decides to negotiate in such circumstances, the decision must be documented in writing in advance of the negotiations. Negotiations might include an extended delivery date, reduced quantity, different accessories, etc., with a corresponding reduction in price. Otherwise, unless canceled or rejected, a responsive bid from the lowest responsible bidder shall be accepted as submitted.

SECTION 10 – OTHER CONSIDERATIONS

10.1 PREFERRED VENDORS

All FMA procurements will provide qualified vendors reasonable access to participate in the process, and no vendor will be arbitrarily or capriciously excluded or discriminated against.

Notwithstanding the foregoing, the public procurement policy, in general, and the policy of the FMA, in particular, allow for reasonable preferences to be included in the bid specifications and selection criteria, as allowed by the VPPA, which facilitate the participation or use of:

- Products or services produced in Virginia (only in instances of a tie bid)
- Products which utilize recycled goods or “less toxic” manufacturing methods
- Participation of small, women-owned, service disabled veteran-owned and minority-owned business

Regarding the latter preference, the FMA does not have a “set aside” program for participation of small, women-owned, service disabled veteran-owned and minority-owned business. However, the FMA Finance Office will encourage participation of such businesses by: obtaining lists of such firms from the Department of Minority Business Enterprises and other sources; referring to the list as procurement needs are identified; and actively soliciting the participation of such firms in applicable procurements.

10.2 DEBARRED VENDORS

An individual or firm may be debarred (not allowed to do business with the FMA) for up to one (1) year for any of the following reasons:

- Breach (default) of contract
- Stating an unwillingness or inability to honor a binding bid
- Falsifying or misrepresenting their abilities relative to the procurement specifications and bids in order to appear responsive
- Conferring or offering to confer upon any FMA employee participating in a procurement (on which the entity has bid or intends to submit a bid) any gift, gratuity, favor or advantage, present or future
- Any cause indicating the entity is not a responsible vendor
- A determination by the FMA Executive Director that the entity has used abusive language, threats or other conduct deemed unprofessional or inappropriate during the conduct of business
- Conviction of any criminal offense, antitrust law violation or conviction indicating lack of moral or business integrity (in which cases debarment may be for three years)

The Executive Director or his/her designee will make the final determination as to debarment, and will notify the Finance Office, who will maintain a list of such debarred vendors. Vendors debarred by state entities may also be considered debarred from doing business with the FMA.

10.3 SURPLUS/UNCLAIMED PROPERTY

Property no longer needed by the FMA is to be considered surplus property. The Executive Director or designee will make such determination, and the Facilities Manager will coordinate the transfer or disposal of such items in a manner deemed to be in the best interests of the FMA. It will always be considered to be in the best interests of the FMA if surplus property and materials are disposed of in accordance with the guidelines established in the Agency Procurement and Surplus Property Manual issued by DGS.

SECTION 11 – VENDOR INSURANCE, PERFORMANCE BONDS, BID BONDS

11.1 POLICY

Whenever work is to be performed on FMA owned or leased property or facilities, the contractor shall be required to have Workers' Compensation, Employer's Liability, Commercial General Liability and Automobile Liability and in certain types of programs Professional Liability/Errors and Omissions insurance coverage.

Stipulated insurance must be obtained prior to commencing work and be maintained during the entire term of the contract. At a minimum, the contractor must certify to the agency that they possess the appropriate insurance coverage and documentation concerning the contractor's insurance shall be included in the procurement file. Certification shall be in writing when written quotes are required. The procuring office may require a certificate of insurance to be furnished prior to commencement of work and at anytime during contract performance.

11.2 PROCEDURE

- A. For service contracts under \$30,000, the need for vendors to maintain insurance coverage will be determined by the Procurement Manager on a case-by-case basis.

- B. For services contracts over \$30,000, the vendor (and all subcontractors) must agree to maintain insurance coverage during the entire term of the contract with minimum levels to include:
 - Workers Compensation: Statutory requirements and benefits.
 - Employer's Liability: \$100,000.
 - Commercial General Liability: \$1,000,000 combined single unit, with the FMA named as an additional insured with respect to the services being provided. This coverage is to include Premise/Operations Liability, Products and Completed Operations Coverage, Independent Contractor's Liability, Owner's and Contractor's Protective Liability and Personal Injury Liability.
 - Automobile Liability: \$1,000,000 per occurrence.

- C. If a contract for goods or services is expected to exceed \$50,000 in total annual expenditures, the Procurement Manager must determine if a bid and/or performance bond will be requested prior to issuing the solicitation documents and if such bonds will be maintained once the bids/proposals are received.

D. Construction contracts with a value in excess of \$100,000.00 must have bid, performance and payment bonds as require by the Code of Virginia § 2.2-4336 *et seq.*

E. For construction contracts, if any subcontractors are involved, subcontractors shall also be required to have Workers' Compensation Insurance in accordance with Code of Virginia §§ 2.2-4332 and 65.2-800 *et seq.*

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

SECTION 12 – VENDOR PERFORMANCE MONITORING

12.1 POLICY

A contract administrator shall be assigned to monitor every contract. The contract administrator shall inform the Procurement Manager of any problems or potential problems regarding any contract or PO so action may be taken before such problems become critical.

12.2 PROCEDURE

The procurement process does not end when the PO or contract is issued. Monitoring vendor performance is a critical part of the process to ensure the proposed goods or services are delivered in a timely manner, in accordance with the bid/proposal specifications and without substitution or partial completion (unless previously approved).

- A. The contract administrator may or may not be the individual, who performed the procurement function.

- B. Regardless of expenditure level, if a vendor fails to deliver as specified or in a timely manner, the vendor shall be verbally notified immediately and given a reasonable period of time to cure the failure (“cure period”). This is usually five (5) days.

- C. If the failure persists after the verbal notification, the vendor shall be notified in writing and given additional time (usually ten (10) days) to cure the failure.

- D. If the failure has not been corrected after a reasonable cure period has been allowed (usually fifteen (15) days), the Procurement Manager shall be notified so that additional actions can be initiated as appropriate.

- E. The Procurement Manager is responsible for notifying legal counsel and soliciting advice before acting.

SECTION 13 – VENDOR APPEALS, DISPUTES AND REMEDIES

13.1 POLICY

All actions taken to respond to a vendor appeal or dispute (or any action initiated by the FMA to deny withdrawal of a binding bid or to terminate a vendor contract for non-performance) must be coordinated by the Procurement Manager regardless of the goods or services being procured, the expenditure level or the procurement method utilized. The appeal/dispute process will be coordinated by the Procurement Manager, with final decisions being made by the Executive Director or designee.

13.2 PROCEDURE

To ensure that the FMA does not expose itself to unwarranted liability or misperceptions regarding its procurement policies and procedures, the Procurement Manager shall notify legal counsel before acting.

- A. All appeals and protests by a vendor will be forwarded to the Procurement Manager for action.
- B. The Procurement Manager will review the facts and circumstances as presented by the vendor and will issue a decision to the vendor in writing within ten (10) days after receiving the vendor's submission.
- C. If the vendor is not satisfied with the decision, they have ten (10) days to appeal the Procurement Manager's decision to the FMA Executive Director. The Executive Director or his/ her designee must issue his/her decision to the vendor in writing within ten (10) days after receiving the request or it is deemed denied.
- D. If none of the above steps satisfies the vendor, they must resort to legal action if they wish to continue to pursue their claim. Unless negotiated otherwise in the contract, the vendor shall retain full rights to file legal action if the FMA appeals process is not deemed satisfactory.
- E. An appeal/dispute by a vendor shall have no effect upon any of the following:
 - Existing contracts which have been awarded and accepted in good faith
 - Awards which must be made to ensure the continued operation of critical functions of the FMA
 - Other bids which will expire

SECTION 14 – COMMONWEALTH OF VIRGINIA ELECTRONIC PROCUREMENT SYSTEM (eVA)

14.1 POLICY

FMA encourages the use of eVA as a procurement tool when purchasing goods and services where practicable. FMA Divisions will follow current procurement policies when purchasing goods and services through eVA and shall conform to the FMA Procurement Table in Appendix I.

14.2 PROCEDURE

A. The FMA purchasing agents and Procurement Manager shall receive eVA training (i.e., how to access the eVA website, research products and services, create requisitions, place orders, etc.) after an account number and password have been set up with the Finance Office.

B. In an effort to comply with Virginia's efforts to increase small business purchasing, FMA will conscientiously seek small business vendors through eVA in purchasing office supplies.

C. The following procurement types regardless of dollar value will not normally be purchased through eVA:

- Advertisements in newspapers, magazines, journals, radio, television, etc.
- Professional organizational membership dues and training classes sponsored by the professional organization when payment is made directly to the professional organization
- Conference registrations
- Petty cash purchases
- Honoraria
- Credit/debit card purchases
- Individual travel and lodging

14.3 COOPERATIVE PROCUREMENT/STATE CONTRACTS

The Code of Virginia, § 2.2-4304 authorizes the FMA to utilize cooperative procurement to satisfy requirements for goods and nonprofessional services.

A. All such purchases shall be made through eVA whenever practicable.

B. Additional agencies and institutions, not specifically named in the solicitation, desiring to purchase from another public body's contract may do so if the original solicitation specified that the procurement was being conducted on behalf of other public bodies.

C. The issuing public body shall modify the contract in writing with concurrence from the contractor to add the FMA as an authorized user.

SECTION 15 – PUBLIC/PRIVATE PARTNERSHIP (JOINT VENTURE)

15.1 POLICY

Public/Private partnerships can be procured under the Public/Private Education Facilities and Infrastructure Act of 2002, Code of Virginia §§ 56-575.1 thru 56-75.18 (“PPEA”). Procurement of public/private partnerships or joint ventures shall conform to the FMA Procurement Table in Appendix I.

15.2 PROCEDURE

The FMA anticipates working with commercial enterprises, private organizations, or other public entities to organize and operate programs, advertise, or market and promote business at Fort Monroe/Old Point Comfort. These arrangements are referred to as public/private partnerships or joint ventures

The PPEA grants responsible public entities authority to create public-private partnerships for development of a wide range of projects for public use if the public entities determine there is a need for such projects and that private involvement may provide the project in a more timely or cost-effective fashion, lead to productivity or efficiency improvements in the public entities’ processes or delivery of services, considering, among other things, the probable scope, complexity or priority of the project; risk sharing including guaranteed cost or completion guarantees; added value or debt or equity investments proposed by the private entity; or an increase in funding, dedicated revenue source or other economic benefit that would not otherwise be available.

- A. All such joint ventures will be documented as a multi-party written agreement with specific line-item budgets prepared and authorized in advance by the Executive Director.

- B. If the FMA expects to be reimbursed by any other party for expenditures incurred by FMA on behalf of the cooperative/joint venture, the written agreement must include a schedule for all such reimbursements.

SECTION 16 – CONSTRUCTION AND REAL ESTATE

16.1 POLICY

The Executive Director will be responsible for authorizing all contracts for real estate or construction services. No real estate or construction contracts or services should be established or ordered directly by any division or cost center. Procurement of construction shall conform to the FMA Procurement Table in Appendix I.

16.2 PROCEDURE

Prior to making a determination as to the use of design-build or construction management for a specific construction project, the FMA shall have in its employ or under contract a licensed architect or engineer with professional competence appropriate to the project who shall advise the public body regarding the use of design-build or construction management for that project and who shall assist with the preparation of the Request for Proposal and the evaluation of such proposals.

- A. The FMA shall seek assistance from the Bureau of Capital Outlay Management (“BCOM”) for guidance when procuring construction and Architectural/Engineering (“A/E”) services.
- B. The FMA shall use the standard forms and applicable sections of the **Construction and Professional Services Manual – 2004 for Architects and Engineers (A/E Manual)** whenever practicable.
- C. Requests for Proposals shall include and define the criteria of the construction project in areas such as site plans; floor plans; exterior elevations; basic building envelope materials; fire protection information plans; structural, mechanical (“HVAC”), and electrical systems; and special telecommunications and may define such other requirements as the FMA determines appropriate for that particular construction project.
- D. Procurement of construction by the design-build method shall be a two-step competitive negotiation process. In the first step, offerors shall be requested to submit their qualifications. Based upon the information submitted and any other relevant information which the FMA may obtain, no more than five (5) offerors deemed most suitable for the project shall be selected by the Commonwealth and requested to submit proposals in accordance with section 7 – Competitive Negotiation.
- E. Construction management projects shall include selection procedures and required construction management contract terms.

F. Unless otherwise specified in the Request for Proposal, the contract shall be awarded to the fully qualified offeror who submits an acceptable proposal determined to be the best value in response to the Request for Proposal.

G. All construction must be bonded as required by Code of Virginia § 2.2-4336 et seq.

SECTION 17 – INTERNAL CONTROL AND RECORD KEEPING

17.1 POLICY

Budgetary control is essential to the procurement process at the FMA. All divisions and cost centers will prepare and submit a budget request each fiscal year to include the projected expenditure levels for procurement of goods and services. The budget will further define major procurements which are to be obtained during the course of the year. The request will be reviewed by the Executive Director, Senior Management, the Finance Committee and the Finance Officer and either approved or revised as part of the overall FMA budgeting process, prior to final approval by the Board of Commissioners.

17.2 PROCEDURE

A. Before any purchase of goods or services, management must ensure that proper funds are available (based on the available budget) to support the payment for such items. Currently, the FMA accounting records reflect the “expenditure” of those funds after the invoice is paid to ensure subsequent purchases do not result in an over-expenditure of the budget.

B. The Finance Office will establish the approved budget in the FMA financial systems and will produce monthly reports showing the budget less expenditures (payments) and remaining (unexpended) funds.

C. Before authorizing any purchase, the responsible person (depending on the expenditure level and procurement method) must ensure that budget funds are available. *This must be done regardless of the amount of the expenditure.*

D. If funds are available and all other purchasing procedures have been complied with, the procurement may be authorized. This results in the “encumbrance” of division funds, although the current FMA systems do not track the encumbrance.

17.3 EXPENDITURE CODING

The FMA management shall designate the applicable expenditure code for any purchase, which indicates the type of goods or services being acquired.

A. All FMA purchasing transactions will be coded with a fund and account code to ensure the appropriate cost center budgets are reduced accordingly. The Director of Finance shall maintain the list of all valid fund and cost codes.

B. The Procurement Manager will enter fund and cost codes on the applicable Purchase Orders, Accounting Transmittal Forms and Credit/Debit Card Transmittal Forms or in eVA.

17.4 FIXED ASSETS

A fixed asset is a tangible or intangible item with a cost of \$5,000 or more and a life expectancy of more than one (1) year. All costs directly related to the acquisition of a fixed asset (i.e. freight or installation) should be included in the computation of the total costs.

A. The Procurement Manager will be responsible for ensuring that any purchases of fixed assets are properly identified.

B. The Deputy Director of Finance will be responsible for properly recording the transaction on the FMA's financial records.

17.5 RECORD RETENTION

All records related to procurement transactions shall be retained in the Finance Office for thirty-six (36) months unless circumstances (e.g., litigation) dictate retention for a longer period.

17.6 AUDIT REVIEWS

The FMA purchasing process will be subject to audit and other reviews, as directed by the following:

- FMA Executive Director
- FMA Finance Office
- FMA Board of Directors
- Auditor of Public Accounts
- Office of the Attorney General
- Legislative Boards and Commissions
- Federal granting authorities

The basis for such reviews will be the FMA purchasing policies and procedures, as approved by the FMA Board and as documented herein. *All audits or other such reviews will be coordinated by the Finance Office and the Executive Director.*

The Executive Director must coordinate and authorize:

- Participation in audits or reviews by other members of the FMA management and staff
- The release of materials to support those audits or reviews

17.7 FREEDOM OF INFORMATION ACT

Under the Federal Freedom of Information Act ("FOIA"), which can be found in Code of Virginia § 2.2-3700 et seq., information relating to the procurement of goods and services which are funded in whole or in part by public monies is available for inspection

by the public. The public includes any citizen or interested person, firm, corporation, research organization or other public entity.

While the FMA will fully comply with valid FOIA requests, certain information is exempt from disclosure pursuant to Virginia Code § 2.2-4342. This typically includes proprietary information and trade secrets submitted by vendors as part of their bids/proposals and cost estimates prepared for the public body. *Therefore if a request for information relating to any previous or ongoing FMA procurement is made under the FOIA or otherwise, the request should be immediately referred to the Finance Director.*

SECTION 18 – CONTRACT ADMINISTRATION

18.1 POLICY

A multi-party contract (typically two parties—the vendor and FMA) may be established and would be considered typical, for all procurements resulting from competitive negotiations as well as the procurement of services, regardless of procurement method in which the total expenditure is expected to exceed \$10,000 per annum. *An exception is the purchase of goods or services from established State Contracts, which do not require a separate contract to be established by the FMA.*

18.2 PROCEDURE

- A. The contract will use the FMA standard General Terms and Conditions as a basis and will include all specifications, RFPs/IFBs, vendor proposals and the like as attachments where appropriate. (See Appendices IIV, IV and V)
- B. The actual expenditure of funds against the contract will be authorized by the related invoice and a properly authorized Accounting Transmittal Form. The Division Director overseeing the contract will initial each invoice and forward to the Finance Office.
- C. The FMA shall be conscious to avoid contracts that will lead to a duplication of work already completed. Therefore, any professional or nonprofessional service contract may be continued if the scope of work builds on earlier efforts performed by the contractor.
- D. A copy of any contract modification for any contract funded wholly or in part by other than State Appropriations shall be forwarded to the Director of Operations for possible request of additional funds from the funding source.

SECTION 19 – PROCUREMENT PROCESS

19.1 BIDS

Multiple bids shall be obtained for all purchases whenever possible.

A. INFORMAL BIDS

Informal bids including eVA Quick Quotes, Telephone Quotations and Written Quotes are an efficient method for introducing competition into the procurement process. They are typically used when the goods or services are readily definable and when the total expenditure level is relatively low.

B. FORMAL BIDS

Formal bids also referred to as IFBs, competitive negotiation when price is considered, and competitive sealed bids are used to introduce open competition into the procurement process. Specifications (or scope of work) form the backbone of good formal bid procurements and must be:

- Sufficiently complete to ensure the FMA's needs are adequately met
- Broad enough to ensure competition
- Drawn to reflect the procurement needs of the FMA rather than favor a particular vendor

19.2 ELECTRONIC PROCUREMENT PROCESS (Eva)

Requisitions shall be entered in eVA "Shop Now" module.

RFP's and RFQ's shall be entered in the eVA module VBO.

Refer to eVA manual for step by step directions.

19.3 RECEIPT OF GOODS AND SERVICES

All purchases shall be inspected upon delivery or as soon as practicable thereafter.

- A. If there is a discrepancy between the original order and the items received, notify the vendor immediately to request resolution.
- B. If the discrepancy remains uncorrected for five (5) business days, the vendor shall be notified in writing. Include any specifications or other documentation which clarifies the problem with the written notification.
- C. If the receipt of goods and services is not corrected within ten (10) business days, the Finance Office is responsible for all subsequent actions

including processing of potential vendor appeals, dispute resolutions and defaults.

D. Once all goods and services are received in good order, the Accounting Transmittal Form (“ATF”) will be completed. This includes obtaining signatures from the authorized official as well as the signature of someone independent of the original decision. The later may be the individual who actually receives and inspects the delivered items and enters the receiving information on the ATF.

19.4 PAYMENT

Payment for all items ordered and received will be done by the Finance Department based in part on their receipt of all necessary procurement documentation and authorizing signatures.

SECTION 20 – APPENDICES

- I FMA Procurement Table
- II Purchasing Forms
- III General Terms and Conditions
- IV General Terms and Conditions for Construction and Professional Services
- V FMA Contract Between Owner and Consultant/Contractor

APPENDIX I – FMA PROCURMENT TABLE

PROCUREMENT METHOD	EXPENDITURE	BID REQUIREMENTS	AUTHORIZED APPROVER(S)	DOCUMENTATION REQUIRED
EMERGENCY PROCUREMENT		AS MANY AS PRACTICABLE	EXECUTIVE DIRECTOR OR DESIGNEE	1. EMERGENCY JUSTIFICATION 2. CONTRACT OR EVA PO
SMALL PURCHASES	UNDER \$5,000	NOT REQUIRED	PROCURMENT MANAGER AND DIRECTOR OF OPERATIONS	1. BIDS OBTAINED (IF REQUIRED) 2. INVOICE, PACKING SLIP, ETC AND 3. CONTRACT OR EVA PO IF APPLICABLE
	\$5,000 TO \$30,000	NOT REQUIRED	DEPARTMENT DIRECTOR AND DIRECTOR OF OPERATIONS	
	>\$30,000 AND <\$50,000	4 BIDS	DEPARTMENT DIRECTOR AND DIRECTOR OF OPERATIONS	
COMPETITIVE NEGOTIATION		AS MANY AS PRACTICABLE	EXECUTIVE DIRECTOR OR DESIGNEE	1. BID SUMMARY AND 2. CONTRACT OR EVA PO
SOLE SOURCE		AS MANY AS PRACTICABLE	EXECUTIVE DIRECTOR OR DESIGNEE	1. SOLE SOURCE JUSTIFICATION AND 2. CONTRACT OR EVA PO
COMPETITIVE SEALED BIDDING		AS MANY AS PRACTICABLE	EXECUTIVE DIRECTOR OR DESIGNEE	1. JUSTIFICATION FOR COMPETITIVE SEALED BIDDING 2. BID SUMMARY AND 3. CONTRACT OR EVA PO

APPENDIX II – FMA PROCURMENT FORMS



Procurement/Contract Modification Request

Date of Request

Procurement Request

Instructions: To be completed for procurement requests. Requests expected to exceed \$5,000 require Department Director Authorization. Requests expected to exceed \$50,000 require Executive Director Authorization.

Contract Modification Request

Instructions: To be completed for requests to modify existing contract terms. Modifications expected to exceed \$5,000 require Department Director Authorization. Modifications expected to exceed \$50,000 require Executive Director Authorization.

Proposed Vendor:	<input type="text"/>			Project Code/Contract Number:	<input type="text"/>
Point of Contact:	<input type="text"/>		Phone:	<input type="text"/>	
Address:	<input type="text"/>			Fax:	<input type="text"/>
City:	<input type="text"/>	State:	<input type="text"/>	Zip Code:	<input type="text"/>

GENERAL INFORMATION

Description of Proposed Procurement or Contract Modification:

Check if additional information is attached:

JUSTIFICATION

Explain why Service/Material or Contract Modification is required:

Check if additional information is attached:

If Known, explain why Price is considered reasonable:

Check if additional information is attached:

ORIGINATOR

AUTHORIZATION

Signature:	<input type="text"/>	<input type="text"/>
Name:	<input type="text"/>	<input type="text"/>
Date:	<input type="text"/>	<input type="text"/>

TO BE COMPLETED BY PROCUREMENT

Date received:	<input type="text"/>	Fund	<input type="text"/>	Account:	<input type="text"/>
Finance Approval (if required):	<input type="text"/>	Date:	<input type="text"/>		
Project Code:	<input type="text"/>				
Processed By:	<input type="text"/>	Date:	<input type="text"/>		

If procurement is denied, provide explanation and return to originator:

Check if additional information is attached:



Sole Source Justification/Emergency Procurement Authorization

Date of Request

Sole Source Justification

*Instructions: To be completed for sole source procurements, expected to exceed \$30,000, where only one source is practicably available.
(Not applicable to Proprietary Procurements)*

Emergency Procurement Authorization

Instructions: To be completed for emergency procurements, required to protect personal safety or property, expected to exceed \$30,000. Applicable only to that which is necessary to cover the requirements of the emergency.

GENERAL INFORMATION

Description of Proposed Procurement

Check if additional information is attached:

Proposed Contractor/Vendor:

Point of Contact: <input type="text"/>	Phone: <input type="text"/>
Address: <input type="text"/>	Fax: <input type="text"/>
City: <input type="text"/>	State: <input type="text"/> Zip Code: <input type="text"/>

JUSTIFICATION

Explain why this is the only product or service that can meet the needs of the Authority or why procurement is deemed an emergency:

Check if additional information is attached:

Explain why this is the only practicable available source:

Check if additional information is attached:

Explain why Price is considered reasonable:

Check if additional information is attached:

Describe efforts made to conduct noncompetitive negotiation to get the best possible price:

Check if additional information is attached:

ORIGINATOR AUTHORIZATION

Signature: <input type="text"/> Name: <input type="text"/> Date: <input type="text"/>	
---	--

TO BE COMPLETED BY PROCUREMENT

Date received: <input type="text"/>	Fund: <input type="text"/>	Account: <input type="text"/>
Finance Approval (if required): <input type="text"/>	Date: <input type="text"/>	
Project Code: <input type="text"/>		
Processed By: <input type="text"/>	Date: <input type="text"/>	

The Fort Monroe Authority - Procurement Policies and Procedures Manual

FMA-ATF-02 (07/10)

ACCOUNTING TRANSMITTAL FORM

AGENCY NAME/DELIVERY ADDRESS

FMA
151 Bernard Road
Fort Monroe, VA 23651

CONTRACT NUMBER	DATE PREPARED	EP/PO NO.
NEED BY DATE	RECEIVED DATE	PO TERMS NET 30 DAYS

REMIT TO: NAME, ADDRESS & ZIP CODE

PHONE _____ FAX _____

ADDRESS ALL INQUIRIES AND CORRESPONDENCE TO

PROCUREMENT MANAGER Yvonne Cash
TELEPHONE 757-637-7778
FAX 757-637-7776

RESERVED FOR FINANCE USE

INVOICE TO ADDRESS

FMA
151 Bernard Road
Fort Monroe, VA 23651

ITEM	ACCT CODE	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	AMOUNT

PURCHASE AUTHORIZED BY: _____ TITLE **FMFADA Executive Director** DATE _____

PURCHASE AUTHORIZED BY: _____ TITLE **FMFADA Finance Director** DATE _____

Initials:

TRANS	AGENCY	FUND	FY	ACCT CODE	AMOUNT	PROJECT	REVENUE SOURCE	
	91							
DUE DATE		VENDOR		INVOICE		POSTED AS OF	POSTED BY	DATE
				DATE	NUMBER			
DESCRIPTION				SUBMISSION NUMBER	SX	CHECK	CREDIT CARD (last 4)	CONFIRMATION

I CERTIFY THAT THE ABOVE LISTED GOOD OR SERVICE WAS RECEIVED ON THE DATE INDICATED IN GOOD CONDITION, WITH EXCEPTIONS AS NOTED HEREON.

PARTIAL
 COMPLETE
 _____ DATE _____

PREPARED BY: _____ TITLE **PROCUREMENT MANAGER** DATE _____

APPENDIX III – FMA STANDARD TERMS AND CONDITIONS

APPENDIX A

GENERAL TERMS AND CONDITIONS FOR GOODS AND NONPROFESSIONAL SERVICES

- A. **VENDORS MANUAL:** This solicitation is subject to the provisions of the Commonwealth of Virginia *Vendors Manual* and any changes or revisions thereto, which are hereby incorporated into this contract in their entirety. The procedure for filing contractual claims is in section 7.19 of the *Vendors Manual*. A copy of the manual is normally available for review at the purchasing office and is accessible on the Internet at www.dgs.state.va.us/dps under "Manuals."
- B. **APPLICABLE LAWS AND COURTS:** This solicitation and any resulting contract 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 agency and the contractor are encouraged to resolve any issues in controversy arising from the award of the contract or any contractual dispute using Alternative Dispute Resolution (ADR) procedures (Code of Virginia, § 2.2-4366). ADR procedures are described in Chapter 9 of the *Vendors Manual*. The contractor shall comply with all applicable federal, state and local laws, rules and regulations.
- C. **ANTI-DISCRIMINATION:** By submitting their (bids/proposals), (bidders/Offerors) certify to the FMA 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, the Americans With Disabilities Act and § 2.2-4311 of the Virginia Public Procurement Act (VPPA). 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 public body. (Code of Virginia, § 2.2-4343.1E).

In every contract over \$10,000 the provisions in 1 and 2 below apply:

1. During the performance of this contract, the contractor agrees as follows:
 - a. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 - b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.
 - c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.
 2. The contractor will include the provisions of 1 above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.
- D. **ETHICS IN PUBLIC CONTRACTING:** By submitting their (bids/proposals), (bidders/Offerors) certify that their (bids/proposals) are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other (bidder/Offeror), supplier, manufacturer or subcontractor in connection with their (bid/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.
- E. **IMMIGRATION REFORM AND CONTROL ACT OF 1986:** By submitting their (bids/proposals), (bidders/Offerors) certify that they do not and will not during the performance of this contract employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986.
- F. **DEBARMENT STATUS:** By submitting their (bids/proposals), (bidders/Offerors) certify that they are not currently debarred by the Commonwealth of Virginia or the federal government from submitting bids or proposals on contracts for the type of goods and/or services covered by this solicitation, nor are they an agent of any person or entity that is currently so debarred.
- G. **ANTITRUST:** By entering into a contract, the contractor conveys, sells, assigns, and transfers to the FMA 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 FMA under said contract.
- H. **CLARIFICATION OF TERMS:** If any prospective (bidder/Offeror) has questions about the specifications or other solicitation documents, the prospective (bidder/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.

APPENDIX A
GENERAL TERMS AND CONDITIONS FOR GOODS AND NONPROFESSIONAL SERVICES

I. **PAYMENT:**

To Prime Contractor:

1. Invoices for items ordered, delivered and accepted shall be submitted by the contractor directly to the payment address shown on the purchase order/contract. All invoices shall show the FMA contract number and/or state contract number when applicable; social security number (for individual contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations).
2. Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.
3. All goods or services provided under this contract or purchase order, that are to be paid for with public funds, shall be billed by the contractor at the contract price, regardless of which public agency is being billed.
4. 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.
5. **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. Charges which appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, the FMA 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 unless a settlement cannot be reached within thirty (30) days of notification. The provisions of this section do not relieve an agency of its prompt payment obligations with respect to those charges which are not in dispute (*Code of Virginia*, § 2.2-4363).

To Subcontractors:

- a. A contractor awarded a contract under this solicitation is hereby obligated:
 - (1) To pay the subcontractor(s) within seven (7) days of the contractor's receipt of payment from the FMA for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or
 - (2) To notify the agency and the subcontractor(s), in writing, of the contractor's intention to withhold payment and the reason.
 - b. The contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all amounts owed by the contractor that remain unpaid seven (7) days following receipt of payment from the FMA, except for amounts withheld as stated in (2) 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 under the primary contract.
 3. Each prime contractor who wins an award in which provision of a SWAM procurement plan is a condition to the award, shall deliver to the contracting agency or institution, on or before request for final payment, evidence and certification of compliance (subject only to insubstantial shortfalls and to shortfalls arising from subcontractor default) with the SWAM procurement plan. Final payment under the contract in question may be withheld until such certification is delivered and, if necessary, confirmed by the agency or institution, or other appropriate penalties may be assessed in lieu of withholding such payment.
- J. **PRECEDENCE OF TERMS:** The following General Terms and Conditions *VENDORS MANUAL*, *APPLICABLE LAWS AND COURTS*, *ANTI-DISCRIMINATION*, *ETHICS IN PUBLIC CONTRACTING*, *IMMIGRATION REFORM AND CONTROL ACT OF 1986*, *DEBARMENT STATUS*, *ANTITRUST*, *MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS*, *CLARIFICATION OF TERMS*, *PAYMENT* shall apply in all instances. In the event there is a conflict between any of the other General Terms and Conditions and any Special Terms and Conditions in this solicitation, the Special Terms and Conditions shall apply.
- K. **QUALIFICATIONS OF (BIDDERS/OFFERORS):** The FMA may make such reasonable investigations as deemed proper and necessary to determine the ability of the (bidder/Offeror) to perform the services/furnish the goods and the (bidder/Offeror) shall furnish to the FMA all such information and data for this purpose as may be requested. The FMA reserves the right to inspect (bidder's/Offeror's) physical facilities prior to award to satisfy questions regarding the (bidder's/Offeror's) capabilities. The FMA further reserves the right to reject any (bid/proposal) if the evidence submitted by, or investigations of, such (bidder/Offeror) fails to satisfy the FMA that such (bidder/Offeror) is properly qualified to carry out the obligations of the contract and to provide the services and/or furnish the goods contemplated therein.

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GENERAL TERMS AND CONDITIONS FOR GOODS AND NONPROFESSIONAL SERVICES

- L. **ASSIGNMENT OF CONTRACT:** A contract shall not be assignable by the contractor in whole or in part without the written consent of the FMA.
- M. **CHANGES TO THE CONTRACT:** Changes can be made to the contract in any of the following ways:
1. The parties may agree in writing to modify the scope of the contract. An increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.
 2. The Owner may order changes within the general scope of the contract at any time by written notice to the contractor. Changes within the scope of the contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The contractor shall comply with the notice upon receipt. The contractor shall be compensated for any additional costs incurred as the result of such order and shall give the Owner a credit for any savings. Said compensation shall be determined by one of the following methods:
 - a. By mutual agreement between the parties in writing; or
 - b. By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the contractor accounts for the number of units of work performed, subject to the Owner's right to audit the contractor's records and/or to determine the correct number of units independently; or
 - c. By ordering the contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The contractor shall present the Owner with all vouchers and records of expenses incurred and savings realized. The Owner shall have the right to audit the records of the contractor as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the Owner within thirty (30) days from the date of receipt of the written order from the Owner. If the parties fail to agree on an amount of adjustment, the question of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the procedures for resolving disputes provided by the Disputes Clause of this contract or, if there is none, in accordance with the disputes provisions of the Commonwealth of Virginia *Vendors Manual*. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this contract shall excuse the contractor from promptly complying with the changes ordered by the Owner or with the performance of the contract generally.
 3. Any work done, outside the original scope of work, prior to authorization is at the Contractor's own risk. FMA reserves the right to refuse payment for any work not properly authorized by FMA.
- N. **DEFAULT:** In case of failure to deliver goods or services in accordance with the contract terms and conditions, the FMA, after due oral or written notice, may procure them 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 FMA may have.
- O. **INSURANCE:** By signing and submitting a bid or proposal under this solicitation, the bidder or Offeror certifies that if awarded the contract, it will have the following insurance coverage at the time the contract is awarded. For construction contracts, if any subcontractors are involved, the subcontractor will have workers' compensation insurance in accordance with §§ 2.2-4332 and 65.2-800 et seq. of the *Code of Virginia*. The bidder or 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.

MINIMUM INSURANCE COVERAGES AND LIMITS REQUIRED FOR MOST CONTRACTS:

1. 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 FMA of increases in the number of employees that change their workers' compensation requirements under the *Code of Virginia* during the course of the contract shall be in noncompliance with the contract.
2. Employer's Liability - \$100,000.
3. 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 FMA must be named as an additional insured and so endorsed on the policy.

When the requirement is for parking facilities and garages for motor vehicle maintenance contracts, the forgoing sentence should be changed to read: This coverage should include Garage Owner's Liability. Contracts with movers or truck transporters should also require motor carrier's liability. When in the judgment of a procurement officer, these limits and

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GENERAL TERMS AND CONDITIONS FOR GOODS AND NONPROFESSIONAL SERVICES

coverage are not warranted for the goods and services being procured, the Virginia Division of Risk Management should be contacted.

4. Automobile Liability - \$1,000,000 per occurrence. (Only used if motor vehicle is to be used in the contract.)
- P. **DRUG-FREE WORKPLACE:** During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

- Q. **NONDISCRIMINATION OF CONTRACTORS:** A bidder, Offeror, or contractor shall not be discriminated against in the solicitation or award of this contract because of race, religion, color, sex, national origin, age, disability, faith-based organizational status, any other basis prohibited by state law relating to discrimination in employment or because the bidder or Offeror employs ex-offenders unless the FMA has made a written determination that employing ex-offenders on the specific contract is not in its best interest. If the award of this contract is made to a faith-based organization and an individual, who applies for or receives goods, services, or disbursements provided pursuant to this 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.
- R. **LOBBYING:** The Byrd Amendment (31 U.S.C. §1352), prohibits the use of federally appropriated funds to influence federal agency officials or members and employees of Congress in the awarding, extension, continuation, renewal, amendment or modification of grants, loans, cooperative agreements and contracts. The Lobbying Disclosure Act of 1995 revised the Byrd Amendment to change the kinds of information grantees must disclose yet it retained the basic prohibition of using federal funds for lobbying activities. **Offerors and Contractors should note that the prohibited activities relate to lobbying on specific awards, not on general program issues.** Everyday grant administration transactions with agency officials are not prohibited by the Byrd Amendment.

All Offerors awarded a contract for \$100,000 or more funded by the Federal government, must certify that they are not using the Federal funds for lobbying and provide disclosure forms with information on lobbying with non-Federal funds. This provision also applies to all sub grants and subcontracts of \$100,000.

- S. **CENTRAL CONTRACTOR REGISTRATION:** In accordance with the Federal Funding Accountability and Transparent Act, all contractors who are awarded contracts funded by Federal funds, must be registered in the Central Contractor Registry (CCR). To begin this process, the applicant must go to the CCR website at www.ccr.gov. Here they will be able to do a search to see if their organization is already registered and has a current point of contact. They will need the following information for a new registration:
1. Data Universal Numbering System (DUNS) Number provided by Dun and Bradstreet (D&B).
 2. Tax Identification Number (TIN) and Taxpayer Name used in Federal tax matters.
 3. Statistical Information about your organization, you will be required to provide the receipts and number of employees on a world-wide basis, which includes all affiliates. Information on your organization's profile location is optional. Organizations that sell or generate electricity, refine petroleum, or that are financial institutions will be required to provide additional data.
 4. Electronic Funds Transfer (EFT) Information for payment of invoices – please note that you must have the correct account information for Federal fund payments in this system.
 5. Write down all codes and passwords provided during the registration process.
- T. **AVAILABILITY OF FUNDS:** It is understood and agreed between the parties herein that the agency shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this agreement.

APPENDIX A
GENERAL TERMS AND CONDITIONS FOR GOODS AND NONPROFESSIONAL SERVICES

- U. **TERMINATION OF CONTRACT:** The FMA may terminate the contract for cause or for convenience after giving thirty (30) days notice in writing to the Contractor. The written notice shall include a statement of reasons for the termination. Written notice may be via electronic mail (email).
1. **Termination for Cause**
If the Contractor should breach the contract or fail to perform the services required by the contract, the FMA may terminate the contract for cause by giving written notice or may give the Contractor a stated period of time within which to remedy its breach of contract. If the Contractor shall fail to remedy the breach within the time allotted by the FMA, the contract may be terminated by the FMA at any time thereafter upon written notice to the Contractor or, in the alternative, the FMA may give such extension of time to remedy the breach as the FMA determines to be in its best interest. The FMA's forbearance by not terminating the contract for a breach of contract shall not constitute a waiver of the FMA's right to terminate nor acquiescence in future act or omissions by the Contractor of a like nature. If the contract is terminated for cause, breach of contract or failure to perform, the Contractor may be subject to a claim by the FMA for the costs and expenses incurred in securing a replacement Contractor to fulfill the obligations of the contract.
2. **Termination for Convenience**
The contract may be terminated by the FMA in whole or in part for the convenience of the FMA without a breach of contract by delivering to Contractor a written notice of termination specifying the extent to which performance under the contract is terminated and effective date of the termination. Upon receipt of such a notice of termination, the Contractor must stop work, including but not limited to work performed by subcontractors and consultants, at such time and to the extent specified in the notice of termination.
- If the contract is terminated in whole or in part for the convenience of the FMA, the Contractor shall be entitled to those fees earned for work done prior to the notice of termination and thereafter shall be entitled to any fees earned for work not terminated, but shall not be entitled to lost profits for the portions of the contract which were terminated. The Contractor will be compensated for reasonable costs or expenses arising out of the termination for the convenience of the FMA for delivery to the FMA of all products of the services for which the Contractor has or will receive compensation.
- V. **VENDOR ADVERTISING RESTRICTIONS:** Advertising or promotional literature, including press releases, stating or implying a contract has been awarded or vendor has been contracted to perform work at or with FMA shall be reviewed and approved prior to publication. Advertising or promotional literature stating or implying that the FMA endorses a vendor's products or services is prohibited.

APPENDIX IV – FMA TERMS AND CONDITIONS FOR CONSTRUCTION AND PROFESSIONAL SERVICES

APPENDIX A

General Terms and Conditions for Construction and Professional Services

1.0 **GENERAL POLICIES ON ARCHITECTURAL AND ENGINEERING SERVICES**

- 1.1 **License/Registration:** Entities (e.g. individual, partnership, or corporation) offering to provide architectural and/or engineering services shall be properly registered and licensed in Virginia as required by the Department of Professional and Occupational Regulation (DPOR), Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects (APELSCIDLA) Board, and, if incorporated, the State Corporation Commission. Professional Corporations must obtain a Certificate of Authority as required by §13.1-549. Other business entities must register with DPOR as required by §54.1-411., Code of Virginia, as amended. The Architect or Engineer (i.e. the person) "in responsible charge" for each discipline shall be currently licensed in the Commonwealth of Virginia and shall affix his or her seal to those documents for which he or she is responsible.
- 1.2 **Prime Design Professional:** FMA will normally contract with a single entity, as the "Prime Design Professional", to provide the project architectural and/or engineering services. Such Prime Design Professional may have all necessary disciplines in-house or it may subcontract with consultants to provide services in some disciplines. The Prime Design Professional may be an Architect, an Engineer, or an A/E entity. The FMA will determine which entity best satisfies the requirements for providing the services, meeting the time schedule and budget limitations, and managing the services to be provided on the particular project.
- 1.3 **Associations:** Contracting with an association of firms, such as joint ventures or associated A/E's, involves additional business and legal considerations. Factors to be considered include whether the Association is a registered or licensed entity authorized to offer the services in Virginia, the nature of each party's responsibilities to the other and to the FMA, the professional liability insurance coverage of the Association, its organization and management structure, each firm's financial condition and/or stability, with respect to fulfilling its obligations under the Contract, and whether the parties to the Association are jointly and severally liable for the Work. Prior to selecting an Association for fee negotiation for a possible contract award, FMA may request a review of the Association's legal documents by the FMA's legal counsel as a minimum. Associations not legally constituted and authorized to offer the requested services in Virginia at the time of the closing date of the RFP will be deemed 'not responsive'.

2.0 **PROFESSIONAL SERVICES**

The architectural, civil, structural, mechanical and electrical portions of the project shall be planned and designed by or under the immediate supervision of a licensed Architect or Engineer who has expertise in the particular discipline involved. Where such licensed expertise is not available within the A/E of record or where the A/E chooses to subcontract a part of the Work, the A/E shall employ an associate or consulting Architectural or Engineering firm with the requisite expertise to provide the required services. The consultants, associates, or subcontractors proposed by the A/E during the selection process to be part of the A/E project team shall perform the Work as proposed. If circumstances require a change, the A/E shall advise the FMA of the proposed change, the reasons therefore, and the name and qualifications of the proposed replacements. The replacements must be acceptable to the FMA. Associates, consultants or subcontractors proposed to be part of the A/E's project team shall be contracted by the A/E at the beginning of the Work and shall be active participants in all phases of the Work related to their discipline from beginning to end. The A/E shall be responsible to the FMA for the Work of all associates, consultants and subcontractors, whether employees of the A/E or not, performed under the Contract.

3.0 **TAXPAYER IDENTIFICATION NUMBER**

The A/E shall furnish to the FMA at the time of contract award its Federal Employer Identification Number (FEIN) if a corporation or a partnership or its Social Security Number (SSN) if a sole proprietor.

- 4.0 **CENTRAL CONTRACTOR REGISTRATION:** In accordance with the Federal Funding Accountability and Transparent Act, all contractors who are awarded contracts funded by Federal funds, must be registered in the Central Contractor Registry (CCR). The applicant must go to the CCR website at www.ccr.gov to see if their organization is already registered and has a current point of contact. The following information is required for a new registration:

- Data Universal Numbering System (DUNS) Number provided by Dun and Bradstreet (D&B)
- Tax Identification Number (TIN) and Taxpayer Name used in Federal tax matters
- Statistical Information about your organization, you will be required to provide the receipts and number of employees on a world-wide basis, which includes all affiliates. Information on your organization's profile location is optional. Organizations that sell or generate electricity, refine petroleum, or that are financial institutions will be required to provide additional data.
- Electronic Funds Transfer (EFT) Information for payment of invoices, note: you must have the correct account information for Federal fund payments in this system.

5.0 **RELATIONSHIP OF ARCHITECT/ENGINEER TO FMA**

Once the Contract for A/E services has been fully executed, the A/E shall be the professional advisor and consultant to the FMA for technical matters related to the project and shall be responsible directly to, and only to, the FMA. The FMA shall communicate all approvals, rejections, change requirements and other similar information to the A/E. The A/E shall endeavor to advise the FMA of changes necessary to keep the project within the prescribed area and cost limits. The A/E's status, relationship and authority during the construction phase of the project are further defined in Form Number DGS-30-054, CO-7 General Conditions of the Construction Contract, Section 15, paragraph (a) thru (h), and are included herein by reference. Generally, the FMA will observe the procedure of issuing orders to the Contractor through the A/E or, if the A/E's construction

period duties have been so modified, through the FMA's designated project representative. If the FMA issues orders directly to the Contractor, the A/E shall be copied on such orders.

6.0 ARCHITECT/ENGINEER'S MANUAL

The Department of General Services, Division of Engineering & Buildings, Bureau of Capital Outlay Management **Construction & Professional Services Manual – 2004 (called the Manual), Chapters 1 thru 10 including Appendices A thru Z, and all revisions thereto, shall be called the "A/E Manual"** for identification and the applicable portions of the "A/E Manual" shall be incorporated into the Contract except as amended or superseded in the Contract or an addendum thereto.

For the sake of simplicity, the provisions of the **A/E Manual** dealing with Architects and Engineers are written as though they apply to the design of buildings and to construction administration only. They also shall apply, however, to all architectural and engineering services of every kind including, but not limited to, project studies, development of master site plans, other studies, and related professional services. Many of the changes, additions, or deletions made in revisions to the **A/E Manual** are necessary to keep abreast with codes, statutes, or regulations related to the project. They require immediate compliance. If the A/E determines that including the requirements of the 2004 Edition of the Manual or any **A/E Manual** revision issued subsequent to the revision shown on the Contract Between FMA and Architect/Engineer, will require additional work on its part, the A/E shall notify the FMA of same within 60 days of the date of distribution of the revision, and shall provide an itemized list of the additional work required by the revision. The FMA shall, after consideration, provide direction to the A/E regarding incorporating the requirements of the revision and, if appropriate, issue a change order to the A/E for the **extra** work. Generally, revisions issued prior to the date of approval of the preliminary submittal can be incorporated with minimal, if any, additional work on the part of the A/E. If the A/E fails to notify the FMA within 60 days after the date of distribution of the revision that the revision will require additional work on the A/E's part, the A/E waives the right to make claims for additional services based on the contents of the revision.

7.0 "DESIGN -NOT-TO-EXCEED" COST AS RELATED TO A/E CONTRACT

The FMA shall provide the A/E with a description of the project including information on functions, space requirements, special features and requirements, aesthetic requirements, authorized square footage and "Design-not-to-exceed" construction budget. The A/E's Contract requires that if the low bid exceeds the "Design-not-to-exceed" cost identified in the A/E Contract by more than 10%, any A/E revisions to the plans and specifications required to bring the cost of the project within the "Design-not-to-exceed" cost may be executed by the A/E at no additional cost to the FMA.

The A/E's cost estimate shall be in the systems format described in the **A/E Manual**, Chapter 8 and Appendix E and shall be to a level of detail commensurate with the current level of design. The A/E shall submit a cost estimate with each phase submittal. If the cost estimate indicates a potential problem in securing a bid within the "Design-not-to-exceed" cost, the A/E shall notify the FMA and shall work with the FMA to redefine the design concepts of space utilization, building efficiencies, materials of construction, etc., so that the estimated cost of construction does not exceed the "Design-not-to-exceed" cost. Substantial changes in the project scope, such as those which affect the area or function of the proposed facility, must be justified by the A/E and may require the approval of the FMA Board of Trustees.

8.0 CODE AND REGULATORY COMPLIANCE

The A/E is responsible for designing the project and administering the construction phase of the project in accordance with the Virginia Uniform Statewide Building Code (Code), the **A/E Manual** and other regulatory requirements applicable to the project. Nothing contained herein shall be construed as relieving any A/E, professional design consultant, contractor, supplier or any other participant from any professional or legal responsibility for performance. Reviews, comments and approvals by the FMA, in no way absolve any other person, firm or corporation involved in a project from their full responsibilities under law, codes and professional practice as required in projects for the Commonwealth of Virginia. Lack of comment by a FMA reviewer does not relieve the A/E from designing to meet the Code or **A/E Manual** requirements or applicable state regulations or local regulations related to water, sewer, fire department service, and other utilities. If the correction of a Code, **A/E Manual** or regulatory violation results in a Change Order during construction, any additional costs incurred shall be borne by the party responsible for the violation. The FMA will bear only the costs attributable to the actual Code or regulation-required enhancement of the project. If the A/E believes that a Code, an **A/E Manual** requirement, or a regulation is unclear as to meaning, he shall request a written opinion as to the applicable interpretation from the FMA or from the applicable regulatory agency, as appropriate, and the A/E shall be entitled to rely on the written opinion, if any, which he receives.

9.0 A/E LIABILITY INSURANCE, DESIGN ERRORS AND/OR OMISSIONS and RECORDS RETENTION

9.1 A/E LIABILITY INSURANCE: The A/E shall carry professional liability insurance covering negligent acts, errors, and omissions. The minimum amount of professional liability insurance required to be carried by the A/E shall be \$2,000,000 per claim and \$6,000,000 in the aggregate. The A/E shall maintain this insurance coverage in force after completion of the services under the contract for a period of five years after final completion of construction or the A/E may purchase a 'completed operations' coverage for the project or projects. The FMA's review, approval, or acceptance of, or payment for any of the services required shall not be construed to operate as a waiver by the FMA of any rights or any cause of action arising out of the Contract. The A/E shall be and remain liable to the FMA for all costs of any kind which are incurred by the FMA as a result of negligent acts, errors, or omissions on the part of the A/E including its subcontractors and consultants, in the performance of any of the services furnished.

APPENDIX A

General Terms and Conditions for Construction and Professional Services

- 9.2 **DESIGN ERRORS AND/OR OMISSIONS:** The A/E shall be responsible for all costs resulting from its errors, omissions, and other breaches of the applicable standards of care established by the **A/E Manual** and/or under Virginia law including, but not limited to, its own costs for labor and other in-house costs, any resulting Contractor Change Order costs including the costs for demolition, cutting, patching, repairs, removal, or modification of Work that is already in place, any Contractor or the FMA delay damages, and any judgments, fines or penalties against the FMA resulting from A/E errors, omissions, and other breaches of the applicable standards of care. However, the A/E shall not be responsible for the cost of the correct equipment or system which should have been originally specified, except the A/E shall be responsible for any increased costs, whether the result of inflation, reordering, restocking or otherwise, of incorporating the corrected Work into the Contractor's Contract Change Order. When determining the A/E's contribution for Change Orders attributed to errors and omissions (where the work has not yet been done by the Contractor), the FMA should also take into account the actions and efforts of the A/E during the construction phase that were above and beyond the scope of its contract to assist the FMA in obtaining a timely, quality product. The FMA shall actively pursue reimbursement of costs resulting from the A/E's errors, omissions, or breaches of the applicable standard of care. Upon determination that there may be A/E financial responsibility involved, the A/E shall be contacted by the FMA. The A/E shall be advised of the design deficiency, informed that it is the Agency's opinion that the A/E may be financially responsible, and requested to provide a technical solution to the problem, including cost estimate. Upon notification of potential liability, the A/E should coordinate with the FMA to determine required technical support and timing to minimize delay costs. Pending final decision by the FMA, the A/E will be invited to attend all price negotiations with the Contractor for the corrective work. The A/E shall participate as a non-voting technical advisor to the FMA's negotiator. If the A/E refuses to cooperate in the negotiations or disputes its responsibility, the FMA shall have the right to proceed with the remedial construction and/or change order negotiations without the A/E. All changes to the Contract Document, whether to correct errors or omissions, to accommodate unforeseen or differing site conditions, or FMA requested changes, must be made and documented by Change Order.
- 9.3 **RECORDS RETENTION:** The A/E shall retain record copies of its design calculations, drawings, bid /contract documents, addenda, field orders, clarifications and responses to Requests For Information, approved shop drawings and submittals, inspection / observation reports, fiscal records, and other documents relative to the contract for five (5) years after completion of the services under the contract or five years after completion of construction, whichever occurs earlier. Should the A/E cease its business prior to that time, the A/E will provide those project related documents to the FMA.
- 10.0 **OTHER INSURANCE REQUIRED OF THE A/E**
Prior to the start of any work under the contract, the A/E shall provide to the FMA Certificates of Insurance forms approved by the Commonwealth of Virginia and shall maintain such insurance until the completion of all Work under the contract. The minimum limits of liability shall be as follows:
- Worker's Compensation -- Standard Virginia Workers Compensation Policy with statutory requirements and benefits
 - Employers Liability -- \$100,000
 - Broad Form Comprehensive General Liability -- \$1,000,000 Combined Single Limit coverage. The FMA shall be named as an additional insured with respect to the services being provided. The coverage shall include: Premises / Operations Liability; Products and Completed Operations Coverage; Independent Contractors Liability; FMA's and Contractor's Protective Liability; and Personal Injury Liability (Libel, Slander, Defamation of Character, etc.);
 - Automobile Liability -- \$500,000 Combined Limit for bodily injury and property damage per occurrence.
- 11.0 **OWNERSHIP OF DOCUMENTS AND MATERIALS**
Ownership of all materials and documentation including the original drawings and the Plans and Specifications and copies of any calculations and analyses prepared pursuant to the Contract between the FMA and the A/E, shall belong exclusively to the FMA. These materials and documentation completed or not, shall be the property of the FMA, whether the work for which they are made is executed or not. The A/E shall not use these materials on any other work or release any information about these materials without the express written consent of the FMA. Such material may be subject to public inspection in accordance with the Virginia Freedom of Information Act. Security-related documents and information are excluded from the Act unless a specific need to know can be shown. Trade secrets or proprietary information submitted by a bidder, offeror, or contractor in connection with a procurement transaction shall not be subject to disclosure under the Virginia Freedom of Information Act, provided the bidder, offeror, or contractor invokes the protections of §2.2-4342.F., *Code of Virginia*, prior to or upon submission of the data or other materials, identifies the data or materials to be protected and states the reason why the protection is necessary.
- The A/E shall provide the following documents to the FMA at the completion of the A/E's work:
- original sealed and signed drawings
 - original copy of the specifications
 - copy of analyses made for the project
 - indexed copy of the calculations made by each discipline for the project
 - the FMA copy of all shop drawings, submittals, cut sheets, operation and maintenance instructions, parts lists, and other material related to the project.
- The FMA, as owner of the documents prepared for its projects, has the right to use the project documents as a prototype to demonstrate scope, size, functional relationships, etc., to an A/E designing a similar project. The A/E for the original project design shall not be responsible or liable to the FMA for any such use of the documents. The A/E for the similar project shall be

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responsible for providing a complete set of project and location-specific "Final Documents" with its seals and signatures which meet all applicable codes and standards in effect at the time those "Final Documents" are submitted.

12.0 STANDARD PLANS

Where the FMA has engaged the A/E to prepare "Standard Designs", "Standard Plans" and/or "Prototype Plans" for structures such as picnic shelters, sheds, bath houses, single family residences, cabins and utility buildings for the FMA to site adapt for use at various locations, the drawings for the Standard or Prototype Plans shall show

- the name of the owner
- the Title of the Standard or Prototype Structure for which the design was developed
- the name of the A/E
- the seal and signature of the responsible licensed professional

The Standard Plans shall also show the applicable codes, standards, loadings and design parameters used to develop the design. Where the A/E has not been engaged to review the site adaptation of the Standard Plans nor review the submittals or construction, the FMA, and not the A/E, shall be responsible for the proper site adaptation and use of the Standard Plans. The A/E shall, however, be responsible for negligent acts, errors or omissions in the Standard Plans. When the Work involves the site adaptation of Standard Plans, the cover sheet for the project plans shall list the drawings included in the set of plans and shall differentiate between the Standard Plans and the "site-specific" site development, utility, and foundation drawings prepared by the A/E for that site. These site-specific drawings shall be sealed and signed by the responsible licensed A/E.

13.0 REQUIREMENTS FOR A/E SEALS AND SIGNATURES

- 13.1 General:** The Seal and Signature of the licensed Professional Engineer, Architect or Certified Landscape Architect on the drawings provides notice to the public the drawings are complete and that the professional has exercised complete direction and control over the work to which the seal or signature is affixed. All plans and specifications for building projects designed for the FMA must bear the seal and signature of the responsible licensed professional.

Each drawing to be reproduced shall show:

- the name of the A/E
- the Project Title
- the Project location
- the Project Code
- the Drawing / Sheet Title
- the Drawing / Sheet number
- the seal and signature of the responsible licensed professional
- the uniform date of the completed documents

The Title sheet drawing(s) shall also have

- the Index of Drawings
- the Project VUSBC (Virginia Unified Statewide Building Code) data
- the Seal and Signature of the A/E Principal-In-Charge of the project (A/E may also require the seal and signature of a principal of its consultants)
- the uniform date of the completed documents

The Specifications Table of Contents shall have

- the Seal and Signature of the A/E Principal-In-Charge of the project (A/E may also require the seal and signature of a principal of its consultants)
- the uniform date of the completed documents
- the listing of specification sections included for the project

- 13.2 "Working Drawing Sets"** submitted to FMA for review are expected to be complete documents ready for bidding. All drawings except the cover sheet shall bear the seal of the responsible licensed professional. The Cover Sheet shall show a complete list of the drawings in the set, but a seal and signature are not required at this submission.

- 13.3 "Final Documents" or "Construction Documents"** are completed documents ready for bidding and include all corrections required by the FMA review. Each sheet of the drawings reproduced in the bid documents, including the cover sheet, shall bear the seal and signature of the responsible licensed professional and a uniform document date. The original cover sheet without seal and signature shall be reproduced and attached to copies of the other drawings in the set. Each cover sheet print shall then be sealed, signed and dated with original seals and signatures. These official "Final Documents" shall be distributed to the following:

- 1 set to Building Official (at BCOM)
- 1 set to Regional Fire Marshal's Office
- 3 sets to FMA
- (1 set to Reviewer who reviewed the documents, if other than FMA)

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- 13.4 **"Addendum"** to the Final Documents: The first sheet of each and every addendum issued to bidders shall show the number of pages in the addendum and shall list any attached sketches, drawings or other material included in the addendum. In addition, the first sheet of each and every Addendum shall bear the name of the project, the Project Code number, the date and the seal and signature of the responsible licensed professional. Copies of each addendum with seal and signature shall be distributed to the above recipients in the same fashion as the official "Final Documents".

Each addendum shall show

- the name of the A/E
- the Project Title
- the Addendum Number
- the Project Code
- the seal and signature of the responsible licensed professional
- the date of the Addendum
- the page number and total number of pages
- a list of any attachments to and part of the Addendum

14.0 **SUBCONTRACTS**

No portion of the A/E professional services shall be subcontracted without prior written consent of the FMA. Consultants proposed by the A/E during the selection and fee negotiation phases are assumed to be acceptable to the FMA unless the FMA notes otherwise during those phases. In the event that the A/E desires to subcontract some part of the Work required by the Contract to a consultant or subcontractor not previously approved, the A/E shall furnish the FMA names, qualifications and experience of the proposed consultants. The A/E shall, however, remain fully liable and responsible for all Work performed by his consultants and subcontractors and shall assure that their Work complies with all requirements of the A/E's Contract.

15.0 **MODIFICATION OF THE A/E CONTRACT (A/E CHANGE ORDERS)**

The FMA may, upon mutual agreement with the A/E, issue written modifications to the scope of services of the Contract. Any single change order, or accumulation of change orders, which increases the A/E Contract Amount by 25% of the original contract amount or \$50,000, whichever is greater, must have the prior approval of the Board of Trustees. (§2.2-4309, Code of Virginia as revised.) The first Change Order which causes the cumulative total of Change Orders to exceed \$50,000 or 25 percent of the original Contract Price, whichever is greater, and all subsequent A/E Change Orders which increase the Contract Amount must have the prior approval of the Board of Trustees. (§2.2-4309, Code of Virginia as revised) Once the cumulative total of modifications exceeds 25% of the original contract amount, or \$50,000, whichever is greater, all succeeding Change Orders which increase the Contract Amount must receive said prior approval. In making any modification, the resulting increase or decrease in cost shall be determined by one of the methods selected by the FMA in accordance with requirements of the Public Procurement Act.

16.0 **PAYMENTS TO THE ARCHITECT/ENGINEER**

The following procedures are established in conformance with the Virginia Public Procurement Act (VPPA), §2.2-4300 thru 2.2-4377, Code of Virginia as amended, and, in particular, §2.2-4347 et seq., which is referred to as the Prompt Payment Act.

(1) The A/E shall submit its invoice to the FMA with the documentation required by the FMA. The invoice shall generally itemize or show a breakdown of the various phases or parts of the Total Contract Amount, the value of the various phases or parts, the previously invoiced and approved amounts for payment, and the amount of the current invoice. The invoice shall also include a certification statement signed by the A/E stating that the A/E has paid its consultants, subcontractors and suppliers their individual proportional share of all previous payments, including interest, received from the FMA. Invoices for reimbursables shall include documentation of costs for which reimbursement is sought. Invoices for Work being performed on an hourly rate basis shall show the technical classifications, names of the persons performing the work, man-hours expended, marked up hourly rates for the classification, and the extended cost amount.

(2) Unless there is a dispute about the compensation due the A/E including, but not limited to, claims by the FMA against the A/E, then within thirty (30) days after receipt by the FMA of the A/E's invoice, which shall be considered the invoice receipt date, the FMA shall pay to the A/E the amount approved less any retainage and less any prior payments or advances made to A/E. The date on which payment is due shall be referred to as the Payment Date.

(3) The FMA may agree to make progress or partial payments to the A/E during any phase of the Work based on the estimated value of the Work completed by the A/E on that phase. Any such progress payment shall be based on the FMA's opinion of the value of the Work completed as of the date of the invoice. The A/E may invoice the FMA and, if the FMA agrees that the submittal for the particular design phase is complete, the FMA may approve payment of a cumulative amount of not more than 95% of the value of that phase at the time the phase submittal is made to the FMA. The A/E may invoice the FMA for the remaining 5% (balance of the value of that phase) when the submittal has been reviewed and approved.

(4) Disputes about the compensation due the A/E may include, but are not limited to, the amount due, the value or percentage of the Work completed, defects or deficiencies in the Work, quality of the Work, compliance with the Contract Documents, completion itself, or negligent acts, errors, or omissions on the part of the A/E. In the event of disputes, payment shall be mailed on or before the Payment Date for amounts and Work not in dispute, subject to any setoffs claimed by the FMA.

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(5) All prior payments, whether based on estimates or otherwise, may be corrected and adjusted in any payment and shall be corrected and adjusted in the final payment. In the event that any invoice by the A/E contains a defect or impropriety which would prevent payment by the Payment Date, the FMA shall notify the A/E in writing of such defect or impropriety within ten (10) days after the invoice receipt date. Any disputed amounts determined by the FMA to be payable to the A/E shall be due thirty (30) days from the date the dispute is resolved.

(6) Interest shall accrue on all amounts owed by the FMA to the A/E which remain unpaid seven (7) days following the Payment Date. Said interest shall accrue at the discounted ninety day U.S. Treasury bill rate as established by the Weekly Auction and as reported in the publication entitled The Wall Street Journal on the weekday following each such Weekly Auction. During the period of time when the amounts due to the A/E remain unpaid following the fifteenth day after the Payment Date, the interest accruing shall fluctuate on a weekly basis and shall be that established by the immediately prior Weekly Auction. It shall be the responsibility of the A/E to gather and substantiate the applicable weekly interest rates to the satisfaction of the FMA and to calculate to the satisfaction of the FMA the interest due. In no event shall the rate of interest charge exceed the rate of interest established pursuant to §58.1-1812, *Code of Virginia*. No interest shall accrue when payment is delayed because of a dispute between the FMA and the A/E as described in subparagraph (4) above, or a dispute as to the accuracy of any Request for Payment received. This exception to the accrual of interest shall apply only to that portion of a delayed payment which is actually the subject of the dispute and shall apply only for the duration of such disagreement. Nor shall interest accrue on retainage, which is withheld to assure faithful performance of the Contract. No interest penalty shall be paid to any debtor on any payment, or portion thereof, withheld pursuant to the Comptroller's Debt Setoff Program commencing with the date the payment is withheld. If, as a result of an error, a payment or portion thereof is withheld, and it is determined that at the time of setoff no debt was owed to the Commonwealth, interest shall accrue at the rate determined above on amounts withheld which remain unpaid after seven days following the payment date. In those cases where payment is made by mailing, the date of mailing of any payment by the U.S. Postal Service is deemed to be the date of payment to the addressee. Where payment is made by electronic transfer of funds, the date of the transfer of funds is deemed to be the date of payment. The FMA is entitled to interest on all amounts from the A/E that remain unpaid thirty (30) days after the amount is deemed due, whether as a result of a resolution of a dispute or otherwise. Any such interest shall be calculated by the same method as set forth in this subsection.

17.0 **PAYMENTS BY ARCHITECT/ENGINEER:** The following procedures are established in conformance to the Virginia Public Procurement Act (VPPA), §2.2-4300 thru 2.2-4377, *Code of Virginia* as amended, and, in particular, §2.2-4347 et seq. (Prompt Payment Act). The A/E shall at the time of contract award by the A/E require every consultant, subcontractor and supplier to provide its Social Security Number (SSN), if a sole proprietor, or its Federal Employer Identification Number (FEIN), if a corporation or partnership. Except in cases of bona fide disputes, or where the A/E has some other justifiable reason for delaying payment, the A/E shall pay:

(1) To each of its Consultants, Subcontractors and Suppliers, not later than seven (7) calendar days after receipt of amounts paid to the A/E by the FMA, the proportionate share of the total payment, including any interest, received from the FMA attributable to the Work performed by Consultants and Subcontractors and materials furnished by Suppliers less a retainage of not more than five percent (5%), said retainage being the same money, not additional money, retained by the FMA from the payment to the A/E.

(2) In the case of bona fide disputes or where the A/E has some other justifiable reason to delay payment, not later than seven (7) calendar days after receipt of amounts paid to the A/E by the FMA, the A/E shall notify the FMA and the Consultant, Subcontractor or Supplier, in writing, of his intention to withhold all or a part of the Consultant, Subcontractor or Supplier's payment with the reason for nonpayment. The A/E shall make timely payments of those portions of the payment not in dispute.

(3) The A/E shall pay interest to the Consultants, Subcontractors or Suppliers on all amounts owed by the A/E that remain unpaid after seven (7) days following receipt by the A/E of payment from the FMA for work performed by the Consultants, Subcontractors or materials furnished by Suppliers under the contract, except for amounts withheld as allowed in subsection (2) of this Section. Unless otherwise provided under the terms of this contract, interest shall accrue at the rate of one percent per month.

(4) The A/E's obligation to pay interest to its Consultants, Subcontractors or Suppliers pursuant to subsection (3) of this Section shall not be construed to be an obligation of the FMA.

(5) A contract modification shall not be made for the purpose of providing reimbursement to the A/E for such interest charge. The A/E's invoice shall not include any amount for reimbursement for such interest charge. Failure on the part of the A/E to conform to the requirements of this section and the VPPA may be considered a breach of the requirements of the Contract and/or a violation of law.

18.0 **AUDIT:** The A/E shall provide documentation subject to audit for all invoices requesting payment for services provided on a cost reimbursement or hourly rate basis. Compensation paid to the A/E on these bases is subject to adjustment based on the results of the audit. The A/E, by signing the Contract, agrees to retain all books, records, and other documents relative to the contract for five (5) years after final payment, or until audited by the Commonwealth of Virginia, whichever is sooner. The FMA,

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- its authorized agents, and/or State auditors shall have full access to and the right to examine any of the materials during said period.
- 19.0 **CONFLICTS OF INTEREST:** The A/E, including any subsidiaries or affiliates or other entities in which the A/E has a pecuniary interest, which design, prepare plans and specifications, or cost estimates for a construction contract is prohibited from providing all or a portion of said construction, or the supplies or equipment used in such construction. (§2.2-4373, *Code of Virginia*) In addition, an entity which provides to the A/E any design services specifying a sole source for materials, supplies or equipment to be used in the construction shall be prohibited from bidding on, or otherwise furnishing such materials, supplies or equipment for the construction. This prohibition does not apply to a vendor who provides catalog information, technical data and such on products, material or equipment to the A/E for the A/E's consideration.
- 20.0 **RELEASE OF INFORMATION PERTAINING TO PROJECT DESIGN**
Release in any form by the A/E of information pertaining to the estimated construction cost of a project under design to anyone other than authorized FMA personnel and other A/E's or Consultants performing design of related FMA facilities is prohibited. The A/E shall not give out information concerning a project to anyone other than authorized FMA personnel, other A/E's performing design of related facilities without specific prior approval of the FMA to release such information. This includes, but is not limited to, project photographs, floor plans, and project cost information. When the project is ready to be advertised, the A/E may provide the following information to "construction information / plan room" services who serve the construction industry:
- type of project or facility
 - size (area) and number of stories
 - types of materials
 - bidding requirements
 - IFB (document) source
 - a project cost range (e.g. \$3,000,000 to \$5,000,000)
- As documents are issued to prospective bidders, a current list of plan holders should be made available to those who request such information, including the plan room services. During the bidding period, the A/E shall not respond to requests by prospective bidders to clarify or state the intent of Plans or Specifications unless such requests are in writing. The response must be in the form of an addendum issued to all plan holders. Sources of supply for special equipment may be made available in writing to all bidders/contractors. The A/E should promptly prepare and issue addenda for any necessary corrections or clarifications of the Plans and Specifications.
- 21.0 **VENDOR ADVERTISING RESTRICTIONS:** Advertising or promotional literature, including press releases, stating or implying a contract has been awarded or vendor has been contracted to perform work at or with FMA shall be reviewed and approved prior to publication. Advertising or promotional literature stating or implying that the FMA endorses a vendor's products or services is prohibited.
- 22.0 **DEFAULT:** In case of the A/E's failure to deliver the reports, documents, 'Record Drawings', or services in accordance with the Contract terms and conditions, the FMA, after due written notice, may procure same from other sources, and the A/E shall be responsible for any resulting additional procurement and administrative costs. This remedy shall be in addition to any other remedies which the FMA may have.
- 23.0 **TERMINATION OF CONTRACT BY THE FMA**
General: The FMA may terminate the Contract for cause or for convenience after giving thirty (30) days written notice to the A/E. The written notice shall include a statement of reasons for the termination.
- 23.1 **Termination for Cause:** If the A/E should substantially breach the Contract or fail to perform the services, or any portion thereof, required by the Contract, the FMA may terminate the Contract for cause by giving written notice as set forth above or may give the A/E a stated period of time within which to remedy its breach of contract. If the A/E shall fail to remedy the breach within the time allotted by the FMA, the Contract may be terminated by the FMA at any time thereafter upon written notice, effective immediately upon receipt. The FMA's forbearance in not terminating the contract shall not constitute a waiver of the FMA's right to terminate in the future for similar breaches or failures to perform. If the Contract is terminated for cause, the A/E shall be responsible for all damages incurred by the FMA as a result of the A/E's breach of contract or failure to perform, including but not limited to, all costs and expenses incurred in securing a replacement A/E to fulfill the obligations of the Contract. Any termination by the FMA for default, if determined by a court of competent jurisdiction not to have been justified as a termination for default, shall be deemed a termination for the convenience of the FMA.
- 23.2 **Termination for Convenience:** The FMA may terminate the Contract in whole or in part for convenience by delivering to A/E a written notice of termination as set forth above, specifying the extent to which performance under the contract is terminated and the effective date of the termination. Upon receipt of such notice, the A/E must stop Work, including but not limited to Work performed by subcontractors and consultants, at such time and to the extent specified in the notice. If the contract is terminated for convenience, the A/E shall be entitled to those fees earned for Work performed in accordance with the Contract prior to the notice of termination. Thereafter, the A/E shall be entitled to any fees earned for work not terminated, but shall not

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be entitled to lost profits for the portions of the Contract which were terminated. The A/E will be compensated for reasonable costs or expenses for delivery to the FMA of the products of the services for which the A/E has or will receive compensation.

- 23.3 **Delivery of Materials:** Any termination shall not relieve the A/E of the obligation to deliver to the FMA all products of the services for which the A/E has been or will be compensated, including, but not limited to, the original drawings and specifications, copies of CADD diskettes or tapes, calculations, and analyses. Unless otherwise agreed to in writing, the A/E shall deliver the materials to the FMA within thirty (30) days of receipt of the notice of termination. Failure to do so shall result in the withholding of final payment and shall constitute a material or substantial breach of contract.
- 23.4 **Compensation Due the A/E:** When the A/E is terminated for convenience, the following method shall be utilized in computing amounts due the A/E for services prior to termination:
- If terminated at the completion of a design phase or the bidding phase, the amount due shall be the cumulative total of the fees for the phases completed according to the Contract.
 - If terminated prior to completion of a design phase or the bidding phase, the amount due shall be the sum of the previously completed phase fees plus a negotiated amount based on the portion of services provided for the phase not completed.
 - If terminated during the construction phase, the total amount earned shall be the sum of the previously completed design and bidding phase fees plus a negotiated amount based on the portion of the construction period services provided through the notice of termination.
 - Payment for the Additional Services portion of the fee shall be any portion of those services provided up through the notice of termination.
 - Payment for the Reimbursable Expenses shall be based on approved reimbursable expenses incurred up through the notice of termination. The A/E shall submit invoices for all such amounts in accordance with the normal billing process, but in no event later than 60 days after the last Work is performed. All amounts invoiced are subject to deductions for amounts previously paid or for amounts due the FMA.
- 24.0 **ASSIGNMENT OF CONTRACT:** The A/E shall not assign the Contract between the FMA and the A/E, in whole or in part, without the written consent of the FMA.
- 25.0 **ANTITRUST:** By entering into a contract, the A/E conveys, sells, assigns, and transfers to the FMA all rights, title and interest in and to all causes of the 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 FMA under said Contract.
- 26.0 **ETHICS IN PUBLIC CONTRACTING (§2.2-4367 et seq., Code of Virginia):** The A/E shall not offer or receive any kickbacks or inducements from any other offeror, supplier, manufacturer or subcontractor in connection with this project. The A/E shall not confer on any public employee having official responsibility for this project 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.
- 27.0 **ANTI-DISCRIMINATION:** By signing the Contract, the A/E certifies to the FMA that it, as contractor for the services described in the RFP and the Contract, will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Act of 1975, as amended, where applicable, and §2.2-4310 and §2.2-4311 of the Virginia Public Procurement Act which provides that: In every contract over \$10,000, the contractor (i.e. the A/E) agrees the provisions in (1) and (2) below apply:
1. During the performance of this contract, the contractor agrees as follows:
 - a. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 - b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.
 - c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
 2. The contractor will include the provisions of the foregoing paragraphs a, b and c in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor. Where applicable, the "Virginians with Disabilities Act" and the federal "Americans with Disabilities Act" shall apply to the A/E and all subcontractors or consultants.
- 28.0 **NONDISCRIMINATION OF CONTRACTORS:** A bidder, Offeror, or contractor shall not be discriminated against in the solicitation or award of this contract because of race, religion, color, sex, national origin, age, disability, faith-based

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organizational status, any other basis prohibited by state law relating to discrimination in employment or because the bidder or Offeror employs ex-offenders unless the FMA has made a written determination that employing ex-offenders on the specific contract is not in its best interest. If the award of this contract is made to a faith-based organization and an individual, who applies for or receives goods, services, or disbursements provided pursuant to this 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.

- 29.0 **CONTRACTUAL DISPUTES (§2.2-4363, Code of Virginia):** The FMA's Dispute Resolution Procedures shall apply if in writing and if attached to the contract. If not, the following procedures shall apply:

A/E claims for additional compensation, whether relating to additional services, delay or other, shall be submitted in writing, no later than sixty (60) days after final payment; however, written notice of the A/E's intention to file such claim must be given to the FMA's Project Manager at the time of the occurrence or beginning of the Work upon which the claim is based. The filing of a timely notice is a prerequisite to recovery under this Section. The FMA shall provide the A/E written notice of receipt of the A/E's written claim for additional compensation or the A/E's written notice of intent to file such a claim within thirty days of receipt of the A/E's notice or claim. Although the A/E may be required to submit certain classes of claims prior to final payment, and the A/E is not prevented from filing claims during the pendency of the Work, the FMA shall not be obligated to render a final written decision on any claim until after final payment. All claims shall be submitted along with all practically available supporting evidence and documentation. No written decision denying a claim or addressing issues related to the claim, if rendered prior to final payment, shall be considered a denial pursuant to this Section unless the written decision makes express reference to this Section and is signed by the Executive Director or his designee. The A/E may not institute legal action prior to receipt of the FMA's final written decision on the claim unless the FMA fails to render such a decision within ninety (90) days of submission of the claim or within ninety (90) days of final payment, whichever is later. The decision of the agency head or other signatory on the Contract shall be final and conclusive unless the A/E within six (6) months of the date of the final decision on a claim, initiates legal action as provided in §2.2-4364, Code of Virginia. Failure of the FMA to render a decision within 90 days shall not result in the A/E being awarded the relief claimed nor shall it result in any other relief or penalty. The sole result of the FMA's failure to render a decision within 90 days shall be the A/E's right to immediately institute legal action. No administrative appeals procedure pursuant to §2.2-4365, Code of Virginia, has been established for contractual claims under this Contract.

- 30.0 **APPLICABLE LAWS AND COURTS:** The A/E contract 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 agency and the A/E are encouraged to resolve any issues in controversy arising from the award of the contract or any contractual dispute using Alternative Dispute Resolution (ADR) procedures (Code of Virginia, § 2.2-4366). The A/E shall comply with all applicable federal, state and local laws, rules and regulations.

- 31.0 **PROHIBITION OF ALCOHOL AND OTHER DRUGS AT WORKPLACE:** The FMA seeks to establish and maintain a work environment free from the adverse effects of alcohol and other drugs. The adverse effects of alcohol and other drugs create a serious threat to the safety and welfare of all personnel at the jobsite, to jobsite safety in general, to worker productivity and quality of workmanship, and to the project schedule. In conformance with §2.2-4312, Code of Virginia, the A/E shall establish a written policy to maintain and enforce a drug-free workplace, to specify actions that will be taken against persons for violations of the policy, and to require that such policy be binding on each of its consultants, subcontractors and suppliers performing work on the contract. The A/E's policy shall prohibit the following acts by the A/E, its employees, subcontractors, consultants and suppliers while performing services under the terms of the Contract.

- (1) The unlawful or unauthorized manufacture, distribution, dispensation, possession, or use of marijuana or other drugs (except the possession and use of medically prescribed drugs for legitimate medical purposes) in the workplace or at the construction site;
- (2) The unlawful or unauthorized manufacture, distribution, dispensation, or use of alcoholic beverages in the workplace or at the construction site during hours of work;
- (3) The impairment of a person in the workplace, or at the construction site, related to the use of alcohol, marijuana, or other drugs including impairment from prescription drugs.

The A/E shall post a copy of this policy in a conspicuous place at the workplace and assure that all personnel, including potential hires, are advised of the policy. A violation of this policy will be recognized as a breach of contract and may result in termination of the Contract. For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor (i.e. the A/E and its consultants, subcontractors and suppliers), in accordance with this chapter, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

- 32.0 **DESIGN OF SECURITY SYSTEMS:** The A/E, for the installation, service, maintenance, or design of security equipment or any central station alarm condition monitoring service shall be licensed by the Department of Criminal Justice Services pursuant to §9-183, Code of Virginia. The A/E proposing to provide any of these services with its own staff shall be exempt from the DCJS licensing requirement if properly licensed by the APELSCIDLA Board. (§9-183.2; Code of Virginia) If the A/E

APPENDIX A
General Terms and Conditions for Construction and Professional Services

proposes to have the security system designed by a subcontractor/consultant, such entity shall be properly licensed as required by §9-183, *Code of Virginia*. Any projects designed by the A/E which have such security systems shall include the licensing requirements of §9-183, *Code of Virginia*, in the specifications and the requirement that the successful bidder shall provide documentation within five (5) calendar days of bid opening that the entity (contractor or subcontractor) performing the security system work possesses the proper license.

- 33.0 **REPORTS ON THE PARTICIPATION OF SMALL BUSINESSES AND BUSINESSES OWNED BY WOMEN AND MINORITIES:** The following is required for professional service contracts with a fee greater than \$100,000.
1. Periodic Progress Reports/Invoices: The A/E shall include a report on involvement, if any, of small businesses and businesses owned by women and minorities as a part of their periodic invoice. The report will specify the actual amounts of contracts to date with such businesses, and the actual dollars paid to date with such businesses on this contract. This information shall be provided separately for small businesses, women-owned businesses and minority owned businesses. The A/E shall provide two (2) copies of this information to the FMA. Failure to submit the required information will result in invoices being returned without payment.
 2. Final Actual Involvement Report: The A/E shall submit, prior to completion or at completion of the contract and prior to final payment, a report on the actual dollars paid to small businesses and businesses owned by women and minorities during the performance of this contract. At a minimum, this report shall include for each firm contracted, the Business Class, a comparison of the total actual dollars paid on this contract with the planned involvement of the firm, the totals for each business class as specified in the proposal, and the actual percent of the total estimated contract value. A format for the report will be provided by the FMA. A generic format is posted on the Forms Center.
- 34.0 **DISADVANTAGED BUSINESSES:** It is the policy of the Commonwealth of Virginia to contribute to the establishment, preservation, and strengthening of small businesses and businesses owned by women and minorities and to encourage their participation in State procurement activities. The Commonwealth encourages contractors to provide for the participation of small businesses and businesses owned by women and minorities through partnerships, joint ventures, subcontracts, or other contractual opportunities. All procurements by competitive negotiation for professional or nonprofessional services that are expected to exceed \$100,000 in value shall include consideration of the proposer's past and proposed use of small businesses and businesses owned by women and minorities in the evaluation of proposals.
- 35.0 **IMMIGRATION REFORM AND CONTROL ACT OF 1986:** The A/E shall certify that they do not and will not during the performance of this contract employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986.
- 36.0 **DEBARMENT STATUS:** The A/E shall certify that they are not currently debarred by the Commonwealth of Virginia or the federal government from submitting bids or proposals on contracts for the type of goods and/or services covered by this solicitation, nor are they an agent of any person or entity that is currently so debarred.
- 37.0 **PRECEDENCE OF TERMS:** The following General Terms and Conditions, APPLICABLE LAWS AND COURTS, ANTI-DISCRIMINATION, ETHICS IN PUBLIC CONTRACTING, IMMIGRATION REFORM AND CONTROL ACT OF 1986, DEBARMENT STATUS, ANTITRUST, MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS, CLARIFICATION OF TERMS, PAYMENT shall apply in all instances. In the event there is a conflict between any of the other General Terms and Conditions and any Special Terms and Conditions in this solicitation, the Special Terms and Conditions shall apply.
- 38.0 **LOBBYING:** The Byrd Amendment (31 U.S.C. §1352), prohibits the use of federally appropriated funds to influence federal agency officials or members and employees of Congress in the awarding, extension, continuation, renewal, amendment or modification of grants, loans, cooperative agreements and contracts. The Lobbying Disclosure Act of 1995 revised the Byrd Amendment to change the kinds of information grantees must disclose yet it retained the basic prohibition of using federal funds for lobbying activities. **The A/E should note that the prohibited activities relate to lobbying on specific awards, not on general program issues.** Everyday grant administration transactions with agency officials are not prohibited by the Byrd Amendment.
- All Offerors awarded a contract for \$100,000 or more funded by the Federal government, must certify that they are not using the Federal funds for lobbying and provide disclosure forms with information on lobbying with non-Federal funds. This provision also applies to all sub grants and subcontracts of \$100,000.
- 41.0 **AVAILABILITY OF FUNDS:** It is understood and agreed between the parties herein that the agency shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this agreement.

APPENDIX V – FMA CONTRACT BETWEEN OWNER AND CONSULTANT/CONTRACTOR



FORT MONROE AUTHORITY (FMA) CONTRACT BETWEEN OWNER AND CONSULTANT/CONTRACTOR

This Contract, dated this _____ day of _____, 2010 Between The Fort Monroe Authority (“Owner”) and _____ (“Contractor”),
Is binding among and between these parties as of the date of the Owner’s signature.

RECITALS

- The legal address for the Owner and for the Contractor and the addresses for delivery of Contract related notices are as follows:

Owner:	Fort Monroe Authority (FMA)	Contractor:	
Attention:	Procurement Manager	Attention:	
Address:	151 Bernard Road Fort Monroe, Virginia 23651	Address:	
Phone:	757-637-7778	Phone:	
FAX:	757-637-7776	FAX:	
		FEIN/SSN:	

- The Project is identified as:

Project Title:
Project Code – PC#:
General Project Description:

The Project Code (PC#) is required to be shown for identification purposes on all contract-related material and documents including but not limited to Notices, Contract Changes, Submittals, Requests For Information, Correspondence and related materials.

- Pursuant to FMA Procurement Policies, Contractor is awarded this Contract to perform the Work described by the Contract Documents for the project described herein (“the Project”). The Contractor’s submitted proposal forms an integral part of this agreement.

THEREFORE, in consideration of the Recitals set forth above, and good and valuable consideration as set forth below, the parties agree as follows:

A. STATEMENT OF WORK

The Contractor shall furnish all labor, equipment, and materials and perform all Work for the Project in strict accordance with the Contract Documents.

TASK	DESCRIPTION	EST COMPLETE DATE	PRICE
	ALLOWABLE EXPENSES		

B. CONTRACT DOCUMENTS

This Contract shall consist of the following documents incorporated herein by reference and/or by attachment:

- This Contract between Owner and Contractor, Form FMA CONTRACT Rev07/10;
- The Proposal submitted by the Contractor dated _____
- Appendix A – General Terms and Conditions for Goods and Nonprofessional Services
- Appendix A – General Terms and Conditions for Construction and Professional Services

C. TIME FOR COMPLETION

The Work shall commence upon signature of this contract by both parties and shall be completed no later than the Contract Completion Date which is _____

D. COMPENSATION TO BE PAID TO THE CONTRACTOR

The Owner agrees to pay and the Contractor agrees to accept as just and adequate compensation for the performance of the Work in accordance with the Contract Documents the sum of _____ dollars _____

E. METHOD OF PAYMENT

1. Payments may be made monthly to this Contractor for the proportional part of the services rendered during the period.
2. Contractor shall submit to the Owner by the 5th day of the month an invoice for approval and payment for the services performed during the preceding month.
3. Should services be required beyond that time, this Contractor will be compensated at a rate set forth in the Contract or, if not set forth in the Contract, at a rate commensurate with the services provided and at the equivalent rates used in the Contract for the personnel classifications involved.

F. ALLOWABLE EXPENSES

Additional expenses, not specifically addressed herein, shall be pre-approved, in writing, by the Executive Director FMA, William Armbruster or his designated representative. Reimbursement shall be made for only approved expenses accompanied by original receipts. FMA reserves the right to deny reimbursement of any expenses not preapproved.

IN WITNESS WHEREOF, the parties hereto on the day and year written below have executed this agreement.

(signature in ink) *(date)*
 Crystal L. DeAngelis, FMA Deputy Director of Finance

For the CONTRACTOR:

By: _____
(signature in ink) *(date)*

(printed or typed name)

(printed or typed title)

For the OWNER:

By: _____
(signature in ink) *(date)*
 William Armbruster
(name)
 Executive Director FMA
(title)

Contract submitted electronically. Please sign and return to the Owner by fax or as attachment to electronic mail.

Distribution:
 Original-CLD/AP file
 1 copy-YRC/Contract file
 1 copy – DD of