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SENATE BILL NO. 1156

Offered January 14, 2009

Prefiled January 13, 2009

A BILL to amend and reenact § 4.3 and Exhibit A, Attachment 1 and Attachment 2 of Exhibit D, and Exhibit F of the first enactment of Chapters 933 and 943 of the Acts of Assembly of 2006; § 4.3 and Exhibit G, Attachment 1 of Exhibit J, and Exhibit L of the second enactment of Chapters 933 and 943 of the Acts of Assembly of 2006; § 4.3 and Exhibit M, Attachment 1 and Attachment 2 of Exhibit P, and Exhibit R of the third enactment of Chapters 933 and 943 of the Acts of Assembly of 2006; and the fifth enactment of Chapters 933 and 943 of the Acts of Assembly of 2006, relating to the management agreements between the Commonwealth and Virginia Polytechnic Institute and State University, the College of William and Mary in Virginia, and the University of Virginia, respectively.

Patron—Edwards

Referred to Committee on Education and Health

Be it enacted by the General Assembly of Virginia:

1. That § 4.3 and Exhibit A, Attachment 1 and Attachment 2 of Exhibit D, and Exhibit F of the first enactment of Chapters 933 and 943 of the Acts of Assembly of 2006; § 4.3 and Exhibit G, Attachment 1 of Exhibit J, and Exhibit L of the second enactment of Chapters 933 and 943 of the Acts of Assembly of 2006; § 4.3 and Exhibit M, Attachment 1 and Attachment 2 of Exhibit P, and Exhibit R of the third enactment of Chapters 933 and 943 of the Acts of Assembly of 2006; and the fifth enactment of Chapters 933 and 943 of the Acts of Assembly of 2006 are amended and reenacted as follows:

SECTION 4.3. Term of Agreement. This Management Agreement shall expire at midnight on June 30, 20402012.

EXHIBIT A**MANAGEMENT AGREEMENT****BETWEEN****THE COMMONWEALTH OF VIRGINIA****AND****VIRGINIA POLYTECHNIC INSTITUTE****AND STATE UNIVERSITY****PURSUANT TO**

**THE RESTRUCTURED HIGHER EDUCATION
FINANCIAL AND ADMINISTRATIVE OPERATIONS
ACT OF 2005**

POLICY GOVERNING**CAPITAL PROJECTS****THE BOARD OF VISITORS OF VIRGINIA POLYTECHNIC INSTITUTE****AND STATE UNIVERSITY****POLICY GOVERNING CAPITAL PROJECTS****I. PREAMBLE.**

The Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter 4.10 of Title 23 of the Code of Virginia, provides that, upon becoming a Covered Institution, the University may be delegated the authority to establish its own system for undertaking the implementation of its capital projects. In general, status as a Covered Institution is designed to replace the post-authorization system of reviews, approvals, policies and procedures carried out by a variety of central State agencies, and also the traditional preauthorization approval process for projects funded entirely with non-general funds and without any proceeds from State Tax Supported Debt. The University's system for carrying out its capital outlay process as a Covered Institution is to be governed by policies adopted by the Board of Visitors. The following provisions of this Policy, together with the Policy Governing the Procurement of Goods, Services, Insurance, and Construction, and the Disposition of Surplus Materials adopted by the Board, and the Rules Governing Procurement of Goods, Services, Insurance, and Construction, which is attached as Attachment 1 to that Policy, constitute the adopted Board of Visitors policies regarding the University's capital projects, whether funded by a state general

59 fund appropriation, State Tax Supported Debt, or funding from other sources. This Policy is intended to
60 encompass and implement the authority that may be granted to the University pursuant to Subchapter 3
61 of the Act. Any other powers and authorities granted to the University pursuant to the Appropriation
62 Act, or any other sections of the Code of Virginia, including other provisions of the Act and the
63 University's Enabling Legislation, are not affected by this Policy.

64 II. DEFINITIONS.

65 As used in this policy, the following terms shall have the following meanings, unless the context
66 requires otherwise:

67 "Act" means the Restructured Higher Education Financial and Administrative Operations Act,
68 Chapter 4.10 of Title 23 of the Code of Virginia.

69 "Board of Visitors" or "Board" means the Board of Visitors of Virginia Polytechnic Institute and
70 State University.

71 "Capital Lease" means a lease that is defined as such within Generally Accepted Accounting
72 Principles pursuant to the pronouncement of the Financial Accounting Standards Board.

73 "Capital Professional Services" means professional engineering, architecture, land surveying and
74 landscape architecture services related to capital projects.

75 "Capital project(s)" means the acquisition of any interest in land, including improvements on the
76 acquired land at the time of acquisition, new construction, improvements or renovations, and Capital
77 Leases.

78 "Covered Institution" means, on and after the Effective Date of its initial Management Agreement, a
79 public institution of higher education of the Commonwealth of Virginia that has entered into a
80 management agreement with the Commonwealth to be governed by the provisions of Subchapter 3 of
81 the Act.

82 "Enabling Legislation" means those chapters, other than Chapter 4.10, of Title 23 of the Code of
83 Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and missions
84 of the individual public institutions of higher education of the Commonwealth.

85 "Major Capital Project(s)" means the acquisition of any interest in land, including improvements on
86 the acquired land at the time of acquisition, new construction of 5,000 square feet or greater or costing
87 \$1 million or more, improvements or renovations of \$1 million or more, and Capital Leases.

88 "State Tax Supported Debt" means bonds, notes, or other obligations issued under Article X, Section
89 9(a), 9(b), or 9(c), or 9(d), if the debt service payments are made or ultimately are to be made from
90 general government funds, as defined in the December 20, 2004 Report to the Governor and General
91 Assembly of the Debt Capacity Advisory Committee or as that definition is amended from time to time.

92 "University" means Virginia Polytechnic Institute and State University, consisting of the University
93 Division (State Agency 208) and Virginia Cooperative Extension and the Agricultural Experiment
94 Station Division (State Agency 229).

95 III. SCOPE OF POLICY.

96 This Policy applies to the planning and budget development for capital projects, capital project
97 authorization, and the implementation of capital projects, whether funded by a general fund
98 appropriation of the General Assembly, proceeds from State Tax Supported Debt, or funding from other
99 sources.

100 This Policy provides guidance for 1) the process for developing one or more capital project programs
101 for the University, 2) authorization of new capital projects, 3) procurement of Capital Professional
102 Services and construction services, 4) design reviews and code approvals for capital projects, 5)
103 environmental impact requirements, 6) building demolitions, 7) building and land acquisitions, 8)
104 building and land dispositions, 9) project management systems, and 10) reporting requirements.

105 IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.

106 The Board of Visitors of the University shall at all times be fully and ultimately accountable for the
107 proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation
108 of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant
109 to its legally permissible procedures, specifically delegate either herein or by separate Board resolution
110 the duties and responsibilities set forth in this Policy to a person or persons within the University, who,
111 while continuing to be fully accountable for such duties and responsibilities, may further delegate the
112 implementation of those duties and responsibilities pursuant to the University's usual delegation policies
113 and procedures.

114 V. CAPITAL PROGRAM.

115 The President, acting through the Executive Vice President and Chief Operating Officer, shall adopt a
116 system for developing one or more capital project programs that defines or define the capital needs of
117 the University for a given period of time consistent with the University's published Master Plan. This
118 process may or may not mirror the Commonwealth's requirements for capital plans. The Board of
119 Visitors shall approve the program for Major Capital Projects. Major Capital Projects that are to be
120 funded entirely or in part by a general fund appropriation of the General Assembly or proceeds from

State Tax Supported Debt shall follow the Commonwealth's requirements for capital plans. The Board may approve amendments to the program for Major Capital Projects annually or more often if circumstances warrant. It shall be University policy that each capital project program shall meet the University's mission and institutional objectives, and be appropriately authorized by the University. Moreover, it shall be University policy that each capital project shall be of a size and scope to provide for the defined program needs, designed in accordance with all applicable building codes and handicapped accessibility standards as well as the University's design guidelines and standards, and costed to reflect current costs and escalated to the mid-point of anticipated construction.

VI. AUTHORIZATION OF CAPITAL PROJECTS.

The Board of Visitors shall authorize the initiation of each Major Capital Project by approving its size, scope, budget, and funding. The President, acting through the Executive Vice President and Chief Operating Officer, shall adopt procedures for approving the size, scope, budget and funding of all other capital projects. Major Capital Projects that are to be funded entirely or in part by a general fund appropriation of the General Assembly or proceeds from State Tax Supported Debt, shall require both Board of Visitors approval and those preappropriation approvals of the State's governmental agencies then applicable, and shall follow the State's process for capital budget requests.

It shall be the policy of the University that the implementation of capital projects shall be carried out so that the capital project as completed is the capital project approved by the Board for Major Capital Projects and according to the procedures adopted by the President, acting through the Executive Vice President and Chief Operating Officer, for all other capital projects. The President, acting through the Executive Vice President and Chief Operating Officer, shall ensure strict adherence to this requirement. Accordingly, the budget, size and scope of a capital project shall not be materially changed beyond the plans and justifications that were the basis for the capital project's approval, either before or during construction, unless approved in advance as described above. Minor changes shall be permissible if they are determined by the President, acting through the Executive Vice President and Chief Operating Officer, to be justified. Major Capital Projects may be submitted for Board of Visitors authorization at any time but must include a statement of urgency if not part of the approved Major Capital Project program.

VII. PROCUREMENT OF CAPITAL PROFESSIONAL SERVICES AND CONSTRUCTION SERVICES.

It shall be the policy of the University that procurements shall result in the purchase of high quality services and construction at reasonable prices and shall be consistent with the Policy Governing the Procurement of Goods, Services, Insurance, and Construction, and the Disposition of Surplus Materials adopted by the Board, and with the Rules Governing Procurement of Goods, Services, Insurance, and Construction, which is attached as Attachment 1 to that Policy. Specifically, the University is committed to:

A. Seeking competition to the maximum practical degree, taking into account the size of the anticipated procurement, the term of the resulting contract and the likely extent of competition;

B. Conducting all procurements in a fair and impartial manner and avoiding any impropriety or the appearance of any impropriety prohibited by State law or University policy;

C. Making procurement rules clear in advance of any competition;

D. Providing access to the University's business to all qualified vendors, firms and contractors, with no potential bidder or offeror excluded arbitrarily or capriciously, while allowing the flexibility to engage in cooperative procurements and to meet special needs of the University;

E. Including in contracts of more than \$10,000 the contractor's agreement not to discriminate against employees or applicants because of race, religion, color, sex, national origin, age, disability or other basis prohibited by State law except where there is a bona fide occupational qualification reasonably necessary to the contractor's normal operations; and

F. Providing for a non-discriminatory procurement process, and including appropriate and lawful provisions to effectuate fair and reasonable consideration of women-owned, minority-owned and small businesses and to promote and encourage a diversity of suppliers.

The President, acting through the Executive Vice President and Chief Operating Officer, is authorized to develop implementing procedures for the procurement of Capital Professional Services and construction services at the University. The procedures shall implement this Policy and provide for:

A. A system of competitive negotiation for Capital Professional Services, including a procedure for expedited procurement of Capital Professional Services under \$50,000, pursuant to (i) subdivisions 1, 2, and 3 a of the defined term "competitive negotiation" in Rule 4 of the Rules Governing Procurement of Goods, Services, Insurance, and Construction, and (ii) § 4-5.06 of the 2004-2006 Appropriation Act;

B. A prequalification procedure for contractors or products;

C. A procedure for special construction contracting methods, including but not limited to design-build and construction management contracts; and

182 D. A prompt payment procedure.

183 The University also may enter into cooperative arrangements with other private or public health or
184 educational institutions, healthcare provider alliances, purchasing organizations or state agencies where,
185 in the judgment of the University, the purposes of this Policy will be furthered.

186 VIII. DESIGN REVIEWS AND CODE APPROVALS.

187 The Board of Visitors shall review the design of all Major Capital Projects and shall provide final
188 Major Capital Project authorization based on the size, scope and cost estimate provided with the design.
189 Unless stipulated by the Board of Visitors at the design review, no further design reviews shall be
190 required. For all capital projects other than Major Capital Projects, the President, acting through the
191 Executive Vice President and Chief Operating Officer, shall adopt procedures for design review and
192 project authorization based on the size, scope and cost estimate provided with the design. It shall be the
193 University's policy that all capital projects shall be designed and constructed in accordance with
194 applicable Virginia Uniform Statewide Building Code (VUSBC) standards and the applicable
195 accessibility code.

196 The President, acting through the Executive Vice President and Chief Operating Officer, shall
197 designate a Building Official responsible for building code compliance by either (i) hiring an individual
198 to be the University Building Official, or (ii) continuing to use the services of the Department of
199 General Services, Division of Engineering and Buildings, to perform the Building Official function. If
200 option (i) is selected, the individual hired as the University Building Official shall be a full-time
201 employee, a registered professional architect or engineer, and certified by the Department of Housing
202 and Community Development to perform this Building Official function. The University Building
203 Official shall issue building permits for each capital project required by the VUSBC to have a building
204 permit, and shall determine the suitability for occupancy of, and shall issue certifications for building
205 occupancy for, all capital projects requiring such certification. Prior to issuing any such certification, this
206 individual shall ensure that the VUSBC and accessibility requirements are met for that capital project
207 and that such capital project has been inspected by the State Fire Marshal or his designee *as required*.
208 When serving as the University Building Official, such individual shall organizationally report directly
209 and exclusively to the Board of Visitors. If the University hires its own University Building Official, it
210 shall fulfill the code review requirement by maintaining a review unit *of licensed professional architects*
211 *or engineers supported by resources and staff* who are certified by the Department of Housing and
212 Community Development in accordance with § 36-137 of the Code of Virginia, for such purpose and
213 who shall review plans, specifications and documents for compliance with building codes and standards
214 and perform required inspections of work in progress and the completed capital project. No individual
215 licensed professional architect or engineer hired *under the University's personnel system as a member of*
216 *the review unit or contracted with to perform these functions* shall also perform other building
217 code-related design, construction, facilities-related project management or facilities management
218 functions for the University ~~on the same capital project~~.

219 IX. ENVIRONMENTAL IMPACT REPORTS.

220 It shall be the policy of the University to assess the environmental, historic preservation, and
221 conservation impacts of all capital projects and to minimize and otherwise mitigate all adverse impacts
222 to the extent practicable. The University shall develop a procedure for the preparation and approval of
223 environmental impact reports for capital projects, in accordance with State environmental, historic
224 preservation, and conservation requirements generally applicable to capital projects otherwise meeting
225 the definition of Major Capital Projects but, pursuant to § 23-38.109 C 1 of the Act, with a cost of
226 \$300,000 or more.

227 X. BUILDING DEMOLITIONS.

228 It shall be the policy of the University to consider the environmental and historical aspects of any
229 proposed demolitions. The Board of Visitors shall be responsible for approving demolition requests. The
230 University shall develop a procedure for the preparation and review of demolition requests, including
231 any necessary reviews by the Department of Historic Resources and the Art and Architectural Review
232 Board in accordance with State historic preservation requirements generally applicable to capital projects
233 in the Commonwealth. Further, for any property that was acquired or constructed with funding from a
234 general fund appropriation of the General Assembly or from proceeds from State Tax Supported Debt,
235 general laws applicable to State owned property shall apply.

236 XI. BUILDING OR LAND ACQUISITIONS.

237 It is the policy of the University that capital projects involving building or land acquisition shall be
238 subjected to thorough inquiry and due diligence prior to closing on the acquisition of such real property.
239 The President, acting through the Executive Vice President and Chief Operating Officer, shall ensure
240 that the project management system implemented pursuant to Section XIII below provides for a review
241 and analysis of all pertinent matters relating to the acquisition of buildings and land as any prudent
242 purchaser would perform to the end that any building or land acquired by the University shall be
243 suitable for its intended purpose, that the acquisition can be made without substantial risk of liability to

the University and that the cost of the real property to be acquired, together with any contemplated development thereof, shall be such that compliance with the provisions of Section VI of this Policy is achieved. In addition, the President, acting through the Executive Vice President and Chief Operating Officer, shall ensure that, where feasible and appropriate to do so, the following specific policies pertaining to the acquisition of buildings or land for capital projects are carried out.

A. Environmental and Land Use Considerations.

It is the policy of the University to reasonably cooperate with each locality affected by the acquisition. Such cooperation shall include but not be limited to furnishing any information that the locality may reasonably request and reviewing any requests by the locality with regard to any such acquisition. The University shall consider the zoning and comprehensive plan designation by the locality of the building or land and surrounding parcels, as well as any designation by State or federal agencies of historically or archeologically significant areas on the land. Nothing herein shall be construed as requiring the University to comply with local zoning laws and ordinances.

B. Infrastructure and Site Condition.

The President, acting through the Executive Vice President and Chief Operating Officer, shall ensure that, in the case of capital projects involving the acquisition of buildings or land, the project management systems implemented under Section XIII below provide for a review of the following matters prior to acquisition of the building or land: that any land can be developed for its intended purpose without extraordinary cost; that an environmental engineer has been engaged by the University to provide an assessment of any environmental conditions on the land; that there is adequate vehicular ingress and egress to serve the contemplated use of the building or land; that utilities and other services to the land are adequate or can reasonably be provided or have been provided in the case of building acquisitions; and that the condition and grade of the soils have been examined to determine if any conditions exist that would require extraordinary site work or foundation systems.

C. Title and Survey.

A survey shall be prepared for any real property acquired, and an examination of title to the real property shall be conducted by a licensed attorney or, in the alternative, a commitment for title insurance shall be procured from a title insurance company authorized to do business in the Commonwealth. Based upon the survey and title examination or report, the President, acting through the Executive Vice President and Chief Operating Officer, shall conclude, prior to acquisition of the real property, that title thereto will be conveyed to the University in fee simple, free and clear of all liens, encumbrances, covenants, restrictions, easements or other matters that may have a significant adverse effect upon the University's ability to own, occupy, convey or develop the real property.

D. Appraisal.

An appraisal shall be conducted of the real property to be acquired to determine its fair market value and the consistency of the fair market value with the price agreed upon by the University.

XII. BUILDING OR LAND DISPOSITIONS.

The Board of Visitors shall approve the disposition of any building or land. Disposition of land or buildings, the acquisition or construction of which was funded entirely or in part by a general fund appropriation of the General Assembly or proceeds from State Tax Supported Debt, shall require both Board of Visitors approval and other approvals in accordance with general law applicable to State-owned property and with the University's Enabling Legislation.

XIII. PROJECT MANAGEMENT SYSTEMS.

The President, acting through the Executive Vice President and Chief Operating Officer, shall implement one or more systems for the management of capital projects for the University. The systems may include the delegation of project management authority to appropriate University officials, including a grant of authority to such officials to engage in further delegation of authority as the President, acting through the Executive Vice President and Chief Operating Officer, deems appropriate.

The project management systems for capital projects shall be designed to ensure that such projects comply with the provisions of this Policy and other Board of Visitors policies applicable to closely related subjects such as selection of architects or policies applicable to University buildings and grounds.

The project management systems may include one or more reporting systems applicable to capital projects whereby University officials responsible for the management of such projects provide appropriate and timely reports to the President, acting through the Executive Vice President and Chief Operating Officer, on the status of such projects during construction.

XIV. REPORTING REQUIREMENTS.

In addition to complying with any internal reporting systems contained in the University's project management systems, as described in Section XIII above, the University shall comply with State reporting requirements for those Major Capital Projects funded entirely or in part by a general fund appropriation by the General Assembly or State Tax Supported Debt. Additionally, if any capital project constructs improvements on land, or renovates property, that originally was acquired or constructed in

whole or in part with a general fund appropriation for that purpose or proceeds from State Tax Supported Debt, and such improvements or renovations are undertaken entirely with funds not appropriated by the General Assembly and, if the cost of such improvements or renovations is reasonably expected to exceed two million dollars, the decision to undertake such improvements or renovations shall be communicated as required by § 23-38.109 C 3 of the Act. As a matter of routine, the President, acting through the Executive Vice President and Chief Operating Officer, shall report to the Department of General Services on the status of such capital projects at the initiation of the project, prior to the commencement of construction, and at the time of acceptance of any such capital project.

ATTACHMENT 1

Rules Governing Procurement of Goods, Services, Insurance, and Construction by a Public Institution of Higher Education of the Commonwealth of Virginia Governed by Subchapter 3 of the

Restructured Higher Education Financial and Administrative Operations Act, Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia

In accordance with the provisions of the Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia, and in particular § 23-38.110 of the Act, the governing body of a public institution of higher education of the Commonwealth of Virginia that has entered into a Management Agreement with the Commonwealth pursuant to Subchapter 3 of the Act has adopted the following Rules Governing Procurement of Goods, Services, Insurance, and Construction to govern the procurement of goods, services, insurance, and construction by the Institution, excluding the University of Virginia Medical Center:

§ 1. Purpose. -

The purpose of these Rules is to enunciate the public policies pertaining to procurement of good, services, insurance, and construction by the Institution from nongovernmental sources, to include governmental procurement that may or may not result in monetary consideration for either party. These Rules shall apply whether the consideration is monetary or nonmonetary and regardless of whether the Institution, the contractor, or some third party is providing the consideration.

§ 2. Scope of Procurement Authority. -

Subject to these Rules, and the Institution's continued substantial compliance with the terms and conditions of its Management Agreement with the Commonwealth pursuant to § 23-38.88(D)(4) and the requirements of Chapter 4.10 of the Act, the Institution shall have and shall be authorized to have and exercise all of the authority relating to procurement of goods, services, insurance, and construction, including but not limited to capital outlay-related procurement and information technology-related procurement, that Institutions are authorized to exercise pursuant to Subchapter 3 of the Restructuring Act.

§ 3. Competition is the Priority. -

To the end that the Institution shall obtain high quality goods and services at reasonable cost, that all procurement procedures be conducted in an open, fair and impartial manner with avoidance of any impropriety or appearance of impropriety, that all qualified vendors have access to the Institution's business and that no offeror be arbitrarily or capriciously excluded, it is the intent of the governing body of the Institution that competition be sought to the maximum feasible degree, that procurement procedures involve openness and administrative efficiency, that individual public bodies enjoy broad flexibility in fashioning details of such competition, that the rules governing contract awards be made clear in advance of the competition, that specifications reflect the procurement needs of the purchasing body rather than being drawn to favor a particular vendor, and that the purchaser and vendor freely exchange information concerning what is sought to be procured and what is offered. The Institution may consider best value concepts when procuring goods and nonprofessional services, but not construction or professional services. Professional services will be procured using a qualification-based selection process. 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.

§ 4. Definitions. -

As used in these Rules:

"Affiliate" means an individual or business that controls, is controlled by, or is under common control with another individual or business. A person controls an entity if the person owns, directly or indirectly, more than 10% of the voting securities of the entity. For the purposes of this definition "voting security" means a security that (i) confers upon the holder the right to vote for the election of members of the board of directors or similar governing body of the business or (ii) is convertible into, or entitles the holder to receive, upon its exercise, a security that confers such a right to vote. A general partnership interest shall be deemed to be a voting security.

"Best value," as predetermined in the solicitation, means the overall combination of quality, price, and various elements of required services that in total are optimal relative to the Institution's needs.

"Business" means any type of corporation, partnership, limited liability company, association, or sole proprietorship operated for profit.

"Competitive negotiation" is a method of contractor selection that includes the following elements:

1. Issuance of a written Request for Proposal indicating in general terms that which is sought to be procured, specifying the factors that will be used in evaluating the proposal and containing or incorporating by reference the other applicable contractual terms and conditions, including any unique capabilities or qualifications that will be required of the contractor.

2. Public notice of the Request for Proposal at least 10 days prior to the date set for receipt of proposals 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 offerors that can be reasonably anticipated to submit proposals in response to the particular request. Public notice also shall be published on the Department of General Services' central electronic procurement website and may be published on other appropriate websites. In addition, proposals may be solicited directly from potential contractors.

3. a. Procurement of professional services. The procurement of professional services for capital projects shall be conducted using a qualification-based selection process. The Institution shall engage in individual discussions with two or more offerors deemed fully qualified, responsible and suitable on the basis of initial responses and with emphasis on professional competence, to provide the required services. Repetitive informal interviews shall be permissible. The offerors shall be encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project, as well as alternative concepts. The Request for Proposal shall not, however, request that offerors furnish estimates of man-hours or cost for services. At the discussion stage, the Institution may discuss nonbinding estimates of total project costs, including, but not limited to, life-cycle costing, and where appropriate, nonbinding estimates of price for services. Proprietary information from competing offerors shall not be disclosed to the public or to competitors. At the conclusion of discussion, outlined in this subdivision, on the basis of evaluation factors published in the Request for Proposal and all information developed in the selection process to this point, the Institution shall select in the order of preference two or more offerors whose professional qualifications and proposed services are deemed most meritorious. Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract satisfactory and advantageous to the Institution can be negotiated at a price considered fair and reasonable, the award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first shall be formally terminated and negotiations conducted with the offeror ranked second, and so on until such a contract can be negotiated at a fair and reasonable price. Should the Institution determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that offeror.

A contract for architectural or professional engineering services relating to construction projects may be negotiated by the Institution, for multiple projects provided (i) the projects require similar experience and expertise, and (ii) the nature of the projects is clearly identified in the Request for Proposal. Under such contract, (a) the fair and reasonable prices, as negotiated, shall be used in determining the cost of each project performed, (b) the sum of all projects performed in one contract term shall be as set in the Request for Proposal; and (c) the project fee of any single project shall not exceed the term limit as set in the Request for Proposal. Any unused amounts from any contract term may be carried forward. Competitive negotiations for such contracts may result in awards to more than one offeror provided the Request for Proposal stated the potential for a multi-vendor award.

Multiphase professional services contracts satisfactory and advantageous to the Institution for environmental, location, design and inspection work regarding construction of infrastructure projects may be negotiated and awarded based on qualifications at a fair and reasonable price for the first phase only, when completion of the earlier phases is necessary to provide information critical to the negotiation of a fair and reasonable price for succeeding phases. Prior to the procurement of any such contract, the Institution shall state the anticipated intended total scope of the project and determine in writing that the nature of the work is such that the best interests of such Institution require awarding the contract.

b. Procurement of other than professional services. Selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals, on the basis of the factors involved in the Request for Proposal, including price if so stated in the Request for Proposal. Negotiations shall then be conducted with each of the offerors so selected. Price shall be considered, but need not be the sole determining factor. After negotiations have been conducted with each offeror so selected, the Institution shall select the offeror which, in its opinion, has made the best proposal, and shall award the contract to that offeror. When the terms and conditions of multiple awards are so provided in the Request for Proposal, awards may be made to more than one offeror. Should the Institution determine in writing and in its sole discretion that only one offeror has made the best

428 proposal, a contract may be negotiated and awarded to that offeror.

429 "Competitive sealed bidding" is a method of contractor selection, other than for professional services,
430 which includes the following elements:

431 1. Issuance of a written Invitation to Bid containing or incorporating by reference the specifications
432 and contractual terms and conditions applicable to the procurement. Unless the Institution has provided
433 for prequalification of bidders, the Invitation to Bid shall include a statement of any requisite
434 qualifications of potential contractors. When it is impractical to prepare initially a purchase description
435 to support an award based on prices, an Invitation to Bid may be issued requesting the submission of
436 unpriced offers to be followed by an Invitation to Bid limited to those bidders whose offers have been
437 qualified under the criteria set forth in the first solicitation.

438 2. Public notice of the Invitation to Bid at least 10 days prior to the date set for receipt of bids by
439 publication on the Department of General Services' central electronic procurement website. Public notice
440 also may be published in a newspaper of general circulation or on other appropriate websites, or both. In
441 addition, bids may be solicited directly from potential contractors. Any additional solicitations shall
442 include businesses selected from a list made available by the Department of Minority Business
443 Enterprise.

444 3. Public opening and announcement of all bids received.

445 4. Evaluation of bids based upon the requirements set forth in the invitation, which may include
446 special qualifications of potential contractors, life-cycle costing, value analysis, and any other criteria
447 such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose, which
448 are helpful in determining acceptability.

449 5. Award to the lowest responsive and responsible bidder. When the terms and conditions of multiple
450 awards are so provided in the Invitation to Bid, awards may be made to more than one bidder.

451 "Construction" means building, altering, repairing, improving or demolishing any structure, building
452 or highway, and any draining, dredging, excavation, grading or similar work upon real property.

453 "Construction management contract" means a contract in which a party is retained by the owner to
454 coordinate and administer contracts for construction services for the benefit of the owner, and may also
455 include, if provided in the contract, the furnishing of construction services to the owner.

456 "Covered Institution" or "Institution" means, on and after the effective date of the initial management
457 agreement with the Commonwealth of Virginia, a public institution of higher education of the
458 Commonwealth that has entered into a management agreement with the Commonwealth to be governed
459 by the provisions of Subchapter 3 of the Restructuring Act. "Design-build contract" means a contract
460 between the Institution and another party in which the party contracting with the Institution agrees to
461 both design and build the structure, roadway or other item specified in the contract.

462 "Goods" means all material, equipment, supplies, and printing, including information technology and
463 telecommunications goods such as automated data processing hardware and software. "Informality"
464 means a minor defect or variation of a bid or proposal from the exact requirements of the Invitation to
465 Bid, or the Request for Proposal, which does not affect the price, quality, quantity or delivery schedule
466 for the goods, services or construction being procured. "Multiphase professional services contract" means
467 a contract for the providing of professional services where the total scope of work of the second or
468 subsequent phase of the contract cannot be specified without the results of the first or prior phase of the
469 contract.

470 "Nonprofessional services" means any services not specifically identified as professional services in
471 the definition of professional services and includes small construction projects valued not over \$1
472 million; provided that subdivision 3a of the definition of "competitive negotiation" in this section shall
473 still apply to professional services for such small construction projects.

474 "Potential bidder or offeror" for the purposes of §§ 50 and 54 of these Rules means a person who, at
475 the time the Institution negotiates and awards or proposes to award a contract, is engaged in the sale or
476 lease of goods, or the sale of services, insurance or construction, of the type to be procured under the
477 contract, and who at such time is eligible and qualified in all respects to perform that contract, and who
478 would have been eligible and qualified to submit a bid or proposal had the contract been procured
479 through competitive sealed bidding or competitive negotiation.

480 "Professional services" means work performed by an independent contractor within the scope of the
481 practice of accounting, actuarial services, architecture, land surveying, landscape architecture, law,
482 dentistry, medicine, optometry, pharmacy or professional engineering.

483 "Public body" means any legislative, executive or judicial body, agency, office, department, authority,
484 post, commission, committee, institution, board or political subdivision created by law to exercise some
485 sovereign power or to perform some governmental duty, and empowered by law to undertake the
486 activities described in these Rules.

487 "Public contract" means an agreement between the Institution and a nongovernmental source that is
488 enforceable in a court of law.

489 "Responsible bidder" or "offeror" means a person who has the capability, in all respects, to perform

fully the contract requirements and the moral and business integrity and reliability that will assure good faith performance, and who has been prequalified, if required.

"Responsive bidder" means a person who has submitted a bid that conforms in all material respects to the Invitation to Bid.

"Restructuring Act" or "Act" means the Restructured Higher Education Financial and Administrative Operations Act, Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia.

"Rules" means these Rules Governing Procurement of Goods, Services, Insurance, and Construction adopted by the governing body of the Covered Institution.

"Reverse auctioning" means a procurement method wherein bidders are invited to bid on specified goods or nonprofessional services through real-time electronic bidding, with the award being made to the lowest responsive and responsible bidder. During the bidding process, bidders' prices are revealed and bidders shall have the opportunity to modify their bid prices for the duration of the time period established for bid opening.

"Services" means any work performed by an independent contractor wherein the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials and supplies.

"Sheltered workshop" means a work-oriented rehabilitative facility with a controlled working environment and individual goals that utilizes work experience and related services for assisting the handicapped person to progress toward normal living and a productive vocational status.

§ 5. Methods of procurement. -

A. All public contracts with nongovernmental contractors for the purchase or lease of goods, or for the purchase of services, insurance, or construction, shall be awarded after competitive sealed bidding, or competitive negotiation as provided in this section, unless otherwise authorized by law.

B. Professional services shall be procured by competitive negotiation. Qualification-based selection shall be used for design services.

C. Goods, services, or insurance may be procured by competitive negotiation.

D. Construction may be procured only by competitive sealed bidding, except that competitive negotiation may be used in the following instances upon a determination made in advance by the Institution and set forth in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to the public, which writing shall document the basis for this determination:

1. By the Institution on a fixed price design-build basis or construction management basis under § 7;
2. By the Institution for the construction, alteration, repair, renovation or demolition of buildings; or
3. By the Institution for the construction of highways and any draining, dredging, excavation, grading or similar work upon real property.

E. Upon a determination in writing that there is only one source practicably available for that which is to be procured, a contract may be negotiated and awarded to that source without competitive sealed bidding or competitive negotiation. The writing shall document the basis for this determination. The Institution shall issue a written notice stating that only one source was determined to be practicably available, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted in a designated public area, which may be the Department of General Services' website for the Commonwealth's central electronic procurement system, or published in a newspaper of general circulation on the day the Institution awards or announces its decision to award the contract, whichever occurs first. Public notice shall also be published on the Department of General Services' website for the Commonwealth's central electronic procurement system and may be published on other appropriate websites.

F. In case of emergency, a contract may be awarded without competitive sealed bidding or competitive negotiation; however, such procurement shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file. The Institution shall issue a written notice stating that the contract is being awarded on an emergency basis, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted in a designated public area, which may be the Department of General Services' website for the Commonwealth's central electronic procurement system, or published in a newspaper of general circulation on the day the Institution awards or announces its decision to award the contract, whichever occurs first, or as soon thereafter as is practicable. Public notice may also be published on the Department of General Services' website for the Commonwealth's central electronic procurement system and other appropriate websites.

G. The Institution may establish purchase procedures, if adopted in writing, not requiring competitive sealed bids or competitive negotiation for single or term contracts for goods and services other than professional services if the aggregate or the sum of all phases is not expected to exceed \$50,000; however, such small purchase procedures shall provide for competition wherever practicable.

551 H. The Institution may establish purchase procedures, if adopted in writing, not requiring competitive
552 negotiation for single or term contracts for professional services if the aggregate or the sum of all phases
553 is not expected to exceed \$50,000; however such small purchase procedures shall provide for
554 competition wherever practicable.

555 I. Upon a determination made in advance by the Institution and set forth in writing that the purchase
556 of goods, products or commodities from a public auction sale is in the best interests of the public, such
557 items may be purchased at the auction, including online public auctions. The writing shall document the
558 basis for this determination.

559 J. The purchase of goods or nonprofessional services, but not construction or professional services,
560 may be made by reverse auctioning.

561 § 6. Cooperative procurement. -

562 A. In circumstances where the Institution determines and documents that statewide contracts for
563 goods and services, including information technology and telecommunications goods and services, do not
564 provide goods and services to the Institution that meet its business goals and objectives, the Institution is
565 authorized to participate in, sponsor, conduct, or administer a cooperative procurement arrangement on
566 behalf of or in conjunction with public bodies, public or private health or educational institutions, other
567 public or private organizations or entities, including public-private partnerships, charitable organizations,
568 health care provider alliances or purchasing organizations or entities, or with public agencies or
569 institutions or group purchasing organizations of the several states, territories of the United States, or the
570 District of Columbia, for the purpose of combining requirements to effect cost savings or reduce
571 administrative expense in any acquisition of goods and services, other than professional services. The
572 Institution may purchase from any authority, department, agency, institution, city, county, town, or other
573 political subdivision of the Commonwealth's contract even if it did not participate in the request for
574 proposal or invitation to bid, if the request for proposal or invitation to bid specified that the
575 procurement was being conducted on behalf of other public bodies. In such instances, deviation from the
576 procurement procedures set forth in these Rules and the administrative policies and procedures
577 established to implement these Rules shall be permitted. Notwithstanding all of the above, use of
578 cooperative contracts shall conform to the business requirements of the Commonwealth's electronic
579 procurement system, including the requirement for payment of applicable fees. Nothing herein shall
580 prohibit the payment by direct or indirect means of any administrative fee that will allow for
581 participation in any such arrangement.

582 B. In circumstances where statewide contracts for goods and services, including information
583 technology and telecommunications goods and services, do not provide goods and services to meet the
584 Institution's business goals and objectives, and as authorized by the United States Congress and
585 consistent with applicable federal regulations, and provided the terms of the contract permit such
586 purchases:

587 1. The Institution may purchase goods and nonprofessional services, from a United States General
588 Services Administration contract or a contract awarded by any other agency of the United States
589 government; and

590 2. The Institution may purchase telecommunications and information technology goods and
591 nonprofessional services from a United States General Services Administration contract or a contract
592 awarded by any other agency of the United States government.

593 § 7. Design-build or construction management contracts authorized. -

594 A. Notwithstanding any other provisions of law, the Institution may enter into contracts on a fixed
595 price design-build basis or construction management basis in accordance with the provisions of this
596 section.

597 B. Procurement of construction by the design-build or construction management method shall be a
598 two-step competitive negotiation process. In the first step, offerors shall be requested to submit their
599 qualifications. Based upon the information submitted and any other relevant information which the
600 Commonwealth may obtain, no more than five offerors deemed most suitable for the project shall be
601 selected by the Commonwealth and requested to submit proposals.

602 § 8. Modification of the contract. -

603 A. A contract awarded by the Institution may include provisions for modification of the contract
604 during performance, but no fixed-price contract may be increased by more than 25% of the amount of
605 the contract or \$50,000, whichever is greater, without the advance written approval of the Institution's
606 president or his designee. In no event may the amount of any contract, without adequate consideration,
607 be increased for any purpose, including, but not limited to, relief of an offeror from the consequences of
608 an error in its bid or offer.

609 B. The Institution may extend the term of an existing contract for services to allow completion of
610 any work undertaken but not completed during the original term of the contract.

611 C. Nothing in this section shall prevent the Institution from placing greater restrictions on contract
612 modifications.

§ 9. Discrimination prohibited; participation of small, women- and minority-owned business. -

A. In the solicitation or awarding of contracts, the Institution shall not discriminate against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment. Whenever solicitations are made, the Institution shall include businesses selected from a list made available by the Department of Minority Business Enterprise.

B. The Institution shall establish programs consistent with this section to facilitate the participation of small businesses and businesses owned by women and minorities in procurement transactions. The programs established shall be in writing and shall include cooperation with the Department of Minority Business Enterprise, the United States Small Business Administration, and other public or private agencies. The Institution shall submit annual progress reports on minority business procurement to the Department of Minority Business Enterprise.

C. Whenever there exists (i) a rational basis for small business enhancement or (ii) a persuasive analysis that documents a statistically significant disparity between the availability and utilization of women- and minority-owned businesses, the Governor is by law authorized and encouraged to require the Institution to implement appropriate enhancement or remedial measures consistent with prevailing law.

D. In the solicitation or awarding of contracts, the Institution shall not discriminate against a bidder or offeror because the bidder or offeror employs ex-offenders unless it has made a written determination that employing ex-offenders on the specific contract is not in its best interest.

§ 10. Employment discrimination by contractor prohibited; required contract provisions. -

The Institution shall include in every contract of more than \$10,000 the following provisions:

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.

§ 11. Drug-free workplace to be maintained by contractor; required contract provisions. -

The Institution shall include in every contract over \$10,000 the following provisions: 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 in accordance with these Rules, 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.

§ 12. Use of brand names. -

Unless otherwise provided in the Invitation to Bid, the name of a certain brand, make or manufacturer shall not restrict bidders to the specific brand, make or manufacturer named and shall be deemed to convey the general style, type, character, and quality of the article desired. Any article that the Institution in its sole discretion determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted.

§ 13. Comments concerning specifications. -

The Institution shall establish procedures whereby comments concerning specifications or other provisions in Invitations to Bid or Requests for Proposal can be received and considered prior to the

674 time set for receipt of bids or proposals or award of the contract.

675 § 14. Prequalification generally; prequalification for construction. -

676 A. Prospective contractors may be prequalified for particular types of supplies, services, insurance or
677 construction, and consideration of bids or proposals limited to prequalified contractors. Any
678 prequalification procedure shall be established in writing and sufficiently in advance of its
679 implementation to allow potential contractors a fair opportunity to complete the process.

680 B. Any prequalification of prospective contractors for construction by the Institution shall be pursuant
681 to a prequalification process for construction projects adopted by the Institution. The process shall be
682 consistent with the provisions of this section.

683 The application form used in such process shall set forth the criteria upon which the qualifications of
684 prospective contractors will be evaluated. The application form shall request of prospective contractors
685 only such information as is appropriate for an objective evaluation of all prospective contractors
686 pursuant to such criteria. The form shall allow the prospective contractor seeking prequalification to
687 request, by checking the appropriate box, that all information voluntarily submitted by the contractor
688 pursuant to this subsection shall be considered a trade secret or proprietary information subject to the
689 provisions of subsection D of § 34 of these Rules.

690 In all instances in which the Institution requires prequalification of potential contractors for
691 construction projects, advance notice shall be given of the deadline for the submission of
692 prequalification applications. The deadline for submission shall be sufficiently in advance of the date set
693 for the submission of bids for such construction so as to allow the procedures set forth in this subsection
694 to be accomplished.

695 At least 30 days prior to the date established for submission of bids or proposals under the
696 procurement of the contract for which the prequalification applies, the Institution shall advise in writing
697 each contractor who submitted an application whether that contractor has been prequalified. In the event
698 that a contractor is denied prequalification, the written notification to the contractor shall state the
699 reasons for the denial of prequalification and the factual basis of such reasons.

700 A decision by the Institution denying prequalification under the provisions of this subsection shall be
701 final and conclusive unless the contractor appeals the decision as provided in § 54 of these Rules.

702 C. The Institution may deny prequalification to any contractor only if the Institution finds one of the
703 following:

704 1. The contractor does not have sufficient financial ability to perform the contract that would result
705 from such procurement. If a bond is required to ensure performance of a contract, evidence that the
706 contractor can acquire a surety bond from a corporation included on the United States Treasury list of
707 acceptable surety corporations in the amount and type required by the Institution shall be sufficient to
708 establish the financial ability of the contractor to perform the contract resulting from such procurement;

709 2. The contractor does not have appropriate experience to perform the construction project in
710 question;

711 3. The contractor or any officer, director or owner thereof has had judgments entered against him
712 within the past 10 years for the breach of contracts for governmental or nongovernmental construction,
713 including, but not limited to, design-build or construction management;

714 4. The contractor has been in substantial noncompliance with the terms and conditions of prior
715 construction contracts with the Institution without good cause. If the Institution has not contracted with a
716 contractor in any prior construction contracts, the Institution may deny prequalification if the contractor
717 has been in substantial noncompliance with the terms and conditions of comparable construction
718 contracts with another public body without good cause.

719 The Institution may not utilize this provision to deny prequalification unless the facts underlying such
720 substantial noncompliance were documented in writing in the prior construction project file and such
721 information relating thereto given to the contractor at that time, with the opportunity to respond;

722 5. The contractor or any officer, director, owner, project manager, procurement manager or chief
723 financial official thereof has been convicted within the past 10 years of a crime related to governmental
724 or nongovernmental construction or contracting, including, but not limited to, a violation of (i) Article 6
725 (§ 2.2-4367 et seq.) of Chapter 43 of Title 2.2 of the Code of Virginia, (ii) the Virginia Governmental
726 Frauds Act (§ 18.2-498.1 et seq.), (iii) Chapter 4.2 (§ 59.1-68.6 et seq.) of Title 59.1 of the Code of
727 Virginia, or (iv) any substantially similar law of the United States or another state;

728 6. The contractor or any officer, director or owner thereof is currently debarred pursuant to an
729 established debarment procedure from bidding or contracting by any public body, agency of another
730 state or agency of the federal government; and

731 7. The contractor failed to provide to the Institution in a timely manner any information requested by
732 the Institution relevant to subdivisions 1 through 6 of this subsection.

733 § 15. Negotiation with lowest responsible bidder. -

734 Unless canceled or rejected, a responsive bid from the lowest responsible bidder shall be accepted as
735 submitted, except that if the bid from the lowest responsible bidder exceeds available funds, the

Institution may negotiate with the apparent low bidder to obtain a contract price within available funds. However, the negotiation may be undertaken only under conditions and procedures described in writing and approved by the Institution prior to issuance of the Invitation to Bid and summarized therein.

§ 16. Cancellation, rejection of bids; waiver of informalities. -

A. An Invitation to Bid, a Request for Proposal, any other solicitation, or any and all bids or proposals, may be canceled or rejected. The reasons for cancellation or rejection shall be made part of the contract file. The Institution shall not cancel or reject an Invitation to Bid, a Request for Proposal, any other solicitation, bid or proposal pursuant to this section solely to avoid awarding a contract to a particular responsive and responsible bidder or offeror.

B. The Institution may waive informalities in bids.

§ 17. Exclusion of insurance bids prohibited. -

Notwithstanding any other provision of law, no insurer licensed to transact the business of insurance in the Commonwealth or approved to issue surplus lines insurance in the Commonwealth shall be excluded from presenting an insurance bid proposal to the Institution in response to a request for proposal or an invitation to bid. Nothing in this section shall preclude the Institution from debarring a prospective insurer pursuant to § 18.

§ 18. Debarment. -

Prospective contractors may be debarred from contracting for particular types of supplies, services, insurance or construction, for specified periods of time. Any debarment procedure shall be established in writing by the Institution. Any debarment procedure may provide for debarment on the basis of a contractor's unsatisfactory performance for the Institution.

§ 19. Purchase programs for recycled goods; Institution responsibilities. -

A. The Institution may implement a purchase program for recycled goods and may coordinate its efforts so as to achieve the goals and objectives set forth in §§ 10.1-1425.6, 10.1-1425.7, and 10.1-1425.8 of the Code of Virginia, and §§ 20 and 22 of these Rules.

B. The Department of Environmental Quality, with advice from the Virginia Recycling Markets Development Council, shall advise the Institution concerning the designation of recycled goods.

§ 20. Preference for Virginia products with recycled content and for Virginia firms. -

A. In the case of a tie bid, preference shall be given to goods produced in Virginia, goods or services or construction provided by Virginia persons, firms or corporations; otherwise the tie shall be decided by lot.

B. Whenever any bidder is a resident of any other state and such state under its laws allows a resident contractor of that state a preference, a like preference may be allowed by the Institution to the lowest responsive and responsible bidder who is a resident of Virginia.

C. Notwithstanding the provisions of subsections A and B, in the case of a tie bid in instances where goods are being offered, and existing price preferences have already been taken into account, preference shall be given to the bidder whose goods contain the greatest amount of recycled content.

§ 21. Preference for Virginia coal used in the Institution. -

In determining the award of any contract for coal to be purchased for use in the Institution with state funds, the Institution shall procure using competitive sealed bidding and shall award to the lowest responsive and responsible bidder offering coal mined in Virginia so long as its bid price is not more than 4% greater than the bid price of the low responsive and responsible bidder offering coal mined elsewhere.

§ 22. Preference for recycled paper and paper products used by the Institution. -

A. In determining the award of any contract for paper and paper products to be purchased for use by the Institution, it shall competitively procure recycled paper and paper products of a quality suitable for the purpose intended, so long as the price is not more than 10% greater than the price of the low responsive and responsible bidder or offeror offering a product that does not qualify under subsection B.

B. For purposes of this section, recycled paper and paper products means any paper or paper products meeting the EPA Recommended Content Standards as defined in 40 C.F.R. Part 247.

§ 23. Withdrawal of bid due to error. -

A. A bidder for a public construction contract, other than a contract for construction or maintenance of public highways, may withdraw his bid from consideration if the price bid was substantially lower than the other bids due solely to a mistake in the bid, provided the bid was submitted in good faith, and the mistake was a clerical mistake as opposed to a judgment mistake, and was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn.

If a bid contains both clerical and judgment mistakes, a bidder may withdraw his bid from consideration if the price bid would have been substantially lower than the other bids due solely to the

797 clerical mistake, that was an unintentional arithmetic error or an unintentional omission of a quantity of
798 work, labor or material made directly in the compilation of a bid that shall be clearly shown by
799 objective evidence drawn from inspection of original work papers, documents and materials used in the
800 preparation of the bid sought to be withdrawn.

801 One of the following procedures for withdrawal of a bid shall be selected by the Institution and
802 stated in the advertisement for bids: (i) the bidder shall give notice in writing of his claim of right to
803 withdraw his bid within two business days after the conclusion of the bid opening procedure and shall
804 submit original work papers with such notice; or (ii) the bidder shall submit to the Institution or
805 designated official his original work papers, documents and materials used in the preparation of the bid
806 within one day after the date fixed for submission of bids. The work papers shall be delivered by the
807 bidder in person or by registered mail at or prior to the time fixed for the opening of bids. In either
808 instance, the work papers, documents and materials may be considered as trade secrets or proprietary
809 information subject to the conditions of subsection F of § 34 of these Rules. The bids shall be opened
810 one day following the time fixed by the Institution for the submission of bids. Thereafter, the bidder
811 shall have two hours after the opening of bids within which to claim in writing any mistake as defined
812 herein and withdraw his bid. The contract shall not be awarded by the Institution until the two-hour
813 period has elapsed. The mistake shall be proved only from the original work papers, documents and
814 materials delivered as required herein.

815 B. The Institution may establish procedures for the withdrawal of bids for other than construction
816 contracts.

817 C. No bid shall be withdrawn under this section when the result would be the awarding of the
818 contract on another bid of the same bidder or of another bidder in which the ownership of the
819 withdrawing bidder is more than 5%.

820 D. If a bid is withdrawn in accordance with this section, the lowest remaining bid shall be deemed to
821 be the low bid.

822 E. No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or
823 labor to or perform any subcontract or other work agreement for the person or firm to whom the
824 contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for
825 which the withdrawn bid was submitted.

826 F. If the Institution denies the withdrawal of a bid under the provisions of this section, it shall notify
827 the bidder in writing stating the reasons for its decision and award the contract to such bidder at the bid
828 price, provided such bidder is a responsible and responsive bidder.

829 § 24. Contract Pricing Arrangements. -

830 A. Public contracts may be awarded on a fixed price or cost reimbursement basis, or on any other
831 basis that is not prohibited by these Rules.

832 B. Except in case of emergency affecting the public health, safety or welfare, no public contract shall
833 be awarded on the basis of cost plus a percentage of cost.

834 C. A policy or contract of insurance or prepaid coverage having a premium computed on the basis of
835 claims paid or incurred, plus the insurance carrier's administrative costs and retention stated in whole or
836 part as a percentage of such claims, shall not be prohibited by this section.

837 § 25. Workers' compensation requirements for construction contractors and subcontractors. -

838 A. No contractor shall perform any work on a construction project of the Institution unless he (i) has
839 obtained, and continues to maintain for the duration of the work, workers' compensation coverage
840 required pursuant to the provisions of Chapter 8 (§ 65.2-800 et seq.) of Title 65.2 of the code of
841 Virginia, and (ii) provides prior to the award of contract, on a form furnished by the Institution,
842 evidence of such coverage.

843 B. The Department of General Services shall provide the form to the Institution. Failure of the
844 Institution to provide the form prior to the award of contract shall waive the requirements of clause (ii)
845 of subsection A.

846 C. No subcontractor shall perform any work on a construction project of the Institution unless he has
847 obtained, and continues to maintain for the duration of such work, workers' compensation coverage
848 required pursuant to the provisions of Chapter 8 (§ 65.2-800 et seq.) of Title 65.2 of the Code of
849 Virginia.

850 § 26. Retainage on construction contracts. -

851 A. In any contract issued by the Institution for construction that provides for progress payments in
852 installments based upon an estimated percentage of completion, the contractor shall be paid at least 95%
853 of the earned sum when payment is due, with no more than 5% being retained to ensure faithful
854 performance of the contract. All amounts withheld may be included in the final payment.

855 B. Any subcontract for a public project that provides for similar progress payments shall be subject
856 to the provisions of this section.

857 § 27. Public construction contract provisions barring damages for unreasonable delays declared void.

858 -

A. Any provision contained in any public construction contract of the Institution that purports to waive, release, or extinguish the rights of a contractor to recover costs or damages for unreasonable delay in performing such contract, either on his behalf or on behalf of his subcontractor if and to the extent the delay is caused by acts or omissions of the Institution, its agents or employees and due to causes within their control shall be void and unenforceable as against public policy.

B. Subsection A shall not be construed to render void any provision of a public construction contract awarded by the Institution that:

1. Allows the recovery of that portion of delay costs caused by the acts or omissions of the contractor, or its subcontractors, agents or employees;

2. Requires notice of any delay by the party claiming the delay;

3. Provides for liquidated damages for delay; or

4. Provides for arbitration or any other procedure designed to settle contract disputes.

C. A contractor making a claim against the Institution for costs or damages due to the alleged delaying of the contractor in the performance of its work under any public construction contract of the Institution shall be liable to the Institution and shall pay it for a percentage of all costs incurred by the Institution in investigating, analyzing, negotiating, litigating and arbitrating the claim, which percentage shall be equal to the percentage of the contractor's total delay claim that is determined through litigation or arbitration to be false or to have no basis in law or in fact.

D. If the Institution denies a contractor's claim for costs or damages due to the alleged delaying of the contractor in the performance of work under any public construction contract for the Institution, it shall be liable to and shall pay such contractor a percentage of all costs incurred by the contractor to investigate, analyze, negotiate, litigate and arbitrate the claim. The percentage paid by the Institution shall be equal to the percentage of the contractor's total delay claim for which the Institution's denial is determined through litigation or arbitration to have been made in bad faith.

§ 28. Bid bonds. -

A. Except in cases of emergency, all bids or proposals for construction contracts in excess of \$1 million shall be accompanied by a bid bond from a surety company selected by the bidder that is authorized to do business in Virginia, as a guarantee that if the contract is awarded to the bidder, he will enter into the contract for the work mentioned in the bid. The amount of the bid bond shall not exceed 5% of the amount bid.

B. No forfeiture under a bid bond shall exceed the lesser of (i) the difference between the bid for which the bond was written and the next low bid, or (ii) the face amount of the bid bond.

C. Nothing in this section shall preclude the Institution from requiring bid bonds to accompany bids or proposals for construction contracts anticipated to be less than \$1 million.

§ 29. Performance and payment bonds. -

A. Upon the award by the Institution of any (i) public construction contract exceeding \$1 million awarded to any prime contractor or (ii) public construction contract exceeding \$1 million awarded to any prime contractor requiring the performance of labor or the furnishing of materials for buildings, structures or other improvements to real property owned by the Institution, the contractor shall furnish to the Institution the following bonds:

1. Except for transportation-related projects, a performance bond in the sum of the contract amount conditioned upon the faithful performance of the contract in strict conformity with the plans, specifications and conditions of the contract. For transportation-related projects, such bond shall be in a form and amount satisfactory to the Institution.

2. A payment bond in the sum of the contract amount. The bond shall be for the protection of claimants who have and fulfill contracts to supply labor or materials to the prime contractor to whom the contract was awarded, or to any subcontractors, in furtherance of the work provided for in the contract, and shall be conditioned upon the prompt payment for all materials furnished or labor supplied or performed in the furtherance of the work.

"Labor or materials" shall include public utility services and reasonable rentals of equipment, but only for periods when the equipment rented is actually used at the site.

B. Each of the bonds shall be executed by one or more surety companies selected by the contractor that are authorized to do business in Virginia.

C. The bonds shall be payable to the Commonwealth of Virginia naming also the Institution.

D. Each of the bonds shall be filed with the Institution, or a designated office or official thereof.

E. Nothing in this section shall preclude the Institution from requiring payment or performance bonds for construction contracts below \$1 million.

F. Nothing in this section shall preclude the contractor from requiring each subcontractor to furnish a payment bond with surety thereon in the sum of the full amount of the contract with such subcontractor conditioned upon the payment to all persons who have and fulfill contracts that are directly with the subcontractor for performing labor and furnishing materials in the prosecution of the work provided for

920 in the subcontract.

921 § 30. Alternative forms of security. -

922 A. In lieu of a bid, payment, or performance bond, a bidder may furnish a certified check or cash
923 escrow in the face amount required for the bond.

924 B. If approved by the Institution's General Counsel or his equivalent, a bidder may furnish to the
925 Institution a personal bond, property bond, or bank or savings institution's letter of credit on certain
926 designated funds in the face amount required for the bid, payment or performance bond. Approval shall
927 be granted only upon a determination that the alternative form of security proffered affords protection to
928 the Institution equivalent to a corporate surety's bond.

929 § 31. Bonds on other than construction contracts. -

930 The Institution may require bid, payment, or performance bonds for contracts for goods or services if
931 provided in the Invitation to Bid or Request for Proposal.

932 § 32. Action on performance bond. -

933 No action against the surety on a performance bond shall be brought by the Institution unless
934 brought within one year after (i) completion of the contract, including the expiration of all warranties
935 and guarantees, or (ii) discovery of the defect or breach of warranty that gave rise to the action.

936 § 33. Actions on payment bonds; waiver of right to sue. -

937 A. Subject to the provisions of subsection B, any claimant who has performed labor or furnished
938 material in accordance with the contract documents in furtherance of the work provided in any contract
939 for which a payment bond has been given, and who has not been paid in full before the expiration of 90
940 days after the day on which the claimant performed the last of the labor or furnished the last of the
941 materials for which he claims payment, may bring an action on the payment bond to recover any
942 amount due him for the labor or material. The obligee named in the bond need not be named a party to
943 the action.

944 B. Any claimant who has a direct contractual relationship with any subcontractor but who has no
945 contractual relationship, express or implied, with the contractor, may bring an action on the contractor's
946 payment bond only if he has given written notice to the contractor within 180 days from the day on
947 which the claimant performed the last of the labor or furnished the last of the materials for which he
948 claims payment, stating with substantial accuracy the amount claimed and the name of the person for
949 whom the work was performed or to whom the material was furnished. Notice to the contractor shall be
950 served by registered or certified mail, postage prepaid, in an envelope addressed to such contractor at
951 any place where his office is regularly maintained for the transaction of business. Claims for sums
952 withheld as retainages with respect to labor performed or materials furnished, shall not be subject to the
953 time limitations stated in this subsection.

954 C. Any action on a payment bond shall be brought within one year after the day on which the
955 person bringing such action last performed labor or last furnished or supplied materials.

956 D. Any waiver of the right to sue on the payment bond required by this section shall be void unless
957 it is in writing, signed by the person whose right is waived, and executed after such person has
958 performed labor or furnished material in accordance with the contract documents.

959 § 34. Public inspection of certain records. -

960 A. Except as provided in this section, all proceedings, records, contracts and other public records
961 relating to procurement transactions shall be open to the inspection of any citizen, or any interested
962 person, firm or corporation, in accordance with the Virginia Freedom of Information Act (§ 2.2-3700 et
963 seq.).

964 B. Cost estimates relating to a proposed procurement transaction prepared by or for the Institution
965 shall not be open to public inspection.

966 C. Any competitive sealed bidding bidder, upon request, shall be afforded the opportunity to inspect
967 bid records within a reasonable time after the opening of all bids but prior to award, except in the event
968 that the Institution decides not to accept any of the bids and to reopen the contract. Otherwise, bid
969 records shall be open to public inspection only after award of the contract.

970 D. Any competitive negotiation offeror, upon request, shall be afforded the opportunity to inspect
971 proposal records within a reasonable time after the evaluation and negotiations of proposals are
972 completed but prior to award, except in the event that the Institution decides not to accept any of the
973 proposals and to reopen the contract. Otherwise, proposal records shall be open to public inspection only
974 after award of the contract.

975 E. Any inspection of procurement transaction records under this section shall be subject to reasonable
976 restrictions to ensure the security and integrity of the records.

977 F. Trade secrets or proprietary information submitted by a bidder, offeror or contractor in connection
978 with a procurement transaction or prequalification application submitted pursuant to subsection B of § 14
979 shall not be subject to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.); however, the
980 bidder, offeror or contractor shall (i) invoke the protections of this section prior to or upon submission
981 of the data or other materials, (ii) identify the data or other materials to be protected, and (iii) state the

reasons why protection is necessary.

§ 35. Exemption for certain transactions. -

A. The provisions of these Rules shall not apply to:

1. The selection of services related to the management and investment of the Institution's endowment funds, endowment income, or gifts pursuant to § 23-76.1. However, selection of these services shall be governed by the Uniform Management of Institutional Funds Act (§ 55-268.1 et seq.) as required by § 23-76.1.

2. The purchase of items for resale at retail bookstores and similar retail outlets operated by the Institution. However, such purchase procedures shall provide for competition where practicable.

3. Procurement of any construction or planning and design services for construction by the Institution when (i) the planning, design or construction is \$50,000 or less or (ii) the Institution is obligated to conform to procurement procedures that are established by federal statutes or regulations, whether or not those federal procedures are in conformance with the provisions of these Rules.

4. The University of Virginia Medical Center.

5. The purchase of goods and services by the Institution when such purchases are made under a remedial plan established by the Governor pursuant to subsection C of § 9 of these Rules.

B. Where a procurement transaction involves the expenditure of federal assistance or contract funds, the receipt of which is conditioned upon compliance with mandatory requirements in federal laws or regulations not in conformance with the provisions of these Rules, the Institution may comply with such federal requirements, notwithstanding the provisions of these Rules, only upon the written determination of the Institution's President or his designee that acceptance of the grant or contract funds under the applicable conditions is in the public interest. Such determination shall state the specific provision of these Rules in conflict with the conditions of the grant or contract.

§ 36. Permitted contracts with certain religious organizations; purpose; limitations. -

A. The Opportunity Reconciliation Act of 1996, P.L. 104-193, authorizes public bodies to enter into contracts with faith-based organizations for the purposes described in this section on the same basis as any other nongovernmental source without impairing the religious character of such organization, and without diminishing the religious freedom of the beneficiaries of assistance provided under this section.

B. For the purposes of this section, "faith-based organization" means a religious organization that is or applies to be a contractor to provide goods or services for programs funded by the block grant provided pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193.

C. The Institution, in procuring goods or services, or in making disbursements pursuant to this section, shall not (i) discriminate against a faith-based organization on the basis of the organization's religious character or (ii) impose conditions that (a) restrict the religious character of the faith-based organization, except as provided in subsection F, or (b) impair, diminish, or discourage the exercise of religious freedom by the recipients of such goods, services, or disbursements.

D. The Institution shall ensure that all invitations to bid, requests for proposals, contracts, and purchase orders prominently display a nondiscrimination statement indicating that it does not discriminate against faith-based organizations.

E. A faith-based organization contracting with the Institution (i) shall not discriminate against any recipient of goods, services, or disbursements made pursuant to a contract authorized by this section 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 (ii) 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 Institution. Nothing in clause (ii) shall be construed to supersede or otherwise override any other applicable state law.

F. Consistent with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193, funds provided for expenditure pursuant to contracts with public bodies shall not be spent for sectarian worship, instruction, or proselytizing; however, this prohibition shall not apply to expenditures pursuant to contracts, if any, for the services of chaplains.

G. Nothing in this section shall be construed as barring or prohibiting a faith-based organization from any opportunity to make a bid or proposal or contract on the grounds that the faith-based organization has exercised the right, as expressed in 42 U.S.C. (§ 2000e-1 et seq.), to employ persons of a particular religion.

H. If an individual, who applies for or receives goods, services, or disbursements provided pursuant to a contract between the Institution and a faith-based organization, objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the Institution 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.

The Institution shall provide to each individual who applies for or receives goods, services, or disbursements provided pursuant to a contract between the Institution and a faith-based organization a notice in bold face type that states: "Neither the Institution's selection of a charitable or faith-based provider of services nor the expenditure of funds under this contract is an endorsement of the provider's charitable or religious character, practices, or expression. No provider of services may discriminate against you on the basis of religion, a religious belief, or your refusal to actively participate in a religious practice. If you object to a particular provider because of its religious character, you may request assignment to a different provider. If you believe that your rights have been violated, please discuss the complaint with your provider or notify the appropriate person as indicated in this form."

§ 37. Exemptions from competition for certain transactions. -

The Institution may enter into contracts without competition, as that term is described in subsections A through J of § 5 (Methods of procurement) of these Rules, for:

1. The purchase of goods or services that are produced or performed by or related to:
 - a. Persons, or in schools or workshops, under the supervision of the Virginia Department for the Blind and Vision Impaired;
 - b. Nonprofit sheltered workshops or other nonprofit organizations that offer transitional or supported employment services serving the handicapped;
 - c. Private educational institutions; or
 - d. Other public educational institutions.
2. Speakers and performing artists;
3. Memberships and Association dues;
4. Sponsored research grant sub-awards and contract sub-awards, not to include the purchase of goods or services by the Institution;
5. Group travel in foreign countries;
6. Conference facilities and services;
7. Participation in intercollegiate athletic tournaments and events including team travel and lodging, registration and tournament fees;
8. Royalties; or
9. The purchase of legal services, provided that the Office of the Attorney General has been consulted, or expert witnesses or other services associated with litigation or regulatory proceedings; or
10. *Maintenance contract renewals for scientific research equipment and software, provided that the institution has posted the renewal to eVa and documented that there was only one response or less and such documentation includes a statement signed by the buyer indicating that no firm other than the original manufacturer/developer offers the service.*

§ 38. Exemptions from competitive sealed bidding and competitive negotiation for certain transactions; limitations. -

The Institution may enter into contracts for insurance or electric utility service without competitive sealed bidding or competitive negotiation if purchased through an association of which the Institution is a member if the association was formed and is maintained for the purpose of promoting the interest and welfare of and developing close relationships with similar public bodies, provided such association has procured the insurance or electric utility services by use of competitive principles and provided that the Institution has made a determination in advance after reasonable notice to the public and set forth in writing that competitive sealed bidding and competitive negotiation are not fiscally advantageous to the public. The writing shall document the basis for this determination.

§ 39. Definitions. -

As used in §§ 39 through 46, unless the context requires a different meaning:

"Contractor" means the entity that has a direct contract with the Institution.

"Debtor" means any individual, business, or group having a delinquent debt or account with any state agency that obligation has not been satisfied or set aside by court order or discharged in bankruptcy.

"Payment date" means either (i) the date on which payment is due under the terms of a contract for provision of goods or services; or (ii) if such date has not been established by contract, (a) 30 days after receipt of a proper invoice by the Institution or its agent or (b) 30 days after receipt of the goods or services by the Institution..

"Subcontractor" means any entity that has a contract to supply labor or materials to the contractor to whom the contract was awarded or to any subcontractor in the performance of the work provided for in such contract.

§ 40. Exemptions. -

The provisions of §§ 39 through 46 shall not apply to the late payment provisions contained in any public utility tariffs prescribed by the State Corporation Commission.

§ 41. Retainage to remain valid. -

Notwithstanding the provisions of §§ 39 through 46, the provisions of § 26 relating to retainage shall remain valid.

§ 42. Prompt payment of bills by the Institution. -

A. The Institution shall promptly pay for the completely delivered goods or services by the required payment date.

Payment shall be deemed to have been made when offset proceedings have been instituted, as authorized under the Virginia Debt Collection Act (§ 2.2-4800 et seq.) of the Code of Virginia.

B. Separate payment dates may be specified for contracts under which goods or services are provided in a series of partial deliveries or executions to the extent that such contract provides for separate payment for such partial delivery or execution.

§ 43. Defect or impropriety in the invoice or goods and/or services received. -

In instances where there is a defect or impropriety in an invoice or in the goods or services received, the Institution shall notify the supplier of the defect or impropriety, if the defect or impropriety would prevent payment by the payment date. The notice shall be sent within 15 days after receipt of the invoice or the goods or services.

§ 44. Date of postmark deemed to be date payment is made. -

In those cases where payment is made by mail, the date of postmark shall be deemed to be the date payment is made for purposes of these Rules.

§ 45. Payment clauses to be included in contracts. -

Any contract awarded by the Institution shall include:

1. A payment clause that obligates the contractor to take one of the two following actions within seven days after receipt of amounts paid to the contractor by the Institution for work performed by the subcontractor under that contract:

a. Pay the subcontractor for the proportionate share of the total payment received from the Institution attributable to the work performed by the subcontractor under that contract; or

b. Notify the Institution and subcontractor, in writing, of his intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.

2. A payment clause that requires (i) individual contractors to provide their social security numbers and (ii) proprietorships, partnerships, and corporations to provide their federal employer identification numbers.

3. An interest clause that obligates the contractor to pay interest to the subcontractor on all amounts owed by the contractor that remain unpaid after seven days following receipt by the contractor of payment from the Institution for work performed by the subcontractor under that contract, except for amounts withheld as allowed in subdivision 1.

4. An interest rate clause stating, "Unless otherwise provided under the terms of this contract, interest shall accrue at the rate of 1% per month."

Any such contract awarded shall further require the contractor to include in each of its subcontracts a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor.

A contractor's obligation to pay an interest charge to a subcontractor pursuant to the payment clause in this section shall not be construed to be an obligation of the Institution. A contract modification shall not be made for the purpose of providing reimbursement for the interest charge. A cost reimbursement claim shall not include any amount for reimbursement for the interest charge.

§ 46. Interest penalty; exceptions. -

A. Interest shall accrue, at the rate determined pursuant to subsection B, on all amounts owed by the Institution to a vendor that remain unpaid after seven days following the payment date. However, nothing in this section shall affect any contract providing for a different rate of interest, or for the payment of interest in a different manner.

B. The rate of interest charged the Institution pursuant to subsection A shall be the base rate on corporate loans (prime rate) at large United States money center commercial banks as reported daily in the publication entitled The Wall Street Journal. Whenever a split prime rate is published, the lower of the two rates shall be used. However, in no event shall the rate of interest charged exceed the rate of interest established pursuant to § 58.1-1812 of the Code of Virginia.

C. Notwithstanding subsection A, no interest penalty shall be charged when payment is delayed because of disagreement between the Institution and a vendor regarding the quantity, quality or time of delivery of goods or services or the accuracy of any invoice received for the goods or services. The exception from the interest penalty provided by this subsection shall apply only to that portion of a delayed payment that is actually the subject of the disagreement and shall apply only for the duration of the disagreement.

D. This section shall not apply to § 26 pertaining to retainage on construction contracts, during the period of time prior to the date the final payment is due. Nothing contained herein shall prevent a contractor from receiving interest on such funds under an approved escrow agreement.

E. Notwithstanding subsection A, no interest penalty shall be paid to any debtor on any payment, or

1166 portion thereof, withheld pursuant to the Comptroller's Debt Setoff Program, as authorized by the
1167 Virginia Debt Collection Act (§ 2.2-4800 et seq. of the Code of Virginia), commencing with the date the
1168 payment is withheld. If, as a result of an error, a payment or portion thereof is withheld, and it is
1169 determined that at the time of setoff no debt was owed to the Commonwealth, then interest shall accrue
1170 at the rate determined pursuant to subsection B on amounts withheld that remain unpaid after seven days
1171 following the payment date.

1172 § 47. Ineligibility. -

1173 A. Any bidder, offeror or contractor refused permission to participate, or disqualified from
1174 participation, in public contracts to be issued by the Institution shall be notified in writing. Prior to the
1175 issuance of a written determination of disqualification or ineligibility, the Institution shall (i) notify the
1176 bidder in writing of the results of the evaluation, (ii) disclose the factual support for the determination,
1177 and (iii) allow the bidder an opportunity to inspect any documents that relate to the determination, if so
1178 requested by the bidder within five business days after receipt of the notice.

1179 Within 10 business days after receipt of the notice, the bidder may submit rebuttal information
1180 challenging the evaluation. The Institution shall issue its written determination of disqualification or
1181 ineligibility based on all information in the possession of the Institution, including any rebuttal
1182 information, within five business days of the date the Institution received such rebuttal information.

1183 If the evaluation reveals that the bidder, offeror or contractor should be allowed permission to
1184 participate in the public contract, the Institution shall cancel the proposed disqualification action. If the
1185 evaluation reveals that the bidder should be refused permission to participate, or disqualified from
1186 participation, in the public contract, the Institution shall so notify the bidder, offeror or contractor. The
1187 notice shall state the basis for the determination, which shall be final unless the bidder appeals the
1188 decision within 10 days after receipt of the notice by invoking administrative procedures meeting the
1189 standards of § 55 of these Rules, if available, or in the alternative by instituting legal action as provided
1190 in § 54.

1191 B. If, upon appeal, it is determined that the action taken was arbitrary or capricious, or not in
1192 accordance with the Constitution of Virginia, applicable state law or regulations, the sole relief shall be
1193 restoration of eligibility.

1194 § 48. Appeal of denial of withdrawal of bid. -

1195 A. A decision denying withdrawal of bid under the provisions of § 23 of these Rules shall be final
1196 and conclusive unless the bidder appeals the decision within 10 days after receipt of the decision by
1197 invoking administrative procedures meeting the standards of § 55, if available, or in the alternative by
1198 instituting legal action as provided in § 54.

1199 B. If no bid bond was posted, a bidder refused withdrawal of a bid under the provisions of § 23,
1200 prior to appealing, shall deliver to the Institution a certified check or cash bond in the amount of the
1201 difference between the bid sought to be withdrawn and the next low bid. Such security shall be released
1202 only upon a final determination that the bidder was entitled to withdraw the bid.

1203 C. If, upon appeal, it is determined that the decision refusing withdrawal of the bid was not (i) an
1204 honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the
1205 Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to
1206 Bid, the sole relief shall be withdrawal of the bid.

1207 § 49. Determination of nonresponsibility. -

1208 A. Following public opening and announcement of bids received on an Invitation to Bid, the
1209 Institution shall evaluate the bids in accordance with element 4 of the definition of "Competitive sealed
1210 bidding" in § 4 of these Rules. At the same time, the Institution shall determine whether the apparent
1211 low bidder is responsible. If the Institution so determines, then it may proceed with an award in
1212 accordance with element 5 of the definition of "Competitive sealed bidding" in § 4. If the Institution
1213 determines that the apparent low bidder is not responsible, it shall proceed as follows:

1214 1. Prior to the issuance of a written determination of nonresponsibility, the Institution shall (i) notify
1215 the apparent low bidder in writing of the results of the evaluation, (ii) disclose the factual support for
1216 the determination, and (iii) allow the apparent low bidder an opportunity to inspect any documents that
1217 relate to the determination, if so requested by the bidder within five business days after receipt of the
1218 notice.

1219 2. Within 10 business days after receipt of the notice, the bidder may submit rebuttal information
1220 challenging the evaluation. The Institution shall issue its written determination of responsibility based on
1221 all information in the possession of the Institution, including any rebuttal information, within five
1222 business days of the date the Institution received the rebuttal information. At the same time, the
1223 Institution shall notify, with return receipt requested, the bidder in writing of its determination.

1224 3. Such notice shall state the basis for the determination, which shall be final unless the bidder
1225 appeals the decision within 10 days after receipt of the notice by invoking administrative procedures
1226 meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting legal action
1227 as provided in § 54.

The provisions of this subsection shall not apply to procurements involving the prequalification of bidders and the rights of any potential bidders under such prequalification to appeal a decision that such bidders are not responsible.

B. If, upon appeal pursuant to § 54 or 55 of these Rules, it is determined that the decision of the Institution was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid, and the award of the contract in question has not been made, the sole relief shall be a finding that the bidder is a responsible bidder for the contract in question or directed award as provided in subsection A of § 54, or both.

If it is determined that the decision of the Institution was not an honest exercise of discretion, but rather was arbitrary or capricious or not in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid, and an award of the contract has been made, the relief shall be as set forth in subsection B of § 54 of these Rules.

C. A bidder contesting a determination that he is not a responsible bidder for a particular contract shall proceed under this section, and may not protest the award or proposed award under the provisions of § 50 of these Rules.

D. Nothing contained in this section shall be construed to require the Institution, when procuring by competitive negotiation, to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous.

§ 50. Protest of award or decision to award. -

A. Any bidder or offeror, who desires to protest the award or decision to award a contract shall submit the protest in writing to the Institution, or an official designated by the Institution, no later than 10 days after the award or the announcement of the decision to award, whichever occurs first. Public notice of the award or the announcement of the decision to award shall be given by the Institution in the manner prescribed in the terms or conditions of the Invitation to Bid or Request for Proposal. Any potential bidder or offeror on a contract negotiated on a sole source or emergency basis who desires to protest the award or decision to award such contract shall submit the protest in the same manner no later than 10 days after posting or publication of the notice of such contract as provided in § 5 of these Rules. However, if the protest of any actual or potential bidder or offeror depends in whole or in part upon information contained in public records pertaining to the procurement transaction that are subject to inspection under § 34 of these Rules, then the time within which the protest shall be submitted shall expire 10 days after those records are available for inspection by such bidder or offeror under § 34, or at such later time as provided in this section. No protest shall lie for a claim that the selected bidder or offeror is not a responsible bidder or offeror. The written protest shall include the basis for the protest and the relief sought. The Institution or designated official shall issue a decision in writing within 10 days stating the reasons for the action taken. This decision shall be final unless the bidder or offeror appeals within 10 days of receipt of the written decision by invoking administrative procedures meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting legal action as provided in § 54. Nothing in this subsection shall be construed to permit a bidder to challenge the validity of the terms or conditions of the Invitation to Bid or Request for Proposal. The use of Alternative Dispute Resolution (ADR) shall constitute an administrative appeal procedure meeting the standards of § 55 of these Rules.

B. If prior to an award it is determined that the decision to award is arbitrary or capricious, then the sole relief shall be a finding to that effect. The Institution shall cancel the proposed award or revise it to comply with the law. If, after an award, it is determined that an award of a contract was arbitrary or capricious, then the sole relief shall be as hereinafter provided. Where the award has been made but performance has not begun, the performance of the contract may be enjoined. Where the award has been made and performance has begun, the Institution may declare the contract void upon a finding that this action is in the best interest of the public. Where a contract is declared void, the performing contractor shall be compensated for the cost of performance up to the time of such declaration. In no event shall the performing contractor be entitled to lost profits.

C. Where the Institution, an official designated by it, or an appeals board determines, after a hearing held following reasonable notice to all bidders, that there is probable cause to believe that a decision to award was based on fraud or corruption or on an act in violation of these Rules, the Institution, designated official or appeals board may enjoin the award of the contract to a particular bidder.

§ 51. Effect of appeal upon contract. -

Pending final determination of a protest or appeal, the validity of a contract awarded and accepted in good faith in accordance with these Rules shall not be affected by the fact that a protest or appeal has been filed.

§ 52. Stay of award during protest. -

An award need not be delayed for the period allowed a bidder or offeror to protest, but in the event

1289 of a timely protest as provided in § 50 of these Rules, or the filing of a timely legal action as provided
1290 in § 54, no further action to award the contract shall be taken unless there is a written determination that
1291 proceeding without delay is necessary to protect the public interest or unless the bid or offer would
1292 expire.

1293 § 53. Contractual disputes. -

1294 A. Contractual claims, whether for money or other relief, shall be submitted in writing no later than
1295 60 days after final payment. However, written notice of the contractor's intention to file a claim shall be
1296 given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing
1297 herein shall preclude a contract from requiring submission of an invoice for final payment within a
1298 certain time after completion and acceptance of the work or acceptance of the goods. Pendency of
1299 claims shall not delay payment of amounts agreed due in the final payment.

1300 B. The Institution shall include in its contracts a procedure for consideration of contractual claims.
1301 Such procedure, which may be contained in the contract or may be specifically incorporated into the
1302 contract by reference and made available to the contractor, shall establish a time limit for a final
1303 decision in writing by the Institution. If the Institution has established administrative procedures meeting
1304 the standards of § 55 of these Rules, such procedures shall be contained in the contract or specifically
1305 incorporated in the contract by reference and made available to the contractor. The Institution may
1306 require the submission of contractual claims pursuant to any contract to Alternative Dispute Resolution
1307 (ADR) as an administrative procedure.

1308 C. A contractor may not invoke administrative procedures meeting the standards of § 55 of these
1309 Rules, if available, or institute legal action as provided in § 54, prior to receipt of the Institution's
1310 decision on the claim, unless the Institution fails to render such decision within the time specified in the
1311 contract.

1312 D. The decision of the Institution shall be final and conclusive unless the contractor appeals within
1313 six months of the date of the final decision on the claim by the Institution by invoking administrative
1314 procedures meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting
1315 legal action as provided in § 54.

1316 § 54. Legal actions. -

1317 A. A bidder or offeror, actual or prospective, who is refused permission or disqualified from
1318 participation in bidding or competitive negotiation, or who is determined not to be a responsible bidder
1319 or offeror for a particular contract, may bring an action in the appropriate circuit court challenging that
1320 decision, which shall be reversed only if the petitioner establishes that the decision was not (i) an honest
1321 exercise of discretion, but rather was arbitrary or capricious; (ii) in accordance with the Constitution of
1322 Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid; or (iii) in
1323 the case of denial of prequalification, based upon the criteria for denial of prequalification set forth in
1324 subsection B of § 14 of these Rules. In the event the apparent low bidder, having been previously
1325 determined by the Institution to be not responsible in accordance with § 4, is found by the court to be a
1326 responsible bidder, the court may direct the Institution to award the contract to such bidder in
1327 accordance with the requirements of this section and the Invitation to Bid.

1328 B. A bidder denied withdrawal of a bid under § 23 of these Rules may bring an action in the
1329 appropriate circuit court challenging that decision, which shall be reversed only if the bidder establishes
1330 that the decision of the Institution was not (i) an honest exercise of discretion, but rather was arbitrary
1331 or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation,
1332 or the terms or conditions of the Invitation to Bid.

1333 C. A bidder, offeror or contractor, or a potential bidder or offeror on a contract negotiated on a sole
1334 source or emergency basis in the manner provided in § 5 of these Rules, whose protest of an award or
1335 decision to award under § 50 of these Rules is denied, may bring an action in the appropriate circuit
1336 court challenging a proposed award or the award of a contract, which shall be reversed only if the
1337 petitioner establishes that the proposed award or the award is not (i) an honest exercise of discretion, but
1338 rather is arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state
1339 law or regulation, or the terms and conditions of the Invitation to Bid or Request for Proposal.

1340 D. If injunctive relief is granted, the court, upon request of the Institution, shall require the posting
1341 of reasonable security to protect the Institution.

1342 E. A contractor may bring an action involving a contract dispute with the Institution in the
1343 appropriate circuit court. Notwithstanding any other provision of law, the Comptroller shall not be
1344 named as a defendant in any action brought pursuant to these Rules or § 33.1-387 of the Code of
1345 Virginia, except for disputes involving contracts of the Office of the Comptroller or the Department of
1346 Accounts.

1347 F. A bidder, offeror or contractor need not utilize administrative procedures meeting the standards of
1348 § 55 of these Rules, if available, but if those procedures are invoked by the bidder, offeror or contractor,
1349 the procedures shall be exhausted prior to instituting legal action concerning the same procurement
1350 transaction unless the Institution agrees otherwise.

G. Nothing herein shall be construed to prevent the Institution from instituting legal action against a contractor.

§ 55. Administrative appeals procedure. -

A. The Institution may establish an administrative procedure for hearing (i) protests of a decision to award or an award, (ii) appeals from refusals to allow withdrawal of bids, (iii) appeals from disqualifications and determinations of nonresponsibility, and (iv) appeals from decisions on disputes arising during the performance of a contract, or (v) any of these. Such administrative procedure may include the use of Alternative Dispute Resolution (ADR) or shall provide for a hearing before a disinterested person or panel, the opportunity to present pertinent information and the issuance of a written decision containing findings of fact. The disinterested person or panel shall not be an employee of the governmental entity against whom the claim has been filed. The findings of fact shall be final and conclusive and shall not be set aside unless the same are (a) fraudulent, arbitrary or capricious; (b) so grossly erroneous as to imply bad faith; or (c) in the case of denial of prequalification, the findings were not based upon the criteria for denial of prequalification set forth in subsection B of § 14 of these Rules. No determination on an issue of law shall be final if appropriate legal action is instituted in a timely manner. The Institution may seek advice and input from the Alternative Dispute Resolution Council in establishing an Alternative Dispute Resolution (ADR) procedure.

B. Any party to the administrative procedure, including the Institution, shall be entitled to institute judicial review if such action is brought within 30 days of receipt of the written decision.

§ 56. Alternative dispute resolution. -

The Institution may enter into agreements to submit disputes arising from contracts entered into pursuant to these Rules to arbitration and utilize mediation and other alternative dispute resolution procedures. However, such procedures shall be nonbinding and subject to § 2.2-514 of the Code of Virginia, as applicable.

§ 57. Ethics in public contracting. -

The Institution and its governing body, officers and employees shall be governed by the Ethics in Public Contracting provisions of the Virginia Public Procurement Act, Article 6 (§ 2.2-4367 et seq.) of Chapter 43 of Title 2.2 of the Code of Virginia.

ATTACHMENT 2

Memorandum of Agreement

The Commonwealth of Virginia and Virginia Polytechnic Institute and State University

ERP/SciQuest Implementation with eVA

The Commonwealth of Virginia (CoVA) and Virginia Polytechnic Institute and State University (University) agree to the following:

I. The University will use ERP/SciQuest integration as best fits its needs with its ERP system (Banner).

II. Initially, all nonexempt orders produced by the ERP/SciQuest integration will be transmitted to eVA through an ERP-to-eVA interface that conforms to the existing eVA interface standard format. Longer term a more real-time option may be mutually agreed by the Department of General Services/Division of Purchasing and Supply (DGS/DPS) and the University and implemented between the ERP and eVA systems.

III. The University may request that eVA contract vendors provide a version of their contract catalog for loading into ERP/SciQuest. Should the vendor indicate a preference to only provide its catalog through eVA, then the University will access these catalogs as described in item B8 of the Metrics section of this document. In any event, the University shall be responsible for payment of all eVA transaction fees for nonexempt orders to unregistered vendors and exempt orders the University chooses to issue to unregistered and registered vendors through eVA.

IV. eVA will load all nonexempt University orders into the eVA Data Warehouse. For clarity, it is understood that exempt orders are purchase transactions specifically exempted, in writing by DPS, from mandatory processing through eVA.

V. In lieu of processing individual orders for requirements through eVA, a more efficient administrative approach is to establish a blanket or standing order. The University is authorized to use such an approach where it makes good business sense. The University will ensure vendors understand that eVA transaction fees will be invoiced at the time blanket or standing orders are issued, that the transaction fee will be based on the total order amount, and the vendor is required to pay the total transaction fee within 30 days of the invoice date regardless of the performance/delivery schedule specified in the order.

VI. eVA will deliver University nonexempt orders to vendors that are identified as accepting electronic orders (Fax, Email, EDI, cXML). The University or SciQuest will print/mail/deliver all other orders to vendors. Whereas the University maintains a University specific electronic vendor record that identifies vendors that do not agree to the eVA terms and conditions, including payment of the eVA

1412 order transaction fee, the University may deviate from the policy/procedure set forth in Section 3 of the
1413 eVA Business Plan as follows:

1414 A. For vendors that refuse to accept the eVA terms and conditions, the University will transmit the
1415 appropriate R02, S02, E02, or P02 Purchase Order Category and a Purchase Order Comment that
1416 includes the statement "Vendor refuses eVA terms and conditions." The University agrees that it will
1417 pay the eVA transaction fees for these orders.

1418 B. For vendors that agree to accept the eVA terms and conditions, the University will transmit the
1419 appropriate R01, S01, E01, or P01 Purchase Order Category and a Purchase Order Comment that
1420 includes the statement "Vendor accepts eVA terms and conditions - University eVA Vendor Manager,
1421 e-mail address and phone number." The University agrees that, for these orders, it will resolve any
1422 vendor dispute related to payment of eVA transaction fees by working directly with the vendor whether
1423 such vendor contacts the university directly or the dispute is referred to the university by DGS/DPS or
1424 CGI-AMS.

1425 The University further agrees that:

1426 1. It will provide the DGS/DPS eVA Business Manager (or designee) email notification of the
1427 resolution agreed to by the University and the vendor within 10 business days, unless otherwise agreed
1428 on a case-by-case basis by the DGS/DPS eVA Business Manager (or designee);

1429 2. It will pay the eVA transaction fee unless it notifies the eVA Business Manager (or designee)
1430 within the specified time that the dispute has been resolved and the vendor agreed to pay the fee; and

1431 3. In the event the University does not provide resolution notification to the eVA Business Manager
1432 (or designee) within the specified timeframe, DGS/DPS will automatically execute a manual adjustment
1433 reversing disputed transaction fees from the vendor to the University and the University will pay the fee.

1434 VII. The University will not require separate vendor registrations as a prerequisite for responding to
1435 University solicitations. The University will participate in an enterprise workgroup to determine the best
1436 means to capture W-9 information on behalf of the whole enterprise. The process for collecting W-9
1437 information will be supported in eVA in such a way as to provide CoVA verified vendor information to
1438 entities. The University will have the option to receive a subset of vendor related data. Until an
1439 enterprise W-9 process is established, the University will be responsible for collection of W-9
1440 information.

1441 VIII. For major system changes, DGS/DPS will collaborate in advance (advance notice defined as at
1442 least six (6) months prior to change or as soon as any new plan is proposed) with the University
1443 regarding any proposed replacement to the CoVA's electronic procurement system and on changes that
1444 may affect the technical changes described herein.

1445 IX. Integration of the University's electronic procurement solution with the University's ERP is the
1446 responsibility of the University. The solution must provide for orders, change orders and cancellations.

1447 Guidelines

1448 1. The establishment of this agreement is intended to formulate the basis for a long-term solution for
1449 electronic procurement between the University and the CoVA.

1450 2. Orders may be batched and transmitted to eVA as often as needed except between the hours of 8
1451 p.m. and 4 a.m. eVA will transmit registered vendor orders it receives within 15 minutes or less.

1452 3. Nonexempt orders to unregistered vendors are to be transmitted to eVA for loading to the Data
1453 Warehouse. The University shall be responsible for payment of all eVA transaction fees for nonexempt
1454 orders to unregistered vendors and exempt orders the University chooses to issue to unregistered and
1455 registered vendors through eVA. See eVA Business Plan Section 3 for specific processing requirements
1456 for unregistered vendor orders.

1457 4. Change Orders are to be transmitted to eVA as replacement orders complying with the eVA
1458 standard format.

1459 5. Cancellations are to be transmitted to eVA complying with the eVA standard format.

1460 6. eVA Interface standard does not currently support PCard orders; however these orders may be
1461 processed via the interface as (a) confirming orders or (b) orders for PCards on file with the vendor.

1462 Schedule

1463 The University shall implement this agreement no later than July 2006.

1464 Metrics

1465 A. The University shall comply with the following Governor's eVA Management Objective:

1466 ~~Ninety-five~~Eighty percent of all nonexempt orders to be processed by eVA. Includes nonexempt
1467 orders issued by end users (PCard & LPO) and the central purchasing office. Nonexempt orders to
1468 unregistered vendors received into the eVA Data Warehouse are considered compliant orders. For
1469 clarity, it is understood that exempt orders are purchase transactions specifically exempted, in writing by
1470 DPS, from mandatory processing through eVA. All nonexempt orders not processed by eVA shall be
1471 reported on the eVA Dashboard and the corresponding non-use fee paid by the University.

1472 B. The University shall meet the following management objectives for electronic procurement:

1473 1. Provide end users, including purchase-card users, access to an electronic system for buying;

- 1474 2. Conduct business with eVA registered vendors whenever possible;
 1475 3. Place nonexempt orders, including change orders and cancellations, to eVA suppliers electronically
 1476 using eVA;
 1477 4. To the greatest extent possible, transmit real-time electronic purchase orders, regardless of dollar
 1478 value, that include commodity codes, complete item descriptions, quantities, and unit prices;
 1479 5. To the greatest extent feasible, the University will transmit confirming orders to eVA within five
 1480 (5) business days after placing the order. Commodity codes, complete item descriptions, quantities, and
 1481 unit prices will be provided for all confirming orders. DGS/DPS will provide periodic reports on the
 1482 number and timeliness of confirming orders enabling the University and DGS/DPS to work together to
 1483 monitor the usage of confirming orders with the objective of reducing their numbers to the extent
 1484 possible.
 1485 The University agrees that, for confirming orders, it will resolve any vendor dispute, including
 1486 disputes related to payment of eVA transaction fees, by working directly with the vendor whether such
 1487 vendor contacts the University directly or the dispute is referred to the University by DGS/DPS or
 1488 CGI-AMS.
 1489 The University further agrees that:
 1490 a. It will provide the DGS/DPS eVA Business Manager (or designee) email notification of the
 1491 resolution agreed to by the university and the vendor within 10 business days, unless otherwise agreed
 1492 on a case-by-case basis by the DGS/DPS eVA Business Manager (or designee);
 1493 b. It will pay the eVA transaction fee unless it notifies the eVA Business Manager (or designee)
 1494 within the specified time that the dispute has been resolved and the vendor agreed to pay the fee; and
 1495 c. In the event the University does not provide resolution notification to the eVA Business Manager
 1496 (or designee) within the specified timeframe, DGS/DPS will automatically execute a manual adjustment
 1497 reversing disputed transaction fees from the vendor to the University and the University will pay the fee.
 1498 6. Timely process electronic change orders and cancellations;
 1499 7. Post all solicitations and business opportunities greater than \$50,000 on the eVA website except as
 1500 specifically exempted by DPS;
 1501 8. To the extent technically feasible, make eVA catalogs, especially contract catalogs, available to
 1502 end users using the ERP/SciQuest Integration system. The University will be responsible for the
 1503 accuracy of contract catalog pricing loaded into the ERP/SciQuest;
 1504 9. Use eVA electronic vendor notification for procurement opportunities (per plans to post
 1505 solicitations specified in item 7 above and the use of Quick Quote/Reverse Auctions specified in item 10
 1506 below);
 1507 10. Use eVA on-line bidding functions of Quick Quote and Reverse Auction for appropriate
 1508 commodities, when such are identified;
 1509 11. Complete and certify the monthly eVA Dashboard Report; and
 1510 12. Timely remit any eVA transaction and non-use fees incurred by the institution.
 1511 C. The University shall be subject to eVA fees assessed per the eVA Business Plan.
 1512 D. The University shall assure that payments to CGI-AMS are current.

EXHIBIT F

MANAGEMENT AGREEMENT BETWEEN THE COMMONWEALTH OF VIRGINIA AND VIRGINIA POLYTECHNIC INSTITUTE AND STATE UNIVERSITY PURSUANT TO THE RESTRUCTURED HIGHER EDUCATION FINANCIAL AND ADMINISTRATIVE OPERATIONS ACT OF 2005

POLICY GOVERNING FINANCIAL OPERATIONS AND MANAGEMENT

THE BOARD OF VISITORS OF VIRGINIA POLYTECHNIC INSTITUTE AND STATE UNIVERSITY POLICY GOVERNING FINANCIAL OPERATIONS AND MANAGEMENT

I. PREAMBLE.

The Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter

1535 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia, establishes by law a process for granting
1536 additional authority to institutions of higher education for financial operations and management, subject
1537 to the adoption of policies by their governing boards and the approval of management agreements to be
1538 negotiated with the Commonwealth. The following provisions of this Policy constitute the adopted Board
1539 of Visitors policies regarding Virginia Polytechnic Institute and State University's financial operations
1540 and management.

1541 This Policy is intended to cover the authority that may be granted to the University pursuant to
1542 Subchapter 3 of the Act. Any other powers and authorities granted to the University pursuant to the
1543 Appropriation Act, or any other sections of the Code of Virginia, including other provisions of the Act
1544 and the University's Enabling Legislation, are not affected by this Policy.

1545 II. DEFINITIONS.

1546 As used in this policy, the following terms shall have the following meanings, unless the context
1547 requires otherwise:

1548 "Act" means the Restructured Higher Education Financial and Administrative Operations Act,
1549 Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia.

1550 "Board of Visitors" or "Board" means the Board of Visitors of Virginia Polytechnic Institute and
1551 State University.

1552 "Covered Institution" means, on or after the Effective Date of its initial Management Agreement with
1553 the Commonwealth of Virginia, a public institution of higher education of the Commonwealth that has
1554 entered into a Management Agreement with the Commonwealth to be governed by the provisions of
1555 Subchapter 3 of the Act.

1556 "Enabling Legislation" means those chapters, other than Chapter 4.10, of title 23 of the Code of
1557 Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and missions
1558 of the University.

1559 "Effective Date" means the effective date of the initial Management Agreement between the
1560 University and the Commonwealth.

1561 "Management Agreement" means the agreement required by subsection D of § 23-38.88 of the Act
1562 between the University and the Commonwealth of Virginia.

1563 "State Tax Supported Debt" means bonds, notes or other obligations issued under Article X, Section
1564 9(a), 9(b), or 9(c), or 9(d), if the debt service payments are made or ultimately are to be made from
1565 general government funds, as defined in the December 20, 2004 Report to the Governor and General
1566 Assembly of the Debt Capacity Advisory Committee or as that definition is amended from time to time.

1567 "University" means Virginia Polytechnic Institute and State University, consisting of the University
1568 Division (State Agency 208) and Virginia Cooperative Extension and the Agriculture Experiment Station
1569 Division (State Agency 229).

1570 III. SCOPE OF POLICY.

1571 This Policy applies to the University's responsibility for management, investment and stewardship of
1572 all its financial resources, including but not limited to, general, non-general and private funds. This
1573 responsibility includes maintaining an independent uniform system of accounting, financial reporting,
1574 and internal controls adequate to protect and account for the University's financial resources.

1575 Virginia Cooperative Extension and the Agriculture Experiment Station Division shall receive the
1576 benefits of this Policy as it is implemented by the University on behalf of Virginia Cooperative
1577 Extension and the Agriculture Experiment Station Division, but Virginia Cooperative Extension and the
1578 Agriculture Experiment Station Division shall not receive any additional independent financial operations
1579 and management authority as a result of this Management Agreement beyond the independent financial
1580 operations and management authority that it had prior to the Effective Date of the University's initial
1581 Management Agreement with the Commonwealth or that it may be granted by law in the future.

1582 IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.

1583 The Board of Visitors of the University shall at all times be fully and ultimately accountable for the
1584 proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation
1585 of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant
1586 to its legally permissible procedures, specifically delegate either herein or by separate Board resolution
1587 the duties and responsibilities set forth in this Policy to a person or persons within the University, who,
1588 while continuing to be fully accountable for such duties and responsibilities, may further delegate the
1589 implementation of those duties and responsibilities pursuant to the University's usual delegation policies
1590 and procedures.

1591 V. FINANCIAL MANAGEMENT AND REPORTING SYSTEM.

1592 The President, acting through the Executive Vice President and Chief Operating Officer, shall
1593 continue to be authorized by the Board to maintain existing and implement new policies governing the
1594 management of University financial resources. These policies shall continue to (i) ensure compliance
1595 with Generally Accepted Accounting Principles, (ii) ensure consistency with the current accounting
1596 principles employed by the Commonwealth, including the use of fund accounting principles, with regard

to the establishment of the underlying accounting records of the University and the allocation and utilization of resources within the accounting system, including the relevant guidance provided by the State Council of Higher Education for Virginia chart of accounts with regard to the allocation and proper use of funds from specific types of fund sources, (iii) provide adequate risk management and internal controls to protect and safeguard all financial resources, including moneys transferred to the University pursuant to a general fund appropriation, and ensure compliance with the requirements of the Appropriation Act.

The financial management system shall continue to include a financial reporting system to satisfy both the requirements for inclusion into the Commonwealth's Comprehensive Annual Financial Report, as specified in the related State Comptroller's Directives, and the University's separately audited financial statements. To ensure observance of limitations and restrictions placed on the use of the resources available to the University, the accounting and bookkeeping system of the University shall continue to be maintained in accordance with the principles prescribed for governmental organizations by the Governmental Accounting Standards Board.

In addition, the financial management system shall continue to provide financial reporting for the President, acting through the Executive Vice President and Chief Operating Officer, and the Board of Visitors to enable them to provide adequate oversight of the financial operations of the University. Upon the Effective Date of the initial Management Agreement between the University and the Commonwealth, except for the recordation of daily revenue deposits of State funds as specified in Section VII below, the University shall not be required to record its financial transactions in the Commonwealth's Accounting and Reporting System (CARS), including the current monthly interfacing with CARS, or to record its financial transactions in any subsequent Commonwealth financial systems that replace CARS or are in addition to CARS, but shall have its own financial reporting system. The University's financial reporting system shall provide (i) summary monthly reports for State agencies including, but not limited to, the Department of Accounts, the Department of Planning and Budget, the Joint Legislative Audit and Review Commission, the Auditor of Public Accounts, and the State Council of Higher Education for Virginia, and for the Chairmen of the Senate Committee on Finance and the House Committee on Appropriations at a sufficient level of detail, on such schedule, and using such format that is compatible with the Commonwealth's accounting system, as may be requested by the requesting State agency, and (ii) such other special reports as may be requested from time to time.

VI. FINANCIAL MANAGEMENT POLICIES.

The President, acting through the Executive Vice President and Chief Operating Officer, shall create and implement any and all financial management policies necessary to establish a financial management system with adequate risk management and internal control processes and procedures for the effective protection and management of all University financial resources. Such policies will not address the underlying accounting principles and policies employed by the Commonwealth and the University, but rather will focus on the internal operations of the University's financial management. These policies shall include, but need not be limited to, the development of a tailored set of finance and accounting practices that seek to support the University's specific business and administrative operating environment in order to improve the efficiency and effectiveness of its business and administrative functions. In general, the system of independent financial management policies shall be guided by the general principles contained in the Commonwealth's Accounting Policies and Procedures such as establishing strong risk management and internal accounting controls to ensure University financial resources are properly safeguarded and that appropriate stewardship of public funds is obtained through management's oversight of the effective and efficient use of such funds in the performance of University programs.

Upon the Effective Date of its initial Management Agreement with the Commonwealth, the University shall continue to follow the Commonwealth's accounting policies until such time as specific alternate policies can be developed, approved and implemented. Such alternate policies shall include applicable accountability measures and shall be submitted to the State Comptroller for review and comment before they are implemented by the University.

VII. FINANCIAL RESOURCE RETENTION AND MANAGEMENT.

Under § 23-38.104(A)(i) of the Act, subject to applicable accountability measures and audits, the University shall have the power and authority to manage all monies received by it. All State general funds to be allocated to the University shall remain subject to the appropriations process.

Pursuant to subsection C of § 23-9.6:1.01 of the Code of Virginia, the State Council of Higher Education for Virginia (SCHEV) annually shall assess and certify to the Governor and General Assembly the degree to which each public institution of higher education of the Commonwealth has met the financial and administrative management and educational-related performance benchmarks called for by that subsection and approved as part of the Appropriation Act then in effect for the State goals and objectives set forth in subdivisions B 1 through B 11 of § 23-38.88 of the Act. Pursuant to § 2.2-5005 of the Code of Virginia, beginning with the fiscal year that immediately follows the first full fiscal year

1658 for which the financial and administrative management and educational-related performance benchmarks
1659 described in § 23-9.6:1.01 of the Code of Virginia, are effective, as provided in a general Appropriation
1660 Act, and for all fiscal years thereafter, each public institution of higher education of the Commonwealth
1661 that (i) has been certified during the fiscal year by SCHEV as having met such institutional performance
1662 benchmarks and (ii) meets the conditions prescribed in subsection B of § 23-38.88 of the Act, shall
1663 receive certain financial incentives, including the interest on the tuition and fees and other non-general
1664 fund Educational and General Revenues deposited into the State Treasury by the public institution of
1665 higher education.

1666 Consistent with the prior paragraph, beginning with the fiscal year following the first fiscal year for
1667 which it has received such certification from SCHEV, the University is authorized to hold and invest
1668 tuition, Educational and General (E&G) fees, research and sponsored program funds, auxiliary enterprise
1669 funds, and all other non-general fund revenues subject to the following requirements:

1670 i) The University shall deposit such funds in the State Treasury pursuant to the State process in place
1671 at the time of such deposit;

1672 ii) Such non-general funds deposited in the State Treasury shall be disbursed as provided in Section
1673 IX below;

1674 iii) The University shall remit to the State Comptroller quarterly and the State Comptroller shall hold
1675 in escrow all interest earned on the University's tuition and fees and other non-general fund Educational
1676 and General Revenues. *Interest earned on the escrow account shall be deposited to the account.* Upon
1677 receipt of the required State Council of Higher Education for Virginia certification that the University
1678 has met such institutional performance benchmarks and the conditions prescribed in subsection B of
1679 § 23-38.88 of the Act, the Governor shall include in the next budget bill a non-general fund
1680 appropriation, payable no later than July 1 of the immediately following fiscal year, equivalent to the
1681 amount deposited in the escrow account as the financial incentive provided in subdivision 1 of
1682 § 2.2-5005, after which time the University may expend the funds for purposes related to its mission. If
1683 public institutions of higher education of the Commonwealth are permitted, or the University in
1684 particular is permitted, by the Appropriation Act or other law to retain or be paid the interest the
1685 Commonwealth would have earned on sponsored programs and research funds, then this paragraph shall
1686 not apply to such interest on such funds, and such interest shall not be held in escrow.

1687 iv) If in any given year the University does not receive the certification from the State Council of
1688 Higher Education for Virginia that it has met for that year the institutional benchmarks called for by
1689 subsection C of § 23-9.6:1.01 and approved in the then-current Appropriation Act, the Comptroller shall
1690 transfer to the general fund the balance in the escrow account as of June 30 of that year.

1691 v) Beginning on the effective date of its initial Management Agreement with the University until the
1692 beginning of the first fiscal year following the fiscal year for which it has received the required
1693 certification from SCHEV, the University shall continue to deposit tuition and all other non-general
1694 funds with the State Treasurer by the same process that it would have been required to use if it had not
1695 entered into a Management Agreement with the Commonwealth.

1696 vi) On the first business day of the first fiscal year following the fiscal year for which it has received
1697 the required certification from SCHEV, the University may draw down all cash balances held by the
1698 State Treasurer on behalf of the University related to tuition, E&G fees, research and sponsored
1699 programs, auxiliary enterprises, and all other non-general fund revenues.

1700 vii) The Commonwealth shall retain all funds related to general fund appropriations, but shall pay
1701 these funds to the University as specified in Section IX below.

1702 The University also shall have sum sufficient appropriation authority for all non-general funds as
1703 approved by the Governor and the General Assembly in the Commonwealth's biennial appropriations
1704 process, and shall report to the Department of Planning and Budget (i) its estimate of the non-general
1705 fund revenues for the sum sufficient appropriation to be included in the biennial Budget Bill for each of
1706 the two years in the next biennium by November 1 of each odd numbered year and the estimate to be
1707 included in the Budget Bill for the first and second year of the then-current biennium by November 1 of
1708 each even numbered year, and (ii) report its actual non-general fund revenues for each fiscal year to the
1709 Department of Planning and Budget by July 31 of the subsequent fiscal year.

1710 The Board of Visitors shall retain the authority to establish tuition, fee, room, board, and other
1711 charges, with appropriate commitment provided to need-based grant aid for middle- and lower-income
1712 undergraduate Virginians. Except as provided otherwise in the Appropriation Act then in effect, it is the
1713 intent of the Commonwealth and the University that the University shall be exempt from the revenue
1714 restrictions in the general provisions of the Appropriation Act related to non-general funds. In addition,
1715 unless prohibited by the Appropriation Act then in effect, it is the intent of the Commonwealth and the
1716 University that the University shall be entitled to retain non-general fund savings generated from
1717 changes in Commonwealth rates and charges, including but not limited to health, life, and disability
1718 insurance rates, retirement contribution rates, telecommunications charges, and utility rates, rather than
1719 reverting such savings back to the Commonwealth. This financial resource policy assists the University

by providing the framework for retaining and managing non-general funds, for the receipt of general funds, and for the use and stewardship of all these funds.

The President, acting through the Executive Vice President and Chief Operating Officer, shall continue to provide oversight of the University's cash management system which is the framework for the retention of non-general funds. The Internal Audit Department of the University shall periodically audit the University's cash management system in accordance with appropriate risk assessment models and make reports to the Audit and Compliance Committee of the Board of Visitors. Additional oversight shall continue to be provided through the annual audit and assessment of internal controls performed by the Auditor of Public Accounts. For the receipt of general and non-general funds, the University shall conform to the Security for Public Deposits Act, Chapter 44 (§ 2.2-4400 et seq.) of Title 2.2 of the Code of Virginia as it currently exists and from time to time may be amended.

VIII. ACCOUNTS RECEIVABLE MANAGEMENT AND COLLECTION.

The President, through the Executive Vice President and Chief Operating Officer, shall continue to be authorized to create and implement any and all Accounts Receivable Management and Collection policies as part of a system for the management of University financial resources. The policies shall be guided by the requirements of the Virginia Debt Collection Act, Chapter 48 (§ 2.2-4800 et seq.) of the Code of Virginia, such that the University shall take all appropriate and cost effective actions to aggressively collect accounts receivable in a timely manner.

These shall include, but not be limited to, establishing the criteria for granting credit to University customers; establishing the nature and timing of collection procedures within the above general principles; and the independent authority to select and contract with collection agencies and, after consultation with the Office of the Attorney General, private attorneys as needed to perform any and all collection activities for all University accounts receivable such as reporting delinquent accounts to credit bureaus, obtaining judgments, garnishments, and liens against such debtors, and other actions. In accordance with sound collection activities, the University shall continue to utilize the Commonwealth's Debt Set-Off Collection Programs, shall develop procedures acceptable to the Tax Commissioner and the State Comptroller to implement such Programs, and shall provide a quarterly summary report of receivables to the Department of Accounts in accordance with the reporting procedures established pursuant to the Virginia Debt Collection Act.

IX. DISBURSEMENT MANAGEMENT.

The President, acting through the Executive Vice President and Chief Operating Officer, shall continue to be authorized to create and implement any and all disbursement policies as part of a system for the management of University financial resources. The disbursement management policies shall continue to define the appropriate and reasonable uses of all funds, from whatever source derived, in the execution of the University's operations. These policies also shall continue to address the timing of appropriate and reasonable disbursements consistent with the Prompt Payment Act, and the appropriateness of certain goods or services relative to the University's mission, including travel-related disbursements. Further, the University's disbursement policy shall continue to provide for the mechanisms by which payments are made including the use of charge cards, warrants, and electronic payments. Since the University no longer will interface to the CARS system or any replacement for the CARS system for disbursements, the University shall establish its own mechanisms for electronic payments to vendors through Electronic Data Interchange (EDI) or similar process and payments to the Commonwealth's Debt Set-Off Collection Programs.

Beginning with the fiscal year after the first fiscal year for which it first receives the required certification from SCHEV, the University may draw down its general fund appropriations (subject to available cash) and tuition and E&G fees and other non-general fund revenues from the State Treasury. Such funds shall be available to the University for disbursement as provided in the then-current rules of the Automated Clearing House (ACH) Network. The draw down of funds may be initiated in accordance with the following schedule:

i) The University may draw down one-twenty-fourth (1/24) of its annual general fund appropriation for Educational and General programs on *or about* the first and fifteenth days of each month *with adjustments needed to meet short-term cash requirements associated with the Commonwealth's bimonthly pay dates*, and up to 50% of its annual general fund appropriation for Student Financial Assistance on or after September 1 of each year with the remaining 50% to be drawn on or after February 1 of each year in order to meet student obligations;

ii) The University may draw down the sum of all tuition and E&G fees and all other nongeneral revenues deposited to the State Treasury each day on the same business day they were deposited; and

iii) The University anticipates that expenditures could exceed available revenues from time to time during the year if the above disbursement schedule is used. When the University projects a cash deficit is likely in activities supported by general fund appropriations, the University may make a request to the State Comptroller for an early draw on its appropriated general funds deposited in the State Treasury, in

1781 a form and within a timeframe agreeable to the parties, in order to cover expenditures.

1782 These disbursement policies shall authorize the President, acting through the Executive Vice
1783 President and Chief Operating Officer, to independently select, engage, and contract for such consultants,
1784 accountants, and financial experts, and other such providers of expert advice and consultation, and, after
1785 consultation with the Office of the Attorney General, private attorneys, as may be necessary or desirable
1786 in his or her discretion. The policies also shall continue to include the ability to locally manage and
1787 administer the Commonwealth's credit card and cost recovery programs related to disbursements, subject
1788 to any restrictions contained in the Commonwealth's contracts governing those programs, provided that
1789 the University shall submit the credit card and cost recovery aspects of its financial and operations
1790 policies to the State Comptroller for review and comment prior to implementing those aspects of those
1791 policies. The disbursement policies shall ensure that adequate risk management and internal control
1792 procedures shall be maintained over previously decentralized processes for public records, payroll, and
1793 non-payroll disbursements. The University shall continue to provide summary quarterly prompt payment
1794 reports to the Department of Accounts in accordance with the reporting procedures established pursuant
1795 to the Prompt Payment Act.

1796 The University's disbursement policies shall be guided by the principles of the Commonwealth's
1797 policies as included in the Commonwealth's Accounting Policy and Procedures Manual. Upon the
1798 Effective Date of its initial Management Agreement with the Commonwealth, the University shall
1799 continue to follow the Commonwealth's disbursement policies until such time as specific alternative
1800 policies can be developed, approved and implemented. Such alternate policies shall be submitted to the
1801 State Comptroller for review and comment prior to their implementation by the University.

1802 X. DEBT MANAGEMENT.

1803 The President, acting through the Executive Vice President and Chief Operating Officer, shall
1804 continue to be authorized to create and implement any and all debt management policies as part of a
1805 system for the management of University financial resources.

1806 Pursuant to § 23-38.108(B) of the Act, the University shall have the authority to issue bonds, notes,
1807 or other obligations that do not constitute State Tax Supported Debt, as determined by the Treasury
1808 Board, and that are consistent with debt capacity and management policies and guidelines established by
1809 its Board of Visitors, without obtaining the consent of any legislative body, elected official, commission,
1810 board, bureau, or agency of the Commonwealth or of any political subdivision, and without any
1811 proceedings or conditions other than those specifically required by Subchapter 3 of the Act; provided
1812 that, the University shall notify the Treasurer of Virginia of its intention to issue bonds pursuant to this
1813 Policy at the time it adopts the bond issuance planning schedule for those bonds. Any new or revised
1814 debt capacity and management policy shall be submitted to the Treasurer of Virginia for review and
1815 comment prior to its adoption by the University.

1816 The University recognizes that there are numerous types of financing structures and funding sources
1817 available each with specific benefits, risks, and costs. All potential funding sources shall be reviewed by
1818 the President, acting through the Executive Vice President and Chief Operating Officer, within the
1819 context of the overall portfolio to ensure that any financial product or structure is consistent with the
1820 University's objectives. Regardless of the financing structure(s) utilized, the President, acting through the
1821 Executive Vice President and Chief Operating Officer, shall obtain sufficient documentation to gain a
1822 full understanding of the transaction, including (i) the identification of potential risks and benefits, and
1823 (ii) an analysis of the impact on University creditworthiness and debt capacity. All such debt or financial
1824 products issued pursuant to the provisions of §§ 23.38-107 and 23.38-108 of the Act shall be authorized
1825 by resolution of the Board, providing that they do not constitute State Tax Supported Debt.

1826 XI. INVESTMENT POLICY.

1827 It is the policy of the University to invest its operating and reserve funds solely in the interest of the
1828 University and in a manner that will provide the highest investment return with the maximum security
1829 while meeting daily cash flow demands and conforming to the Investment of Public Funds Act
1830 (§ 2.2-4500 et seq. of the Code of Virginia). Investments shall be made with the care, skill, prudence
1831 and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and
1832 familiar with such matters would use in the conduct of an enterprise of a like character and with like
1833 aims.

1834 Endowment investments shall be invested and managed in accordance with the Uniform Management
1835 of Institutional Funds Act, §§ 55-268.1 through 55-268.10, and § 23-76.1 of the Code of Virginia.

1836 The Board of Visitors shall periodically review and approve the investment guidelines governing the
1837 University's operating and reserve funds.

1838 XII. INSURANCE AND RISK MANAGEMENT.

1839 By July 1 of each odd-numbered year, the University shall inform the Secretary of Finance of any
1840 intent during the next biennium to withdraw from any insurance or risk management program made
1841 available to the University through the Commonwealth's Division of Risk Management and in which the
1842 University is then participating, to enable the Commonwealth to complete an adverse selection analysis

of any such decision and to determine the additional costs to the Commonwealth that would result from any such withdrawal. If upon notice of such additional costs to the Commonwealth, the University proceeds to withdraw from the insurance or risk management program, the University shall reimburse the Commonwealth for all such additional costs attributable to such withdrawal as determined by the Commonwealth's actuaries. Such payment shall be made in a manner agreeable to both the University and the Commonwealth.

SECTION 4.3. Term of Agreement. This Management Agreement shall expire at midnight on June 30, 20402012.

EXHIBIT G

MANAGEMENT AGREEMENT BETWEEN THE COMMONWEALTH OF VIRGINIA AND

THE COLLEGE OF WILLIAM AND MARY IN VIRGINIA PURSUANT TO THE RESTRUCTURED HIGHER EDUCATION FINANCIAL AND ADMINISTRATIVE OPERATIONS ACT OF 2005

POLICY GOVERNING CAPITAL PROJECTS

THE RECTOR AND VISITORS OF THE COLLEGE OF WILLIAM AND MARY IN VIRGINIA POLICY GOVERNING CAPITAL PROJECTS

I. PREAMBLE.

The Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter 4.10 of Title 23 of the Code of Virginia, provides that, upon becoming a Covered Institution, the College of William and Mary in Virginia may be delegated the authority to establish its own system for undertaking the implementation of its capital projects. In general, status as a Covered Institution is designed to replace the post-authorization system of reviews, approvals, policies and procedures carried out by a variety of central State agencies, and also the traditional pre-authorization approval process for projects funded entirely with non-general funds and without any proceeds from State Tax Supported Debt. The College's system for carrying out its capital outlay process as a Covered Institution is to be governed by policies adopted by the Board of Visitors. The following provisions of this Policy, together with the Policy Governing the Procurement of Goods, Services, Insurance, and Construction, and the Disposition of Surplus Materials adopted by the Board, and the Rules Governing Procurement of Goods, Services, Insurance, and Construction, which is attached as Attachment 1 to that Policy, constitute the adopted Board of Visitors policies regarding the College's capital projects, whether funded by a state general fund appropriation, State Tax Supported Debt, or funding from other sources.

This Policy is intended to encompass and implement the authority that may be granted to the College pursuant to Subchapter 3 of the Act. Any other powers and authorities granted to the College pursuant to the Appropriation Act, or any other sections of the Code of Virginia, including other provisions of the Act and the College's Enabling Legislation, are not affected by this Policy.

II. DEFINITIONS.

As used in this policy, the following terms shall have the following meanings, unless the context requires otherwise:

"Act" means the Restructured Higher Education Financial and Administrative Operations Act, Chapter 4.10 of Title 23 of the Code of Virginia.

"Board of Visitors" or "Board" means the Rector and Visitors of the College of William and Mary in Virginia.

"Capital Lease" means a lease that is defined as such within Generally Accepted Accounting Principles pursuant to the pronouncement of the Financial Accounting Standards Board.

"Capital Professional Services" means professional engineering, architecture, land surveying and landscape architecture services related to capital projects.

"Capital project(s)" means the acquisition of any interest in land, including improvements on the acquired land at the time of acquisition, new construction, improvements or renovations, and Capital Leases.

"College" means the College of William and Mary in Virginia, (State Agency 204), and the Virginia Institute of Marine Science, (State Agency 268).

"Covered Institution" means, on and after the Effective Date of its initial Management Agreement, a

1904 public institution of higher education of the Commonwealth of Virginia that has entered into a
1905 management agreement with the Commonwealth to be governed by the provisions of Subchapter 3 of
1906 the Act.

1907 "Enabling Legislation" means those chapters, other than Chapter 4.10, of Title 23 of the Code of
1908 Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and missions
1909 of the individual public institutions of higher education of the Commonwealth, and as provided in
1910 §§ 2.2-2817.2, 2.2-2905, and 51.1-126.3.

1911 "Major Capital Project(s)" means the acquisition of any interest in land, including improvements on
1912 the acquired land at the time of acquisition, new construction of 5,000 square feet or greater or costing
1913 \$1 million or more, improvements or renovations of \$1 million or more, and Capital Leases.

1914 "State Tax Supported Debt" means bonds, notes or other obligations issued under Article X, Section
1915 9(a), 9(b), or 9(c), or 9(d), if the debit service payments are made or ultimately are to be made from
1916 general government funds, as defined in the December 20, 2004 Report to the Governor and General
1917 Assembly of the Debt Capacity Advisory Committee or as that definition is amended from time to time.

1918 III. SCOPE OF POLICY.

1919 This Policy applies to the planning and budget development for capital projects, capital project
1920 authorization, and the implementation of capital projects, whether funded by a general fund
1921 appropriation of the General Assembly, proceeds from State Tax Supported Debt, or funding from other
1922 sources.

1923 This Policy provides guidance for 1) the process for developing one or more capital project programs
1924 for the College, 2) authorization of new capital projects, 3) procurement of Capital Professional Services
1925 and construction services, 4) design reviews and code approvals for capital projects, 5) environmental
1926 impact requirements, 6) building demolitions, 7) building and land acquisitions, 8) building and land
1927 dispositions, 9) project management systems, and 10) reporting requirements.

1928 IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.

1929 The Board of Visitors of the College shall at all times be fully and ultimately accountable for the
1930 proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation
1931 of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant
1932 to its legally permissible procedures, specifically delegate either herein or by separate Board resolution
1933 the duties and responsibilities set forth in this Policy to a person or persons within the College, who,
1934 while continuing to be fully accountable for such duties and responsibilities, may further delegate the
1935 implementation of those duties and responsibilities pursuant to the College's usual delegation policies
1936 and procedures.

1937 V. CAPITAL PROGRAM.

1938 The President shall adopt a system for developing one or more capital project programs that defines
1939 or define the capital needs of the College for a given period of time consistent with the College's
1940 published Master Plan. This process may or may not mirror the Commonwealth's requirements for
1941 capital plans. The Board of Visitors shall approve the program for Major Capital Projects. Major
1942 Capital Projects that are to be funded entirely or in part by a general fund appropriation of the General
1943 Assembly or proceeds from State Tax Supported Debt shall follow the Commonwealth's requirements
1944 for capital plans. The Board may approve amendments to the program for Major Capital Projects
1945 annually or more often if circumstances warrant.

1946 It shall be College policy that each capital project program shall meet the College's mission and
1947 institutional objectives, and be appropriately authorized by the College. Moreover, it shall be College
1948 policy that each capital project shall be of a size and scope to provide for the defined program needs,
1949 designed in accordance with all applicable building codes and handicapped accessibility standards as
1950 well as the College's design guidelines and standards, and costed to reflect current costs and escalated to
1951 the mid-point of anticipated construction.

1952 VI. AUTHORIZATION OF CAPITAL PROJECTS

1953 The Board of Visitors shall authorize the initiation of each Major Capital Project by approving its
1954 size, scope, budget, and funding. The President, acting through his designee, shall adopt procedures for
1955 approving the size, scope, budget and funding of all other capital projects. Major Capital Projects that
1956 are to be funded entirely or in part by a general fund appropriation of the General Assembly or proceeds
1957 from State Tax Supported Debt, shall require both Board of Visitors approval and those
1958 pre-appropriation approvals of the State's governmental agencies then applicable, and shall follow the
1959 State's process for capital budget requests.

1960 It shall be the policy of the College that the implementation of capital projects shall be carried out so
1961 that the capital project as completed is the capital project approved by the Board for Major Capital
1962 Projects and according to the procedures adopted by the President, acting through his designee, for all
1963 other capital projects. The President shall ensure strict adherence to this requirement.

1964 Accordingly, the budget, size and scope of a capital project shall not be materially changed beyond
1965 the plans and justifications that were the basis for the capital project's approval, either before or during

1966 construction, unless approved in advance as described above. Minor changes shall be permissible if they
 1967 are determined by the President, acting through his designee, to be justified.

1968 Major Capital Projects may be submitted for Board of Visitors authorization at any time but must
 1969 include a statement of urgency if not part of the approved Major Capital Project program.

1970 VII. PROCUREMENT OF CAPITAL PROFESSIONAL SERVICES AND CONSTRUCTION 1971 SERVICES.

1972 It shall be the policy of the College that procurements shall result in the purchase of high quality
 1973 services and construction at reasonable prices and shall be consistent with the Policy Governing the
 1974 Procurement of Goods, Services, Insurance, and Construction, and the Disposition of Surplus Materials
 1975 adopted by the Board, and with the Rules Governing Procurement of Goods, Services, Insurance, and
 1976 Construction, which is attached as Attachment 1 to that Policy. Specifically, the College is committed
 1977 to:

1978 Seeking competition to the maximum practical degree, taking into account the size of the anticipated
 1979 procurement, the term of the resulting contract and the likely extent of competition;

1980 Conducting all procurements in a fair and impartial manner and avoiding any impropriety or the
 1981 appearance of any impropriety prohibited by State law or College policy;

1982 Making procurement rules clear in advance of any competition;

1983 Providing access to the College's business to all qualified vendors, firms and contractors, with no
 1984 potential bidder or offeror excluded arbitrarily or capriciously, while allowing the flexibility to engage in
 1985 cooperative procurements and to meet special needs of the College;

1986 Including in contracts of more than \$10,000 the contractor's agreement not to discriminate against
 1987 employees or applicants because of race, religion, color, sex, national origin, age, disability or other
 1988 basis prohibited by State law except where there is a bona fide occupational qualification reasonably
 1989 necessary to the contractor's normal operations;

1990 Providing for a non-discriminatory procurement process, and including appropriate and lawful
 1991 provisions to effectuate fair and reasonable consideration of women-owned, minority-owned and small
 1992 businesses and to promote and encourage a diversity of suppliers.

1993 The President, acting through his designee, is authorized to develop implementing procedures for the
 1994 procurement of Capital Professional Services and construction services at the College. The procedures
 1995 shall implement this Policy and provide for:

1996 A system of competitive negotiation for Capital Professional Services, including a procedure for
 1997 expedited procurement of Capital Professional Services under \$50,000, pursuant to (i) subdivisions 1, 2,
 1998 and 3 a of the defined term "competitive negotiation" in Rule 4 of the Rules Governing Procurement of
 1999 Goods, Services, Insurance, and Construction, and (ii) § 4-5.06 of the 2004-2006 Appropriation Act;

2000 A prequalification procedure for contractors or products;

2001 A procedure for special construction contracting methods, including but not limited to design-build
 2002 and construction management contracts; and

2003 A prompt payment procedure.

2004 The College also may enter into cooperative arrangements with other private or public health or
 2005 educational institutions, healthcare provider alliances, purchasing organizations or state agencies where,
 2006 in the judgment of the College, the purposes of this Policy will be furthered.

2007 VIII. DESIGN REVIEWS AND CODE APPROVALS.

2008 The Board of Visitors shall review the design of all Major Capital Projects and shall provide final
 2009 Major Capital Project authorization based on the size, scope and cost estimate provided with the design.
 2010 Unless stipulated by the Board of Visitors at the design review, no further design reviews shall be
 2011 required. For all capital projects other than Major Capital Projects, the President, acting through his
 2012 designee, shall adopt procedures for design review and project authorization based on the size, scope and
 2013 cost estimate provided with the design. It shall be the College's policy that all capital projects shall be
 2014 designed and constructed in accordance with applicable Virginia Uniform Statewide Building Code
 2015 (VUSBC) standards and the applicable accessibility code.

2016 The President shall designate a Building Official responsible for building code compliance by either
 2017 (i) hiring an individual to be the College Building Official, or (ii) continuing to use the services of the
 2018 Department of General Services, Division of Engineering and Buildings, to perform the Building Official
 2019 function. If option (i) is selected, the individual hired as the College Building Official shall be a
 2020 full-time employee, a registered professional architect or engineer, and certified by the Department of
 2021 Housing and Community Development to perform this Building Official function. The College Building
 2022 Official shall issue building permits for each capital project required by the VUSBC to have a building
 2023 permit, and shall determine the suitability for occupancy of, and shall issue certifications for building
 2024 occupancy for, all capital projects requiring such certification. Prior to issuing any such certification,
 2025 this individual shall ensure that the VUSBC and accessibility requirements are met for that capital
 2026 project and that such capital project has been inspected by the State Fire Marshal or his designee as

2027 *required.* When serving as the College Building Official, such individual shall organizationally report
2028 directly and exclusively to the Board of Visitors. If the College hires its own College Building Official,
2029 it shall fulfill the code review requirement by maintaining a review unit *of licensed professional*
2030 *architects or engineers supported by resources and staff* who are certified by the Department of Housing
2031 and Community Development in accordance with § 36-137 of the Code of Virginia for such purpose and
2032 who shall review plans, specifications and documents for compliance with building codes and standards
2033 and perform required inspections of work in progress and the completed capital project. No individual
2034 licensed professional architect or engineer hired *under the College's personnel system as a member of*
2035 *the review unit or contracted with to perform these functions* shall also perform other building
2036 code-related design, construction, facilities-related project management or facilities management
2037 functions for the College ~~on the same capital project.~~

2038 IX. ENVIRONMENTAL IMPACT REPORTS.

2039 It shall be the policy of the College to assess the environmental, historic preservation, and
2040 conservation impacts of all capital projects and to minimize and otherwise mitigate all adverse impacts
2041 to the extent practicable. The College shall develop a procedure for the preparation and approval of
2042 environmental impact reports for capital projects, in accordance with State environmental, historic
2043 preservation, and conservation requirements generally applicable to capital projects otherwise meeting
2044 the definition of Major Capital Projects but, pursuant to § 23-38.109 C 1 of the Act, with a cost of
2045 \$300,000 or more.

2046 X. BUILDING DEMOLITIONS.

2047 It shall be the policy of the College to consider the environmental and historical aspects of any
2048 proposed demolitions. The Board of Visitors shall be responsible for approving demolition requests.
2049 The College shall develop a procedure for the preparation and review of demolition requests, including
2050 any necessary reviews by the Department of Historic Resources and the Art and Architectural Review
2051 Board in accordance with State historic preservation requirements generally applicable to capital projects
2052 in the Commonwealth. Further, for any property that was acquired or constructed with funding from a
2053 general fund appropriation of the General Assembly or from proceeds from State Tax Supported Debt,
2054 general laws applicable to State owned property shall apply.

2055 XI. BUILDING OR LAND ACQUISITIONS.

2056 It is the policy of the College that capital projects involving building or land acquisition shall be
2057 subjected to thorough inquiry and due diligence prior to closing on the acquisition of such real property.
2058 The President, acting through his designee, shall ensure that the project management system
2059 implemented pursuant to Section XIII below provides for a review and analysis of all pertinent matters
2060 relating to the acquisition of buildings and land as any prudent purchaser would perform to the end that
2061 any building or land acquired by the College shall be suitable for its intended purpose, that the
2062 acquisition can be made without substantial risk of liability to the College and that the cost of the real
2063 property to be acquired, together with any contemplated development thereof, shall be such that
2064 compliance with the provisions of Section VI of this Policy is achieved. In addition, the President,
2065 acting through his designee, shall ensure that, where feasible and appropriate to do so, the following
2066 specific policies pertaining to the acquisition of buildings or land for capital projects are carried out.

2067 A. Environmental and Land Use Considerations.

2068 It is the policy of the College to reasonably cooperate with each locality affected by the acquisition.
2069 Such cooperation shall include but not be limited to furnishing any information that the locality may
2070 reasonably request and reviewing any requests by the locality with regard to any such acquisition. The
2071 College shall consider the zoning and comprehensive plan designation by the locality of the building or
2072 land and surrounding parcels, as well as any designation by State or federal agencies of historically or
2073 archeologically significant areas on the land. Nothing herein shall be construed as requiring the College
2074 to comply with local zoning laws and ordinances.

2075 B. Infrastructure and Site Condition.

2076 The President, acting through his designee, shall ensure that, in the case of capital projects involving
2077 the acquisition of buildings or land, the project management systems implemented under Section XIII
2078 below provide for a review of the following matters prior to acquisition of the building or land: that any
2079 land can be developed for its intended purpose without extraordinary cost; that an environmental
2080 engineer has been engaged by the College to provide an assessment of any environmental conditions on
2081 the land; that there is adequate vehicular ingress and egress to serve the contemplated use of the
2082 building or land; that utilities and other services to the land are adequate or can reasonably be provided
2083 or have been provided in the case of building acquisitions; and that the condition and grade of the soils
2084 have been examined to determine if any conditions exist that would require extraordinary site work or
2085 foundation systems.

2086 C. Title and Survey.

2087 A survey shall be prepared for any real property acquired, and an examination of title to the real
2088 property shall be conducted by a licensed attorney or, in the alternative, a commitment for title

insurance shall be procured from a title insurance company authorized to do business in the Commonwealth. Based upon the survey and title examination or report, the President, acting through his designee, shall conclude, prior to acquisition of the real property, that title thereto will be conveyed to the College in fee simple, free and clear of all liens, encumbrances, covenants, restrictions, easements or other matters that may have a significant adverse effect upon the College's ability to own, occupy, convey or develop the real property.

D. Appraisal.

An appraisal shall be conducted of the real property to be acquired to determine its fair market value and the consistency of the fair market value with the price agreed upon by the College.

XII. BUILDING OR LAND DISPOSITIONS.

The Board of Visitors shall approve the disposition of any building or land. Disposition of land or buildings, the acquisition or construction of which was funded entirely or in part by a general fund appropriation of the General Assembly or proceeds from State Tax Supported Debt, shall require both Board of Visitors approval and other approvals in accordance with general law applicable to State-owned property and with the College's Enabling Legislation.

XIII. PROJECT MANAGEMENT SYSTEMS.

The President, acting through his designee, shall implement one or more systems for the management of capital projects for the College. The systems may include the delegation of project management authority to appropriate College officials, including a grant of authority to such officials to engage in further delegation of authority as the President deems appropriate.

The project management systems for capital projects shall be designed to ensure that such projects comply with the provisions of this Policy and other Board of Visitors policies applicable to closely related subjects such as selection of architects or policies applicable to College buildings and grounds.

The project management systems may include one or more reporting systems applicable to capital projects whereby College officials responsible for the management of such projects provide appropriate and timely reports to the President on the status of such projects during construction.

XIV. REPORTING REQUIREMENTS.

In addition to complying with any internal reporting systems contained in the College's project management systems, as described in Section XIII above, the College shall comply with State reporting requirements for those Major Capital Projects funded entirely or in part by a general fund appropriation by the General Assembly or State Tax Supported Debt. Additionally, if any capital project constructs improvements on land, or renovates property, that originally was acquired or constructed in whole or in part with a general fund appropriation for that purpose or proceeds from State Tax Supported Debt, and such improvements or renovations are undertaken entirely with funds not appropriated by the General Assembly and, if the cost of such improvements or renovations is reasonably expected to exceed \$2 million dollars, the decision to undertake such improvements or renovations shall be communicated as required by § 23-38.109 C 3 of the Act. As a matter of routine, the President, acting through his designee, shall report to the Department of General Services on the status of such capital projects at the initiation of the project, prior to the commencement of construction, and at the time of acceptance of any such capital project.

ATTACHMENT 1

Rules Governing Procurement of Goods, Services, Insurance, and Construction
by a Public Institution of Higher Education of the Commonwealth of Virginia
Governed by Subchapter 3 of the

Restructured Higher Education Financial and Administrative Operations Act,
Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia

In accordance with the provisions of the Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia, and in particular § 23-38.110 of the Act, the governing body of a public institution of higher education of the Commonwealth of Virginia that has entered into a Management Agreement with the Commonwealth pursuant to Subchapter 3 of the Act, has adopted the following Rules Governing Procurement of Goods, Services, Insurance, and Construction to govern the procurement of goods, services, insurance, and construction by the Institution, excluding the University of Virginia Medical Center:

§ 1. Purpose. -

The purpose of these Rules is to enunciate the public policies pertaining to procurement of good, services, insurance, and construction by the Institution from nongovernmental sources, to include governmental procurement that may or may not result in monetary consideration for either party. These Rules shall apply whether the consideration is monetary or nonmonetary and regardless of whether the Institution, the contractor, or some third party is providing the consideration.

§ 2. Scope of Procurement Authority. -

2150 Subject to these Rules, and the Institution's continued substantial compliance with the terms and
2151 conditions of its Management Agreement with the Commonwealth pursuant to § 23-38.88(D)(4) and the
2152 requirements of Chapter 4.10 of the Act, the Institution shall have and shall be authorized to have and
2153 exercise all of the authority relating to procurement of goods, services, insurance, and construction,
2154 including but not limited to capital outlay-related procurement and information technology-related
2155 procurement, that Institutions are authorized to exercise pursuant to Subchapter 3 of the Restructuring
2156 Act.

2157 § 3. Competition is the Priority. -

2158 To the end that the Institution shall obtain high quality goods and services at reasonable cost, that all
2159 procurement procedures be conducted in an open, fair and impartial manner with avoidance of any
2160 impropriety or appearance of impropriety, that all qualified vendors have access to the Institution's
2161 business and that no offeror be arbitrarily or capriciously excluded, it is the intent of the governing body
2162 of the Institution that competition be sought to the maximum feasible degree, that procurement
2163 procedures involve openness and administrative efficiency, that individual public bodies enjoy broad
2164 flexibility in fashioning details of such competition, that the rules governing contract awards be made
2165 clear in advance of the competition, that specifications reflect the procurement needs of the purchasing
2166 body rather than being drawn to favor a particular vendor, and that the purchaser and vendor freely
2167 exchange information concerning what is sought to be procured and what is offered. The Institution
2168 may consider best value concepts when procuring goods and nonprofessional services, but not
2169 construction or professional services. Professional services will be procured using a qualification-based
2170 selection process. The criteria, factors, and basis for consideration of best value and the process for the
2171 consideration of best value shall be as stated in the procurement solicitation.

2172 § 4. Definitions. -

2173 As used in these Rules:

2174 "Affiliate" means an individual or business that controls, is controlled by, or is under common
2175 control with another individual or business. A person controls an entity if the person owns, directly or
2176 indirectly, more than 10% of the voting securities of the entity. For the purposes of this definition
2177 "voting security" means a security that (i) confers upon the holder the right to vote for the election of
2178 members of the board of directors or similar governing body of the business or (ii) is convertible into,
2179 or entitles the holder to receive, upon its exercise, a security that confers such a right to vote. A general
2180 partnership interest shall be deemed to be a voting security.

2181 "Best value," as predetermined in the solicitation, means the overall combination of quality, price,
2182 and various elements of required services that in total are optimal relative to the Institution's needs.

2183 "Business" means any type of corporation, partnership, limited liability company, association, or sole
2184 proprietorship operated for profit.

2185 "Competitive negotiation" is a method of contractor selection that includes the following elements:

2186 1. Issuance of a written Request for Proposal indicating in general terms that which is sought to be
2187 procured, specifying the factors that will be used in evaluating the proposal and containing or
2188 incorporating by reference the other applicable contractual terms and conditions, including any unique
2189 capabilities or qualifications that will be required of the contractor.

2190 2. Public notice of the Request for Proposal at least 10 days prior to the date set for receipt of
2191 proposals by publication in a newspaper or newspapers of general circulation in the area in which the
2192 contract is to be performed so as to provide reasonable notice to the maximum number of offerors that
2193 can be reasonably anticipated to submit proposals in response to the particular request. Public notice
2194 also shall be published on the Department of General Services' central electronic procurement website
2195 and may be published on other appropriate websites. In addition, proposals may be solicited directly
2196 from potential contractors.

2197 3. a. Procurement of professional services. The procurement of professional services for capital
2198 projects shall be conducted using a qualification-based selection process. The Institution shall engage in
2199 individual discussions with two or more offerors deemed fully qualified, responsible and suitable on the
2200 basis of initial responses and with emphasis on professional competence, to provide the required
2201 services. Repetitive informal interviews shall be permissible. The offerors shall be encouraged to
2202 elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project,
2203 as well as alternative concepts. The Request for Proposal shall not, however, request that offerors
2204 furnish estimates of man-hours or cost for services. At the discussion stage, the Institution may discuss
2205 nonbinding estimates of total project costs, including, but not limited to, life-cycle costing, and where
2206 appropriate, nonbinding estimates of price for services. Proprietary information from competing offerors
2207 shall not be disclosed to the public or to competitors. At the conclusion of discussion, outlined in this
2208 subdivision, on the basis of evaluation factors published in the Request for Proposal and all information
2209 developed in the selection process to this point, the Institution shall select in the order of preference two
2210 or more offerors whose professional qualifications and proposed services are deemed most meritorious.
2211 Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract satisfactory

and advantageous to the Institution can be negotiated at a price considered fair and reasonable, the award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first shall be formally terminated and negotiations conducted with the offeror ranked second, and so on until such a contract can be negotiated at a fair and reasonable price. Should the Institution determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that offeror.

A contract for architectural or professional engineering services relating to construction projects may be negotiated by the Institution, for multiple projects provided (i) the projects require similar experience and expertise, and (ii) the nature of the projects is clearly identified in the Request for Proposal. Under such contract, (a) the fair and reasonable prices, as negotiated, shall be used in determining the cost of each project performed, (b) the sum of all projects performed in one contract term shall be as set in the Request for Proposal; and (c) the project fee of any single project shall not exceed the term limit as set in the Request for Proposal. Any unused amounts from any contract term may be carried forward. Competitive negotiations for such contracts may result in awards to more than one offeror provided the Request for Proposal stated the potential for a multi-vendor award. Multiphase professional services contracts satisfactory and advantageous to the Institution for environmental, location, design and inspection work regarding construction of infrastructure projects may be negotiated and awarded based on qualifications at a fair and reasonable price for the first phase only, when completion of the earlier phases is necessary to provide information critical to the negotiation of a fair and reasonable price for succeeding phases. Prior to the procurement of any such contract, the Institution shall state the anticipated intended total scope of the project and determine in writing that the nature of the work is such that the best interests of such Institution require awarding the contract.

b. Procurement of other than professional services. Selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals, on the basis of the factors involved in the Request for Proposal, including price if so stated in the Request for Proposal. Negotiations shall then be conducted with each of the offerors so selected. Price shall be considered, but need not be the sole determining factor. After negotiations have been conducted with each offeror so selected, the Institution shall select the offeror which, in its opinion, has made the best proposal, and shall award the contract to that offeror. When the terms and conditions of multiple awards are so provided in the Request for Proposal, awards may be made to more than one offeror. Should the Institution determine in writing and in its sole discretion that only one offeror has made the best proposal, a contract may be negotiated and awarded to that offeror.

"Competitive sealed bidding" is a method of contractor selection, other than for professional services, which includes the following elements:

1. Issuance of a written Invitation to Bid containing or incorporating by reference the specifications and contractual terms and conditions applicable to the procurement. Unless the Institution has provided for prequalification of bidders, the Invitation to Bid shall include a statement of any requisite qualifications of potential contractors. When it is impractical to prepare initially a purchase description to support an award based on prices, an Invitation to Bid may be issued requesting the submission of unpriced offers to be followed by an Invitation to Bid limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation.

2. Public notice of the Invitation to Bid at least 10 days prior to the date set for receipt of bids by publication on the Department of General Services' central electronic procurement website. Public notice also may be published in a newspaper of general circulation or on other appropriate websites, or both. In addition, bids may be solicited directly from potential contractors. Any additional solicitations shall include businesses selected from a list made available by the Department of Minority Business Enterprise.

3. Public opening and announcement of all bids received.

4. Evaluation of bids based upon the requirements set forth in the invitation, which may include special qualifications of potential contractors, life-cycle costing, value analysis, and any other criteria such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose, which are helpful in determining acceptability.

5. Award to the lowest responsive and responsible bidder. When the terms and conditions of multiple awards are so provided in the Invitation to Bid, awards may be made to more than one bidder.

"Construction" means building, altering, repairing, improving or demolishing any structure, building or highway, and any draining, dredging, excavation, grading or similar work upon real property.

"Construction management contract" means a contract in which a party is retained by the owner to coordinate and administer contracts for construction services for the benefit of the owner, and may also include, if provided in the contract, the furnishing of construction services to the owner.

"Covered Institution" or "Institution" means, on and after the effective date of the initial management

2273 agreement with the Commonwealth of Virginia, a public institution of higher education of the
2274 Commonwealth that has entered into a management agreement with the Commonwealth to be governed
2275 by the provisions of Subchapter 3 of the Restructuring Act.

2276 "Design-build contract" means a contract between the Institution and another party in which the party
2277 contracting with the Institution agrees to both design and build the structure, roadway or other item
2278 specified in the contract.

2279 "Goods" means all material, equipment, supplies, and printing, including information technology and
2280 telecommunications goods such as automated data processing hardware and software.

2281 "Informality" means a minor defect or variation of a bid or proposal from the exact requirements of
2282 the Invitation to Bid, or the Request for Proposal, which does not affect the price, quality, quantity or
2283 delivery schedule for the goods, services or construction being procured.

2284 "Multiphase professional services contract" means a contract for the providing of professional
2285 services where the total scope of work of the second or subsequent phase of the contract cannot be
2286 specified without the results of the first or prior phase of the contract.

2287 "Nonprofessional services" means any services not specifically identified as professional services in
2288 the definition of professional services and includes small construction projects valued not over \$1
2289 million; provided that subdivision 3a of the definition of "competitive negotiation" in this section shall
2290 still apply to professional services for such small construction projects.

2291 "Potential bidder or offeror" for the purposes of §§ 50 and 54 of these Rules means a person who, at
2292 the time the Institution negotiates and awards or proposes to award a contract, is engaged in the sale or
2293 lease of goods, or the sale of services, insurance or construction, of the type to be procured under the
2294 contract, and who at such time is eligible and qualified in all respects to perform that contract, and who
2295 would have been eligible and qualified to submit a bid or proposal had the contract been procured
2296 through competitive sealed bidding or competitive negotiation.

2297 "Professional services" means work performed by an independent contractor within the scope of the
2298 practice of accounting, actuarial services, architecture, land surveying, landscape architecture, law,
2299 dentistry, medicine, optometry, pharmacy or professional engineering.

2300 "Public body" means any legislative, executive or judicial body, agency, office, department, authority,
2301 post, commission, committee, institution, board or political subdivision created by law to exercise some
2302 sovereign power or to perform some governmental duty, and empowered by law to undertake the
2303 activities described in these Rules.

2304 "Public contract" means an agreement between the Institution and a nongovernmental source that is
2305 enforceable in a court of law.

2306 "Responsible bidder" or "offeror" means a person who has the capability, in all respects, to perform
2307 fully the contract requirements and the moral and business integrity and reliability that will assure good
2308 faith performance, and who has been prequalified, if required.

2309 "Responsive bidder" means a person who has submitted a bid that conforms in all material respects
2310 to the Invitation to Bid.

2311 "Restructuring Act" or "Act" means the Restructured Higher Education Financial and Administrative
2312 Operations Act, Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia.

2313 "Rules" means these Rules Governing Procurement of Goods, Services, Insurance, and Construction
2314 adopted by the governing body of the Covered Institution.

2315 "Reverse auctioning" means a procurement method wherein bidders are invited to bid on specified
2316 goods or nonprofessional services through real-time electronic bidding, with the award being made to
2317 the lowest responsive and responsible bidder. During the bidding process, bidders' prices are revealed
2318 and bidders shall have the opportunity to modify their bid prices for the duration of the time period
2319 established for bid opening.

2320 "Services" means any work performed by an independent contractor wherein the service rendered
2321 does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials
2322 and supplies.

2323 "Sheltered workshop" means a work-oriented rehabilitative facility with a controlled working
2324 environment and individual goals that utilizes work experience and related services for assisting the
2325 handicapped person to progress toward normal living and a productive vocational status.

2326 § 5. Methods of procurement. -

2327 A. All public contracts with nongovernmental contractors for the purchase or lease of goods, or for
2328 the purchase of services, insurance, or construction, shall be awarded after competitive sealed bidding, or
2329 competitive negotiation as provided in this section, unless otherwise authorized by law.

2330 B. Professional services shall be procured by competitive negotiation. Qualification-based selection
2331 shall be used for design services.

2332 C. Goods, services, or insurance may be procured by competitive negotiation.

2333 D. Construction may be procured only by competitive sealed bidding, except that competitive
2334 negotiation may be used in the following instances upon a determination made in advance by the

Institution and set forth in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to the public, which writing shall document the basis for this determination:

1. By the Institution on a fixed price design-build basis or construction management basis under § 7;
2. By the Institution for the construction, alteration, repair, renovation or demolition of buildings; or
3. By the Institution for the construction of highways and any draining, dredging, excavation, grading or similar work upon real property.

E. Upon a determination in writing that there is only one source practicably available for that which is to be procured, a contract may be negotiated and awarded to that source without competitive sealed bidding or competitive negotiation. The writing shall document the basis for this determination. The Institution shall issue a written notice stating that only one source was determined to be practicably available, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted in a designated public area, which may be the Department of General Services' website for the Commonwealth's central electronic procurement system, or published in a newspaper of general circulation on the day the Institution awards or announces its decision to award the contract, whichever occurs first. Public notice shall also be published on the Department of General Services' website for the Commonwealth's central electronic procurement system and may be published on other appropriate websites.

F. In case of emergency, a contract may be awarded without competitive sealed bidding or competitive negotiation; however, such procurement shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file. The Institution shall issue a written notice stating that the contract is being awarded on an emergency basis, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted in a designated public area, which may be the Department of General Services' website for the Commonwealth's central electronic procurement system, or published in a newspaper of general circulation on the day the Institution awards or announces its decision to award the contract, whichever occurs first, or as soon thereafter as is practicable. Public notice may also be published on the Department of General Services' website for the Commonwealth's central electronic procurement system and other appropriate websites.

G. The Institution may establish purchase procedures, if adopted in writing, not requiring competitive sealed bids or competitive negotiation for single or term contracts for goods and services other than professional services if the aggregate or the sum of all phases is not expected to exceed \$50,000; however, such small purchase procedures shall provide for competition wherever practicable.

H. The Institution may establish purchase procedures, if adopted in writing, not requiring competitive negotiation for single or term contracts for professional services if the aggregate or the sum of all phases is not expected to exceed \$50,000; however such small purchase procedures shall provide for competition wherever practicable.

I. Upon a determination made in advance by the Institution and set forth in writing that the purchase of goods, products or commodities from a public auction sale is in the best interests of the public, such items may be purchased at the auction, including online public auctions. The writing shall document the basis for this determination.

J. The purchase of goods or nonprofessional services, but not construction or professional services, may be made by reverse auctioning.

§ 6. Cooperative procurement. -

A. In circumstances where the Institution determines and documents that statewide contracts for goods and services, including information technology and telecommunications goods and services, do not provide goods and services to the Institution that meet its business goals and objectives, the Institution is authorized to participate in, sponsor, conduct, or administer a cooperative procurement arrangement on behalf of or in conjunction with public bodies, public or private health or educational institutions, other public or private organizations or entities, including public-private partnerships, charitable organizations, health care provider alliances or purchasing organizations or entities, or with public agencies or institutions or group purchasing organizations of the several states, territories of the United States, or the District of Columbia, for the purpose of combining requirements to effect cost savings or reduce administrative expense in any acquisition of goods and services, other than professional services. The Institution may purchase from any authority, department, agency, institution, city, county, town, or other political subdivision of the Commonwealth's contract even if it did not participate in the request for proposal or invitation to bid, if the request for proposal or invitation to bid specified that the procurement was being conducted on behalf of other public bodies. In such instances, deviation from the procurement procedures set forth in these Rules and the administrative policies and procedures established to implement these Rules shall be permitted. Notwithstanding all of the above, use of cooperative contracts shall conform to the business requirements of the Commonwealth's electronic

2396 procurement system, including the requirement for payment of applicable fees. Nothing herein shall
2397 prohibit the payment by direct or indirect means of any administrative fee that will allow for
2398 participation in any such arrangement.

2399 B. In circumstances where statewide contracts for goods and services, including information
2400 technology and telecommunications goods and services, do not provide goods and services to meet the
2401 Institution's business goals and objectives, and as authorized by the United States Congress and
2402 consistent with applicable federal regulations, and provided the terms of the contract permit such
2403 purchases:

2404 1. The Institution may purchase goods and nonprofessional services, from a United States General
2405 Services Administration contract or a contract awarded by any other agency of the United States
2406 government; and

2407 2. The Institution may purchase telecommunications and information technology goods and
2408 nonprofessional services from a United States General Services Administration contract or a contract
2409 awarded by any other agency of the United States government.

2410 § 7. Design-build or construction management contracts authorized. -

2411 A. Notwithstanding any other provisions of law, the Institution may enter into contracts on a fixed
2412 price design-build basis or construction management basis in accordance with the provisions of this
2413 section.

2414 B. Procurement of construction by the design-build or construction management method shall be a
2415 two-step competitive negotiation process. In the first step, offerors shall be requested to submit their
2416 qualifications. Based upon the information submitted and any other relevant information which the
2417 Commonwealth may obtain, no more than five offerors deemed most suitable for the project shall be
2418 selected by the Commonwealth and requested to submit proposals.

2419 § 8. Modification of the contract. -

2420 A. A contract awarded by the Institution may include provisions for modification of the contract
2421 during performance, but no fixed-price contract may be increased by more than 25% of the amount of
2422 the contract or \$50,000, whichever is greater, without the advance written approval of the Institution's
2423 president or his designee. In no event may the amount of any contract, without adequate consideration,
2424 be increased for any purpose, including, but not limited to, relief of an offeror from the consequences of
2425 an error in its bid or offer.

2426 B. The Institution may extend the term of an existing contract for services to allow completion of
2427 any work undertaken but not completed during the original term of the contract.

2428 C. Nothing in this section shall prevent the Institution from placing greater restrictions on contract
2429 modifications.

2430 § 9. Discrimination prohibited; participation of small, women- and minority-owned business. -

2431 A. In the solicitation or awarding of contracts, the Institution shall not discriminate against a bidder
2432 or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis
2433 prohibited by state law relating to discrimination in employment. Whenever solicitations are made, the
2434 Institution shall include businesses selected from a list made available by the Department of Minority
2435 Business Enterprise.

2436 B. The Institution shall establish programs consistent with this section to facilitate the participation
2437 of small businesses and businesses owned by women and minorities in procurement transactions. The
2438 programs established shall be in writing and shall include cooperation with the Department of Minority
2439 Business Enterprise, the United States Small Business Administration, and other public or private
2440 agencies. The Institution shall submit annual progress reports on minority business procurement to the
2441 Department of Minority Business Enterprise.

2442 C. Whenever there exists (i) a rational basis for small business enhancement or (ii) a persuasive
2443 analysis that documents a statistically significant disparity between the availability and utilization of
2444 women- and minority-owned businesses, the Governor is by law authorized and encouraged to require
2445 the Institution to implement appropriate enhancement or remedial measures consistent with prevailing
2446 law.

2447 D. In the solicitation or awarding of contracts, the Institution shall not discriminate against a bidder
2448 or offeror because the bidder or offeror employs ex-offenders unless it has made a written determination
2449 that employing ex-offenders on the specific contract is not in its best interest.

2450 § 10. Employment discrimination by contractor prohibited; required contract provisions. -

2451 The Institution shall include in every contract of more than \$10,000 the following provisions:

2452 1. During the performance of this contract, the contractor agrees as follows:

2453 a. The contractor will not discriminate against any employee or applicant for employment because of
2454 race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to
2455 discrimination in employment, except where there is a bona fide occupational qualification reasonably
2456 necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places,
2457 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.

§ 11. Drug-free workplace to be maintained by contractor; required contract provisions.-

The Institution shall include in every contract over \$10,000 the following provisions:

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 in accordance with these Rules, 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.

§ 12. Use of brand names. -

Unless otherwise provided in the Invitation to Bid, the name of a certain brand, make or manufacturer shall not restrict bidders to the specific brand, make or manufacturer named and shall be deemed to convey the general style, type, character, and quality of the article desired. Any article that the Institution in its sole discretion determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted.

§ 13. Comments concerning specifications. -

The Institution shall establish procedures whereby comments concerning specifications or other provisions in Invitations to Bid or Requests for Proposal can be received and considered prior to the time set for receipt of bids or proposals or award of the contract.

§ 14. Prequalification generally; prequalification for construction. -

A. Prospective contractors may be prequalified for particular types of supplies, services, insurance or construction, and consideration of bids or proposals limited to prequalified contractors. Any prequalification procedure shall be established in writing and sufficiently in advance of its implementation to allow potential contractors a fair opportunity to complete the process.

B. Any prequalification of prospective contractors for construction by the Institution shall be pursuant to a prequalification process for construction projects adopted by the Institution. The process shall be consistent with the provisions of this section.

The application form used in such process shall set forth the criteria upon which the qualifications of prospective contractors will be evaluated. The application form shall request of prospective contractors only such information as is appropriate for an objective evaluation of all prospective contractors pursuant to such criteria. The form shall allow the prospective contractor seeking prequalification to request, by checking the appropriate box, that all information voluntarily submitted by the contractor pursuant to this subsection shall be considered a trade secret or proprietary information subject to the provisions of subsection D of § 34 of these Rules.

In all instances in which the Institution requires prequalification of potential contractors for construction projects, advance notice shall be given of the deadline for the submission of prequalification applications. The deadline for submission shall be sufficiently in advance of the date set for the submission of bids for such construction so as to allow the procedures set forth in this subsection to be accomplished.

At least 30 days prior to the date established for submission of bids or proposals under the procurement of the contract for which the prequalification applies, the Institution shall advise in writing each contractor who submitted an application whether that contractor has been prequalified. In the event that a contractor is denied prequalification, the written notification to the contractor shall state the reasons for the denial of prequalification and the factual basis of such reasons.

A decision by the Institution denying prequalification under the provisions of this subsection shall be final and conclusive unless the contractor appeals the decision as provided in § 54 of these Rules.

2519 C. The Institution may deny prequalification to any contractor only if the Institution finds one of the
2520 following:

2521 1. The contractor does not have sufficient financial ability to perform the contract that would result
2522 from such procurement. If a bond is required to ensure performance of a contract, evidence that the
2523 contractor can acquire a surety bond from a corporation included on the United States Treasury list of
2524 acceptable surety corporations in the amount and type required by the Institution shall be sufficient to
2525 establish the financial ability of the contractor to perform the contract resulting from such procurement;

2526 2. The contractor does not have appropriate experience to perform the construction project in
2527 question;

2528 3. The contractor or any officer, director or owner thereof has had judgments entered against him
2529 within the past 10 years for the breach of contracts for governmental or nongovernmental construction,
2530 including, but not limited to, design-build or construction management;

2531 4. The contractor has been in substantial noncompliance with the terms and conditions of prior
2532 construction contracts with the Institution without good cause. If the Institution has not contracted with a
2533 contractor in any prior construction contracts, the Institution may deny prequalification if the contractor
2534 has been in substantial noncompliance with the terms and conditions of comparable construction
2535 contracts with another public body without good cause. The Institution may not utilize this provision to
2536 deny prequalification unless the facts underlying such substantial noncompliance were documented in
2537 writing in the prior construction project file and such information relating thereto given to the contractor
2538 at that time, with the opportunity to respond;

2539 5. The contractor or any officer, director, owner, project manager, procurement manager or chief
2540 financial official thereof has been convicted within the past 10 years of a crime related to governmental
2541 or nongovernmental construction or contracting, including, but not limited to, a violation of (i) Article 6
2542 (§ 2.2-4367 et seq.) of Chapter 43 of Title 2.2 of the Code of Virginia, (ii) the Virginia Governmental
2543 Frauds Act (§ 18.2-498.1 et seq.), (iii) Chapter 4.2 (§ 59.1-68.6 et seq.) of Title 59.1, or (iv) any
2544 substantially similar law of the United States or another state;

2545 6. The contractor or any officer, director or owner thereof is currently debarred pursuant to an
2546 established debarment procedure from bidding or contracting by any public body, agency of another
2547 state or agency of the federal government; and

2548 7. The contractor failed to provide to the Institution in a timely manner any information requested
2549 by the Institution relevant to subdivisions 1 through 6 of this subsection.

2550 § 15. Negotiation with lowest responsible bidder. -

2551 Unless canceled or rejected, a responsive bid from the lowest responsible bidder shall be accepted as
2552 submitted, except that if the bid from the lowest responsible bidder exceeds available funds, the
2553 Institution may negotiate with the apparent low bidder to obtain a contract price within available funds.
2554 However, the negotiation may be undertaken only under conditions and procedures described in writing
2555 and approved by the Institution prior to issuance of the Invitation to Bid and summarized therein.

2556 § 16. Cancellation, rejection of bids; waiver of informalities. -

2557 A. An Invitation to Bid, a Request for Proposal, any other solicitation, or any and all bids or
2558 proposals, may be canceled or rejected. The reasons for cancellation or rejection shall be made part of
2559 the contract file. The Institution shall not cancel or reject an Invitation to Bid, a Request for Proposal,
2560 any other solicitation, bid or proposal pursuant to this section solely to avoid awarding a contract to a
2561 particular responsive and responsible bidder or offeror.

2562 B. The Institution may waive informalities in bids.

2563 § 17. Exclusion of insurance bids prohibited. -

2564 Notwithstanding any other provision of law, no insurer licensed to transact the business of insurance
2565 in the Commonwealth or approved to issue surplus lines insurance in the Commonwealth shall be
2566 excluded from presenting an insurance bid proposal to the Institution in response to a request for
2567 proposal or an invitation to bid. Nothing in this section shall preclude the Institution from debarring a
2568 prospective insurer pursuant to § 18.

2569 § 18. Debarment. -

2570 Prospective contractors may be debarred from contracting for particular types of supplies, services,
2571 insurance or construction, for specified periods of time. Any debarment procedure shall be established in
2572 writing by the Institution. Any debarment procedure may provide for debarment on the basis of a
2573 contractor's unsatisfactory performance for the Institution.

2574 § 19. Purchase programs for recycled goods; Institution responsibilities. -

2575 A. The Institution may implement a purchase program for recycled goods and may coordinate its
2576 efforts so as to achieve the goals and objectives set forth in §§ 10.1-1425.6, 10.1-1425.7, and
2577 10.1-1425.8 of the Code of Virginia and §§ 20 and 22 of these Rules.

2578 B. The Department of Environmental Quality, with advice from the Virginia Recycling Markets
2579 Development Council, shall advise the Institution concerning the designation of recycled goods.

2580 § 20. Preference for Virginia products with recycled content and for Virginia firms. -

A. In the case of a tie bid, preference shall be given to goods produced in Virginia, goods or services or construction provided by Virginia persons, firms or corporations; otherwise the tie shall be decided by lot.

B. Whenever any bidder is a resident of any other state and such state under its laws allows a resident contractor of that state a preference, a like preference may be allowed by the Institution to the lowest responsive and responsible bidder who is a resident of Virginia.

C. Notwithstanding the provisions of subsections A and B, in the case of a tie bid in instances where goods are being offered, and existing price preferences have already been taken into account, preference shall be given to the bidder whose goods contain the greatest amount of recycled content.

§ 21. Preference for Virginia coal used in the Institution. -

In determining the award of any contract for coal to be purchased for use in the Institution with state funds, the Institution shall procure using competitive sealed bidding and shall award to the lowest responsive and responsible bidder offering coal mined in Virginia so long as its bid price is not more than 4% greater than the bid price of the low responsive and responsible bidder offering coal mined elsewhere.

§ 22. Preference for recycled paper and paper products used by the Institution. -

A. In determining the award of any contract for paper and paper products to be purchased for use by the Institution, it shall competitively procure recycled paper and paper products of a quality suitable for the purpose intended, so long as the price is not more than 10% greater than the price of the low responsive and responsible bidder or offeror offering a product that does not qualify under subsection B.

B. For purposes of this section, recycled paper and paper products means any paper or paper products meeting the EPA Recommended Content Standards as defined in 40 C.F.R. Part 247.

§ 23. Withdrawal of bid due to error. -

A. A bidder for a public construction contract, other than a contract for construction or maintenance of public highways, may withdraw his bid from consideration if the price bid was substantially lower than the other bids due solely to a mistake in the bid, provided the bid was submitted in good faith, and the mistake was a clerical mistake as opposed to a judgment mistake, and was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn.

If a bid contains both clerical and judgment mistakes, a bidder may withdraw his bid from consideration if the price bid would have been substantially lower than the other bids due solely to the clerical mistake, that was an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid that shall be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn.

One of the following procedures for withdrawal of a bid shall be selected by the Institution and stated in the advertisement for bids: (i) the bidder shall give notice in writing of his claim of right to withdraw his bid within two business days after the conclusion of the bid opening procedure and shall submit original work papers with such notice; or (ii) the bidder shall submit to the Institution or designated official his original work papers, documents and materials used in the preparation of the bid within one day after the date fixed for submission of bids. The work papers shall be delivered by the bidder in person or by registered mail at or prior to the time fixed for the opening of bids. In either instance, the work papers, documents and materials may be considered as trade secrets or proprietary information subject to the conditions of subsection F of § 34 of these Rules. The bids shall be opened one day following the time fixed by the Institution for the submission of bids. Thereafter, the bidder shall have two hours after the opening of bids within which to claim in writing any mistake as defined herein and withdraw his bid. The contract shall not be awarded by the Institution until the two-hour period has elapsed. The mistake shall be proved only from the original work papers, documents and materials delivered as required herein.

B. The Institution may establish procedures for the withdrawal of bids for other than construction contracts.

C. No bid shall be withdrawn under this section when the result would be the awarding of the contract on another bid of the same bidder or of another bidder in which the ownership of the withdrawing bidder is more than 5%.

D. If a bid is withdrawn in accordance with this section, the lowest remaining bid shall be deemed to be the low bid.

E. No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for

2642 which the withdrawn bid was submitted.

2643 F. If the Institution denies the withdrawal of a bid under the provisions of this section, it shall notify
2644 the bidder in writing stating the reasons for its decision and award the contract to such bidder at the bid
2645 price, provided such bidder is a responsible and responsive bidder.

2646 § 24. Contract Pricing Arrangements. -

2647 A. Public contracts may be awarded on a fixed price or cost reimbursement basis, or on any other
2648 basis that is not prohibited by these Rules.

2649 B. Except in case of emergency affecting the public health, safety or welfare, no public contract
2650 shall be awarded on the basis of cost plus a percentage of cost.

2651 C. A policy or contract of insurance or prepaid coverage having a premium computed on the basis
2652 of claims paid or incurred, plus the insurance carrier's administrative costs and retention stated in whole
2653 or part as a percentage of such claims, shall not be prohibited by this section.

2654 § 25. Workers' compensation requirements for construction contractors and subcontractors. -

2655 A. No contractor shall perform any work on a construction project of the Institution unless he (i) has
2656 obtained, and continues to maintain for the duration of the work, workers' compensation coverage
2657 required pursuant to the provisions of Chapter 8 (§ 65.2-800 et seq.) of Title 65.2 of the Code of
2658 Virginia, and (ii) provides prior to the award of contract, on a form furnished by the Institution,
2659 evidence of such coverage.

2660 B. The Department of General Services shall provide the form to the Institution. Failure of the
2661 Institution to provide the form prior to the award of contract shall waive the requirements of clause (ii)
2662 of subsection A.

2663 C. No subcontractor shall perform any work on a construction project of the Institution unless he
2664 has obtained, and continues to maintain for the duration of such work, workers' compensation coverage
2665 required pursuant to the provisions of Chapter 8 (§ 65.2-800 et seq.) of Title 65.2 of the Code of
2666 Virginia.

2667 § 26. Retainage on construction contracts. -

2668 A. In any contract issued by the Institution for construction that provides for progress payments in
2669 installments based upon an estimated percentage of completion, the contractor shall be paid at least 95%
2670 of the earned sum when payment is due, with no more than 5% being retained to ensure faithful
2671 performance of the contract. All amounts withheld may be included in the final payment.

2672 B. Any subcontract for a public project that provides for similar progress payments shall be subject
2673 to the provisions of this section.

2674 § 27. Public construction contract provisions barring damages for unreasonable delays declared void.
2675 -

2676 A. Any provision contained in any public construction contract of the Institution that purports to
2677 waive, release, or extinguish the rights of a contractor to recover costs or damages for unreasonable
2678 delay in performing such contract, either on his behalf or on behalf of his subcontractor if and to the
2679 extent the delay is caused by acts or omissions of the Institution, its agents or employees and due to
2680 causes within their control shall be void and unenforceable as against public policy.

2681 B. Subsection A shall not be construed to render void any provision of a public construction
2682 contract awarded by the Institution that:

2683 1. Allows the recovery of that portion of delay costs caused by the acts or omissions of the
2684 contractor, or its subcontractors, agents or employees;

2685 2. Requires notice of any delay by the party claiming the delay;

2686 3. Provides for liquidated damages for delay; or

2687 4. Provides for arbitration or any other procedure designed to settle contract disputes.

2688 C. A contractor making a claim against the Institution for costs or damages due to the alleged
2689 delaying of the contractor in the performance of its work under any public construction contract of the
2690 Institution shall be liable to the Institution and shall pay it for a percentage of all costs incurred by the
2691 Institution in investigating, analyzing, negotiating, litigating and arbitrating the claim, which percentage
2692 shall be equal to the percentage of the contractor's total delay claim that is determined through litigation
2693 or arbitration to be false or to have no basis in law or in fact.

2694 D. If the Institution denies a contractor's claim for costs or damages due to the alleged delaying of
2695 the contractor in the performance of work under any public construction contract for the Institution, it
2696 shall be liable to and shall pay such contractor a percentage of all costs incurred by the contractor to
2697 investigate, analyze, negotiate, litigate and arbitrate the claim. The percentage paid by the Institution
2698 shall be equal to the percentage of the contractor's total delay claim for which the Institution's denial is
2699 determined through litigation or arbitration to have been made in bad faith.

2700 § 28. Bid bonds. -

2701 A. Except in cases of emergency, all bids or proposals for construction contracts in excess of \$1
2702 million shall be accompanied by a bid bond from a surety company selected by the bidder that is
2703 authorized to do business in Virginia, as a guarantee that if the contract is awarded to the bidder, he will

enter into the contract for the work mentioned in the bid. The amount of the bid bond shall not exceed 5% of the amount bid.

B. No forfeiture under a bid bond shall exceed the lesser of (i) the difference between the bid for which the bond was written and the next low bid, or (ii) the face amount of the bid bond.

C. Nothing in this section shall preclude the Institution from requiring bid bonds to accompany bids or proposals for construction contracts anticipated to be less than \$1 million.

§ 29. Performance and payment bonds. -

A. Upon the award by the Institution of any (i) public construction contract exceeding \$1 million awarded to any prime contractor or (ii) public construction contract exceeding \$1 million awarded to any prime contractor requiring the performance of labor or the furnishing of materials for buildings, structures or other improvements to real property owned by the Institution, the contractor shall furnish to the Institution the following bonds:

1. Except for transportation-related projects, a performance bond in the sum of the contract amount conditioned upon the faithful performance of the contract in strict conformity with the plans, specifications and conditions of the contract. For transportation-related projects, such bond shall be in a form and amount satisfactory to the Institution.

2. A payment bond in the sum of the contract amount. The bond shall be for the protection of claimants who have and fulfill contracts to supply labor or materials to the prime contractor to whom the contract was awarded, or to any subcontractors, in furtherance of the work provided for in the contract, and shall be conditioned upon the prompt payment for all materials furnished or labor supplied or performed in the furtherance of the work.

"Labor or materials" shall include public utility services and reasonable rentals of equipment, but only for periods when the equipment rented is actually used at the site.

B. Each of the bonds shall be executed by one or more surety companies selected by the contractor that are authorized to do business in Virginia.

C. The bonds shall be payable to the Commonwealth of Virginia naming also the Institution.

D. Each of the bonds shall be filed with the Institution, or a designated office or official thereof.

E. Nothing in this section shall preclude the Institution from requiring payment or performance bonds for construction contracts below \$1 million.

F. Nothing in this section shall preclude the contractor from requiring each subcontractor to furnish a payment bond with surety thereon in the sum of the full amount of the contract with such subcontractor conditioned upon the payment to all persons who have and fulfill contracts that are directly with the subcontractor for performing labor and furnishing materials in the prosecution of the work provided for in the subcontract.

§ 30. Alternative forms of security. -

A. In lieu of a bid, payment, or performance bond, a bidder may furnish a certified check or cash escrow in the face amount required for the bond.

B. If approved by the Institution's General Counsel or his equivalent, a bidder may furnish to the Institution a personal bond, property bond, or bank or savings institution's letter of credit on certain designated funds in the face amount required for the bid, payment or performance bond. Approval shall be granted only upon a determination that the alternative form of security proffered affords protection to the Institution equivalent to a corporate surety's bond.

§ 31. Bonds on other than construction contracts. -

The Institution may require bid, payment, or performance bonds for contracts for goods or services if provided in the Invitation to Bid or Request for Proposal.

§ 32. Action on performance bond. -

No action against the surety on a performance bond shall be brought by the Institution unless brought within one year after (i) completion of the contract, including the expiration of all warranties and guarantees, or (ii) discovery of the defect or breach of warranty that gave rise to the action.

§ 33. Actions on payment bonds; waiver of right to sue. -

A. Subject to the provisions of subsection B, any claimant who has performed labor or furnished material in accordance with the contract documents in furtherance of the work provided in any contract for which a payment bond has been given, and who has not been paid in full before the expiration of 90 days after the day on which the claimant performed the last of the labor or furnished the last of the materials for which he claims payment, may bring an action on the payment bond to recover any amount due him for the labor or material. The obligee named in the bond need not be named a party to the action.

B. Any claimant who has a direct contractual relationship with any subcontractor but who has no contractual relationship, express or implied, with the contractor, may bring an action on the contractor's payment bond only if he has given written notice to the contractor within 180 days from the day on which the claimant performed the last of the labor or furnished the last of the materials for which he

claims payment, stating with substantial accuracy the amount claimed and the name of the person for whom the work was performed or to whom the material was furnished. Notice to the contractor shall be served by registered or certified mail, postage prepaid, in an envelope addressed to such contractor at any place where his office is regularly maintained for the transaction of business. Claims for sums withheld as retainages with respect to labor performed or materials furnished, shall not be subject to the time limitations stated in this subsection.

C. Any action on a payment bond shall be brought within one year after the day on which the person bringing such action last performed labor or last furnished or supplied materials.

D. Any waiver of the right to sue on the payment bond required by this section shall be void unless it is in writing, signed by the person whose right is waived, and executed after such person has performed labor or furnished material in accordance with the contract documents.

§ 34. Public inspection of certain records. -

A. Except as provided in this section, all proceedings, records, contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen, or any interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

B. Cost estimates relating to a proposed procurement transaction prepared by or for the Institution shall not be open to public inspection.

C. Any competitive sealed bidding bidder, upon request, shall be afforded the opportunity to inspect bid records within a reasonable time after the opening of all bids but prior to award, except in the event that the Institution decides not to accept any of the bids and to reopen the contract. Otherwise, bid records shall be open to public inspection only after award of the contract.

D. Any competitive negotiation offeror, upon request, shall be afforded the opportunity to inspect proposal records within a reasonable time after the evaluation and negotiations of proposals are completed but prior to award, except in the event that the Institution decides not to accept any of the proposals and to reopen the contract. Otherwise, proposal records shall be open to public inspection only after award of the contract.

E. Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records.

F. Trade secrets or proprietary information submitted by a bidder, offeror or contractor in connection with a procurement transaction or prequalification application submitted pursuant to subsection B of § 14 shall not be subject to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.); however, the bidder, offeror or contractor shall (i) invoke the protections of this section prior to or upon submission of the data or other materials, (ii) identify the data or other materials to be protected, and (iii) state the reasons why protection is necessary.

§ 35. Exemption for certain transactions. -

A. The provisions of these Rules shall not apply to:

1. The selection of services related to the management and investment of the Institution's endowment funds, endowment income, or gifts pursuant to § 23-76.1. However, selection of these services shall be governed by the Uniform Management of Institutional Funds Act (§ 55-268.1 et seq.) as required by § 23-76.1.

2. The purchase of items for resale at retail bookstores and similar retail outlets operated by the Institution. However, such purchase procedures shall provide for competition where practicable.

3. Procurement of any construction or planning and design services for construction by the Institution when (i) the planning, design or construction is \$50,000 or less or (ii) the Institution is obligated to conform to procurement procedures that are established by federal statutes or regulations, whether or not those federal procedures are in conformance with the provisions of these Rules.

4. The University of Virginia Medical Center.

5. The purchase of goods and services by the Institution when such purchases are made under a remedial plan established by the Governor pursuant to subsection C of § 9 of these Rules.

B. Where a procurement transaction involves the expenditure of federal assistance or contract funds, the receipt of which is conditioned upon compliance with mandatory requirements in federal laws or regulations not in conformance with the provisions of these Rules, the Institution may comply with such federal requirements, notwithstanding the provisions of these Rules, only upon the written determination of the Institution's President or his designee that acceptance of the grant or contract funds under the applicable conditions is in the public interest. Such determination shall state the specific provision of these Rules in conflict with the conditions of the grant or contract.

§ 36. Permitted contracts with certain religious organizations; purpose; limitations. -

A. The Opportunity Reconciliation Act of 1996, P.L. 104-193, authorizes public bodies to enter into contracts with faith-based organizations for the purposes described in this section on the same basis as any other nongovernmental source without impairing the religious character of such organization, and without diminishing the religious freedom of the beneficiaries of assistance provided under this section.

B. For the purposes of this section, "faith-based organization" means a religious organization that is or applies to be a contractor to provide goods or services for programs funded by the block grant provided pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193.

C. The Institution, in procuring goods or services, or in making disbursements pursuant to this section, shall not (i) discriminate against a faith-based organization on the basis of the organization's religious character or (ii) impose conditions that (a) restrict the religious character of the faith-based organization, except as provided in subsection F, or (b) impair, diminish, or discourage the exercise of religious freedom by the recipients of such goods, services, or disbursements.

D. The Institution shall ensure that all invitations to bid, requests for proposals, contracts, and purchase orders prominently display a nondiscrimination statement indicating that it does not discriminate against faith-based organizations.

E. A faith-based organization contracting with the Institution (i) shall not discriminate against any recipient of goods, services, or disbursements made pursuant to a contract authorized by this section 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 (ii) 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 Institution. Nothing in clause (ii) shall be construed to ~~supercede~~^{supersede} or otherwise override any other applicable state law.

F. Consistent with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193, funds provided for expenditure pursuant to contracts with public bodies shall not be spent for sectarian worship, instruction, or proselytizing; however, this prohibition shall not apply to expenditures pursuant to contracts, if any, for the services of chaplains.

G. Nothing in this section shall be construed as barring or prohibiting a faith-based organization from any opportunity to make a bid or proposal or contract on the grounds that the faith-based organization has exercised the right, as expressed in 42 U.S.C. (§ 2000e-1 et seq.), to employ persons of a particular religion.

H. If an individual, who applies for or receives goods, services, or disbursements provided pursuant to a contract between the Institution and a faith-based organization, objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the Institution 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.

The Institution shall provide to each individual who applies for or receives goods, services, or disbursements provided pursuant to a contract between the Institution and a faith-based organization a notice in bold face type that states: "Neither the Institution's selection of a charitable or faith-based provider of services nor the expenditure of funds under this contract is an endorsement of the provider's charitable or religious character, practices, or expression. No provider of services may discriminate against you on the basis of religion, a religious belief, or your refusal to actively participate in a religious practice. If you object to a particular provider because of its religious character, you may request assignment to a different provider. If you believe that your rights have been violated, please discuss the complaint with your provider or notify the appropriate person as indicated in this form."

§ 37. Exemptions from competition for certain transactions. -

The Institution may enter into contracts without competition, as that term is described in subsections A through J of § 5 (Methods of procurement) of these Rules, for:

1. The purchase of goods or services that are produced or performed by or related to:
 - a. Persons, or in schools or workshops, under the supervision of the Virginia Department for the Blind and Vision Impaired;
 - b. Nonprofit sheltered workshops or other nonprofit organizations that offer transitional or supported employment services serving the handicapped;
 - c. Private educational institutions; or
 - d. Other public educational institutions.
2. Speakers and performing artists;
3. Memberships and Association dues;
4. Sponsored research grant sub-awards and contract sub-awards, not to include the purchase of goods or services by the Institution;
5. Group travel in foreign countries;
6. Conference facilities and services;
7. Participation in intercollegiate athletic tournaments and events including team travel and lodging, registration and tournament fees;
8. Royalties; or

2888 9. The purchase of legal services, provided that the Office of the Attorney General has been
2889 consulted, or expert witnesses or other services associated with litigation or regulatory proceedings; or

2890 10. *Maintenance contract renewals for scientific research equipment and software, provided that the*
2891 *institution has posted the renewal to eVa and documented that there was only one response or less and*
2892 *such documentation includes a statement signed by the buyer indicating that no firm other than the*
2893 *original manufacturer/developer offers the service.*

2894 § 38. Exemptions from competitive sealed bidding and competitive negotiation for certain
2895 transactions; limitations. -

2896 The Institution may enter into contracts for insurance or electric utility service without competitive
2897 sealed bidding or competitive negotiation if purchased through an association of which the Institution is
2898 a member if the association was formed and is maintained for the purpose of promoting the interest and
2899 welfare of and developing close relationships with similar public bodies, provided such association has
2900 procured the insurance or electric utility services by use of competitive principles and provided that the
2901 Institution has made a determination in advance after reasonable notice to the public and set forth in
2902 writing that competitive sealed bidding and competitive negotiation are not fiscally advantageous to the
2903 public. The writing shall document the basis for this determination.

2904 § 39. Definitions. -

2905 As used in §§ 39 through 46, unless the context requires a different meaning:

2906 "Contractor" means the entity that has a direct contract with the Institution.

2907 "Debtor" means any individual, business, or group having a delinquent debt or account with any state
2908 agency that obligation has not been satisfied or set aside by court order or discharged in bankruptcy.

2909 "Payment date" means either (i) the date on which payment is due under the terms of a contract for
2910 provision of goods or services; or (ii) if such date has not been established by contract, (a) 30 days after
2911 receipt of a proper invoice by the Institution or its agent or (b) 30 days after receipt of the goods or
2912 services by the Institution.

2913 "Subcontractor" means any entity that has a contract to supply labor or materials to the contractor to
2914 whom the contract was awarded or to any subcontractor in the performance of the work provided for in
2915 such contract.

2916 § 40. Exemptions. -

2917 The provisions of §§ 39 through 46 shall not apply to the late payment provisions contained in any
2918 public utility tariffs prescribed by the State Corporation Commission.

2919 § 41. Retainage to remain valid. -

2920 Notwithstanding the provisions of §§ 39 through 46, the provisions of § 26 relating to retainage shall
2921 remain valid.

2922 § 42. Prompt payment of bills by the Institution. -

2923 A. The Institution shall promptly pay for the completely delivered goods or services by the required
2924 payment date.

2925 Payment shall be deemed to have been made when offset proceedings have been instituted, as
2926 authorized under the Virginia Debt Collection Act (§ 2.2-4800 et seq.) of the Code of Virginia.

2927 B. Separate payment dates may be specified for contracts under which goods or services are
2928 provided in a series of partial deliveries or executions to the extent that such contract provides for
2929 separate payment for such partial delivery or execution.

2930 § 43. Defect or impropriety in the invoice or goods and/or services received. -

2931 In instances where there is a defect or impropriety in an invoice or in the goods or services received,
2932 the Institution shall notify the supplier of the defect or impropriety, if the defect or impropriety would
2933 prevent payment by the payment date. The notice shall be sent within 15 days after receipt of the
2934 invoice or the goods or services.

2935 § 44. Date of postmark deemed to be date payment is made. -

2936 In those cases where payment is made by mail, the date of postmark shall be deemed to be the date
2937 payment is made for purposes of these Rules.

2938 § 45. Payment clauses to be included in contracts. -

2939 Any contract awarded by the Institution shall include:

2940 1. A payment clause that obligates the contractor to take one of the two following actions within
2941 seven days after receipt of amounts paid to the contractor by the Institution for work performed by the
2942 subcontractor under that contract:

2943 a. Pay the subcontractor for the proportionate share of the total payment received from the
2944 Institution attributable to the work performed by the subcontractor under that contract; or

2945 b. Notify the Institution and subcontractor, in writing, of his intention to withhold all or a part of the
2946 subcontractor's payment with the reason for nonpayment.

2947 2. A payment clause that requires (i) individual contractors to provide their social security numbers
2948 and (ii) proprietorships, partnerships, and corporations to provide their federal employer identification
2949 numbers.

3. An interest clause that obligates the contractor to pay interest to the subcontractor on all amounts owed by the contractor that remain unpaid after seven days following receipt by the contractor of payment from the Institution for work performed by the subcontractor under that contract, except for amounts withheld as allowed in subdivision 1.

4. An interest rate clause stating, "Unless otherwise provided under the terms of this contract, interest shall accrue at the rate of 1% per month."

Any such contract awarded shall further require the contractor to include in each of its subcontracts a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor.

A contractor's obligation to pay an interest charge to a subcontractor pursuant to the payment clause in this section shall not be construed to be an obligation of the Institution. A contract modification shall not be made for the purpose of providing reimbursement for the interest charge. A cost reimbursement claim shall not include any amount for reimbursement for the interest charge.

§ 46. Interest penalty; exceptions. -

A. Interest shall accrue, at the rate determined pursuant to subsection B, on all amounts owed by the Institution to a vendor that remain unpaid after seven days following the payment date. However, nothing in this section shall affect any contract providing for a different rate of interest, or for the payment of interest in a different manner.

B. The rate of interest charged the Institution pursuant to subsection A shall be the base rate on corporate loans (prime rate) at large United States money center commercial banks as reported daily in the publication entitled The Wall Street Journal. Whenever a split prime rate is published, the lower of the two rates shall be used. However, in no event shall the rate of interest charged exceed the rate of interest established pursuant to § 58.1-1812 of the Code of Virginia.

C. Notwithstanding subsection A, no interest penalty shall be charged when payment is delayed because of disagreement between the Institution and a vendor regarding the quantity, quality or time of delivery of goods or services or the accuracy of any invoice received for the goods or services. The exception from the interest penalty provided by this subsection shall apply only to that portion of a delayed payment that is actually the subject of the disagreement and shall apply only for the duration of the disagreement.

D. This section shall not apply to § 26 pertaining to retainage on construction contracts, during the period of time prior to the date the final payment is due. Nothing contained herein shall prevent a contractor from receiving interest on such funds under an approved escrow agreement.

E. Notwithstanding subsection A, no interest penalty shall be paid to any debtor on any payment, or portion thereof, withheld pursuant to the Comptroller's Debt Setoff Program, as authorized by the Virginia Debt Collection Act (§ 2.2-4800 et seq. of the Code of Virginia), 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, then interest shall accrue at the rate determined pursuant to subsection B on amounts withheld that remain unpaid after seven days following the payment date.

§ 47. Ineligibility. -

A. Any bidder, offeror or contractor refused permission to participate, or disqualified from participation, in public contracts to be issued by the Institution shall be notified in writing. Prior to the issuance of a written determination of disqualification or ineligibility, the Institution shall (i) notify the bidder in writing of the results of the evaluation, (ii) disclose the factual support for the determination, and (iii) allow the bidder an opportunity to inspect any documents that relate to the determination, if so requested by the bidder within five business days after receipt of the notice.

Within 10 business days after receipt of the notice, the bidder may submit rebuttal information challenging the evaluation. The Institution shall issue its written determination of disqualification or ineligibility based on all information in the possession of the Institution, including any rebuttal information, within five business days of the date the Institution received such rebuttal information.

If the evaluation reveals that the bidder, offeror or contractor should be allowed permission to participate in the public contract, the Institution shall cancel the proposed disqualification action. If the evaluation reveals that the bidder should be refused permission to participate, or disqualified from participation, in the public contract, the Institution shall so notify the bidder, offeror or contractor. The notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within 10 days after receipt of the notice by invoking administrative procedures meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting legal action as provided in § 54.

B. If, upon appeal, it is determined that the action taken was arbitrary or capricious, or not in accordance with the Constitution of Virginia, applicable state law or regulations, the sole relief shall be restoration of eligibility.

§ 48. Appeal of denial of withdrawal of bid. -

A. A decision denying withdrawal of bid under the provisions of § 23 of these Rules shall be final and conclusive unless the bidder appeals the decision within 10 days after receipt of the decision by invoking administrative procedures meeting the standards of § 55, if available, or in the alternative by instituting legal action as provided in § 54.

B. If no bid bond was posted, a bidder refused withdrawal of a bid under the provisions of § 23, prior to appealing, shall deliver to the Institution a certified check or cash bond in the amount of the difference between the bid sought to be withdrawn and the next low bid. Such security shall be released only upon a final determination that the bidder was entitled to withdraw the bid.

C. If, upon appeal, it is determined that the decision refusing withdrawal of the bid was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid, the sole relief shall be withdrawal of the bid.

§ 49. Determination of nonresponsibility. -

A. Following public opening and announcement of bids received on an Invitation to Bid, the Institution shall evaluate the bids in accordance with element 4 of the definition of "Competitive sealed bidding" in § 4 of these Rules. At the same time, the Institution shall determine whether the apparent low bidder is responsible. If the Institution so determines, then it may proceed with an award in accordance with element 5 of the definition of "Competitive sealed bidding" in § 4. If the Institution determines that the apparent low bidder is not responsible, it shall proceed as follows:

1. Prior to the issuance of a written determination of nonresponsibility, the Institution shall (i) notify the apparent low bidder in writing of the results of the evaluation, (ii) disclose the factual support for the determination, and (iii) allow the apparent low bidder an opportunity to inspect any documents that relate to the determination, if so requested by the bidder within five business days after receipt of the notice.

2. Within 10 business days after receipt of the notice, the bidder may submit rebuttal information challenging the evaluation. The Institution shall issue its written determination of responsibility based on all information in the possession of the Institution, including any rebuttal information, within five business days of the date the Institution received the rebuttal information. At the same time, the Institution shall notify, with return receipt requested, the bidder in writing of its determination.

3. Such notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within 10 days after receipt of the notice by invoking administrative procedures meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting legal action as provided in § 54.

The provisions of this subsection shall not apply to procurements involving the prequalification of bidders and the rights of any potential bidders under such prequalification to appeal a decision that such bidders are not responsible.

B. If, upon appeal pursuant to § 54 or 55 of these Rules, it is determined that the decision of the Institution was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid, and the award of the contract in question has not been made, the sole relief shall be a finding that the bidder is a responsible bidder for the contract in question or directed award as provided in subsection A of § 54, or both.

If it is determined that the decision of the Institution was not an honest exercise of discretion, but rather was arbitrary or capricious or not in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid, and an award of the contract has been made, the relief shall be as set forth in subsection B of § 54 of these Rules.

C. A bidder contesting a determination that he is not a responsible bidder for a particular contract shall proceed under this section, and may not protest the award or proposed award under the provisions of § 50 of these Rules.

D. Nothing contained in this section shall be construed to require the Institution, when procuring by competitive negotiation, to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous.

§ 50. Protest of award or decision to award. -

A. Any bidder or offeror, who desires to protest the award or decision to award a contract shall submit the protest in writing to the Institution, or an official designated by the Institution, no later than 10 days after the award or the announcement of the decision to award, whichever occurs first. Public notice of the award or the announcement of the decision to award shall be given by the Institution in the manner prescribed in the terms or conditions of the Invitation to Bid or Request for Proposal. Any potential bidder or offeror on a contract negotiated on a sole source or emergency basis who desires to protest the award or decision to award such contract shall submit the protest in the same manner no later than 10 days after posting or publication of the notice of such contract as provided in § 5 of these

Rules. However, if the protest of any actual or potential bidder or offeror depends in whole or in part upon information contained in public records pertaining to the procurement transaction that are subject to inspection under § 34 of these Rules, then the time within which the protest shall be submitted shall expire 10 days after those records are available for inspection by such bidder or offeror under § 34, or at such later time as provided in this section. No protest shall lie for a claim that the selected bidder or offeror is not a responsible bidder or offeror. The written protest shall include the basis for the protest and the relief sought. The Institution or designated official shall issue a decision in writing within 10 days stating the reasons for the action taken. This decision shall be final unless the bidder or offeror appeals within 10 days of receipt of the written decision by invoking administrative procedures meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting legal action as provided in § 54. Nothing in this subsection shall be construed to permit a bidder to challenge the validity of the terms or conditions of the Invitation to Bid or Request for Proposal. The use of Alternative Dispute Resolution (ADR) shall constitute an administrative appeal procedure meeting the standards of § 55 of these Rules.

B. If prior to an award it is determined that the decision to award is arbitrary or capricious, then the sole relief shall be a finding to that effect. The Institution shall cancel the proposed award or revise it to comply with the law. If, after an award, it is determined that an award of a contract was arbitrary or capricious, then the sole relief shall be as hereinafter provided.

Where the award has been made but performance has not begun, the performance of the contract may be enjoined. Where the award has been made and performance has begun, the Institution may declare the contract void upon a finding that this action is in the best interest of the public. Where a contract is declared void, the performing contractor shall be compensated for the cost of performance up to the time of such declaration. In no event shall the performing contractor be entitled to lost profits.

C. Where the Institution, an official designated by it, or an appeals board determines, after a hearing held following reasonable notice to all bidders, that there is probable cause to believe that a decision to award was based on fraud or corruption or on an act in violation of these Rules, the Institution, designated official or appeals board may enjoin the award of the contract to a particular bidder.

§ 51. Effect of appeal upon contract. -

Pending final determination of a protest or appeal, the validity of a contract awarded and accepted in good faith in accordance with these Rules shall not be affected by the fact that a protest or appeal has been filed.

§ 52. Stay of award during protest. -

An award need not be delayed for the period allowed a bidder or offeror to protest, but in the event of a timely protest as provided in § 50 of these Rules, or the filing of a timely legal action as provided in § 54, no further action to award the contract shall be taken unless there is a written determination that proceeding without delay is necessary to protect the public interest or unless the bid or offer would expire.

§ 53. Contractual disputes. -

A. Contractual claims, whether for money or other relief, shall be submitted in writing no later than 60 days after final payment. However, written notice of the contractor's intention to file a claim shall be given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing herein shall preclude a contract from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of claims shall not delay payment of amounts agreed due in the final payment.

B. The Institution shall include in its contracts a procedure for consideration of contractual claims. Such procedure, which may be contained in the contract or may be specifically incorporated into the contract by reference and made available to the contractor, shall establish a time limit for a final decision in writing by the Institution. If the Institution has established administrative procedures meeting the standards of § 55 of these Rules, such procedures shall be contained in the contract or specifically incorporated in the contract by reference and made available to the contractor. The Institution may require the submission of contractual claims pursuant to any contract to Alternative Dispute Resolution (ADR) as an administrative procedure.

C. A contractor may not invoke administrative procedures meeting the standards of § 55 of these Rules, if available, or institute legal action as provided in § 54, prior to receipt of the Institution's decision on the claim, unless the Institution fails to render such decision within the time specified in the contract.

D. The decision of the Institution shall be final and conclusive unless the contractor appeals within six months of the date of the final decision on the claim by the Institution by invoking administrative procedures meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting legal action as provided in § 54.

§ 54. Legal actions. -

3134 A. A bidder or offeror, actual or prospective, who is refused permission or disqualified from
3135 participation in bidding or competitive negotiation, or who is determined not to be a responsible bidder
3136 or offeror for a particular contract, may bring an action in the appropriate circuit court challenging that
3137 decision, which shall be reversed only if the petitioner establishes that the decision was not (i) an honest
3138 exercise of discretion, but rather was arbitrary or capricious; (ii) in accordance with the Constitution of
3139 Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid; or (iii) in
3140 the case of denial of prequalification, based upon the criteria for denial of prequalification set forth in
3141 subsection B of § 14 of these Rules. In the event the apparent low bidder, having been previously
3142 determined by the Institution to be not responsible in accordance with § 4, is found by the court to be a
3143 responsible bidder, the court may direct the Institution to award the contract to such bidder in
3144 accordance with the requirements of this section and the Invitation to Bid.

3145 B. A bidder denied withdrawal of a bid under § 23 of these Rules may bring an action in the
3146 appropriate circuit court challenging that decision, which shall be reversed only if the bidder establishes
3147 that the decision of the Institution was not (i) an honest exercise of discretion, but rather was arbitrary
3148 or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation,
3149 or the terms or conditions of the Invitation to Bid.

3150 C. A bidder, offeror or contractor, or a potential bidder or offeror on a contract negotiated on a sole
3151 source or emergency basis in the manner provided in § 5 of these Rules, whose protest of an award or
3152 decision to award under § 50 of these Rules is denied, may bring an action in the appropriate circuit
3153 court challenging a proposed award or the award of a contract, which shall be reversed only if the
3154 petitioner establishes that the proposed award or the award is not (i) an honest exercise of discretion, but
3155 rather is arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state
3156 law or regulation, or the terms and conditions of the Invitation to Bid or Request for Proposal.

3157 D. If injunctive relief is granted, the court, upon request of the Institution, shall require the posting
3158 of reasonable security to protect the Institution.

3159 E. A contractor may bring an action involving a contract dispute with the Institution in the
3160 appropriate circuit court. Notwithstanding any other provision of law, the Comptroller shall not be
3161 named as a defendant in any action brought pursuant to these Rules or § 33.1-387 of the Code of
3162 Virginia, except for disputes involving contracts of the Office of the Comptroller or the Department of
3163 Accounts.

3164 F. A bidder, offeror or contractor need not utilize administrative procedures meeting the standards of
3165 § 55 of these Rules, if available, but if those procedures are invoked by the bidder, offeror or contractor,
3166 the procedures shall be exhausted prior to instituting legal action concerning the same procurement
3167 transaction unless the Institution agrees otherwise.

3168 G. Nothing herein shall be construed to prevent the Institution from instituting legal action against a
3169 contractor.

3170 § 55. Administrative appeals procedure. -

3171 A. The Institution may establish an administrative procedure for hearing (i) protests of a decision to
3172 award or an award, (ii) appeals from refusals to allow withdrawal of bids, (iii) appeals from
3173 disqualifications and determinations of nonresponsibility, and (iv) appeals from decisions on disputes
3174 arising during the performance of a contract, or (v) any of these. Such administrative procedure may
3175 include the use of Alternative Dispute Resolution (ADR) or shall provide for a hearing before a
3176 disinterested person or panel, the opportunity to present pertinent information and the issuance of a
3177 written decision containing findings of fact. The disinterested person or panel shall not be an employee
3178 of the governmental entity against whom the claim has been filed. The findings of fact shall be final
3179 and conclusive and shall not be set aside unless the same are (a) fraudulent, arbitrary or capricious; (b)
3180 so grossly erroneous as to imply bad faith; or (c) in the case of denial of prequalification, the findings
3181 were not based upon the criteria for denial of prequalification set forth in subsection B of § 14 of these
3182 Rules. No determination on an issue of law shall be final if appropriate legal action is instituted in a
3183 timely manner. The Institution may seek advice and input from the Alternative Dispute Resolution
3184 Council in establishing an Alternative Dispute Resolution (ADR) procedure.

3185 B. Any party to the administrative procedure, including the Institution, shall be entitled to institute
3186 judicial review if such action is brought within 30 days of receipt of the written decision.

3187 § 56. Alternative dispute resolution. -

3188 The Institution may enter into agreements to submit disputes arising from contracts entered into
3189 pursuant to these Rules to arbitration and utilize mediation and other alternative dispute resolution
3190 procedures. However, such procedures shall be nonbinding and subject to § 2.2-514 of the Code of
3191 Virginia, as applicable.

3192 § 57. Ethics in public contracting. -

3193 The Institution and its governing body, officers and employees shall be governed by the Ethics in
3194 Public Contracting provisions of the Virginia Public Procurement Act, Article 6 (§ 2.2-4367 et seq.) of
3195 Chapter 43 of Title 2.2 of the Code of Virginia.

EXHIBIT L

MANAGEMENT AGREEMENT
BETWEEN
THE COMMONWEALTH OF VIRGINIA
AND
THE COLLEGE OF WILLIAM AND MARY
PURSUANT TO
THE RESTRUCTURED HIGHER EDUCATION
FINANCIAL AND ADMINISTRATIVE OPERATIONS
ACT OF 2005

POLICY GOVERNING
FINANCIAL OPERATIONS AND MANAGEMENT

THE RECTOR AND BOARD OF VISITORS
OF THE COLLEGE OF WILLIAM AND MARY
POLICY GOVERNING FINANCIAL OPERATIONS AND MANAGEMENT

I. PREAMBLE.

The Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia, establishes by law a process for granting additional authority to institutions of higher education for financial operations and management, subject to the adoption of policies by their governing boards and the approval of management agreements to be negotiated with the Commonwealth.

The following provisions of this Policy constitute the adopted Board of Visitors policies regarding the College of William and Mary's financial operations and management.

This Policy is intended to cover the authority that may be granted to the College pursuant to Subchapter 3 of the Act. Any other powers and authorities granted to the College pursuant to the Appropriation Act, or any other sections of the Code of Virginia, including other provisions of the Act and the College's Enabling Legislation, are not affected by this Policy.

II. DEFINITIONS.

As used in this policy, the following terms shall have the following meanings, unless the context requires otherwise:

"Act" means the Restructured Higher Education Financial and Administrative Operations Act, Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia.

"Board of Visitors" or "Board" means the Rector and Board of Visitors of the College of William and Mary and the Virginia Institute of Marine Science.

"College" means the College of William and Mary (State Agency 204) and the Virginia Institute of Marine Science (State Agency 268).

"Covered Institution" means, on or after the Effective Date of its initial Management Agreement with the Commonwealth of Virginia, a public institution of higher education of the Commonwealth that has entered into a Management Agreement with the Commonwealth to be governed by the provisions of Subchapter 3 of the Act.

"Enabling Legislation" means those chapters, other than Chapter 4.10, of title 23 of the Code of Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and missions of the College.

"Effective Date" means the effective date of the initial Management Agreement between the College and the Commonwealth.

"Management Agreement" means the agreement required by subsection D of § 23-38.88 of the Act between the College and the Commonwealth of Virginia.

"State Tax Supported Debt" means bonds, notes or other obligations issued under Article X, Section 9(a), 9(b), or 9(c), or 9(d), if the debt service payments are made or ultimately are to be made from general government funds, as defined in the December 20, 2004 Report to the Governor and General Assembly of the Debt Capacity Advisory Committee or as that definition is amended from time to time.

III. SCOPE OF POLICY.

This Policy applies to the College's responsibility for management, investment and stewardship of all its financial resources, including but not limited to, general, non-general and private funds. This responsibility includes maintaining an independent uniform system of accounting, financial reporting, and internal controls adequate to protect and account for the College's financial resources.

The Virginia Institute of Marine Science (the Institute) shall receive the benefits of this Policy as it is implemented by the College on behalf of the Institute, but the Institute shall not receive any

3257 additional independent financial operations and management authority as a result of this Management
3258 Agreement beyond the independent financial operations and management authority that it had prior to
3259 the Effective Date of the College's initial Management Agreement with the Commonwealth or that it
3260 may be granted by law in the future.

3261 IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.

3262 The Board of Visitors of the College shall at all times be fully and ultimately accountable for the
3263 proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation
3264 of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant
3265 to its legally permissible procedures, specifically delegate either herein or by separate Board resolution
3266 the duties and responsibilities set forth in this Policy to a person or persons within the College, who,
3267 while continuing to be fully accountable for such duties and responsibilities, may further delegate the
3268 implementation of those duties and responsibilities pursuant to the College's usual delegation policies
3269 and procedures.

3270 V. FINANCIAL MANAGEMENT AND REPORTING SYSTEM.

3271 The President, or designee, shall continue to be authorized by the Board to maintain existing and
3272 implement new policies governing the management of College financial resources. These policies shall
3273 continue to (i) ensure compliance with Generally Accepted Accounting Principles, (ii) ensure consistency
3274 with the current accounting principles employed by the Commonwealth, including the use of fund
3275 accounting principles, with regard to the establishment of the underlying accounting records of the
3276 College and the allocation and utilization of resources within the accounting system, including the
3277 relevant guidance provided by the State Council of Higher Education for Virginia chart of accounts with
3278 regard to the allocation and proper use of funds from specific types of fund sources, (iii) provide
3279 adequate risk management and internal controls to protect and safeguard all financial resources,
3280 including moneys transferred to the College pursuant to a general fund appropriation, and ensure
3281 compliance with the requirements of the Appropriation Act.

3282 The financial management system shall continue to include a financial reporting system to satisfy
3283 both the requirements for inclusion into the Commonwealth's Comprehensive Annual Financial Report,
3284 as specified in the related State Comptroller's Directives, and the College's separately audited financial
3285 statements. To ensure observance of limitations and restrictions placed on the use of the resources
3286 available to the College, the accounting and bookkeeping system of the College shall continue to be
3287 maintained in accordance with the principles prescribed for governmental organizations by the
3288 Governmental Accounting Standards Board.

3289 In addition, the financial management system shall continue to provide financial reporting for the
3290 President, or designee, and the Board of Visitors to enable them to provide adequate oversight of the
3291 financial operations of the College. Upon the Effective Date of the initial Management Agreement
3292 between the College and the Commonwealth, except for the recordation of daily revenue deposits of
3293 State funds as specified in Section VII below, the College shall not be required to record its financial
3294 transactions in of the Commonwealth's Accounting and Reporting System ("CARS"), including the
3295 current monthly interfacing with CARS , or be a part of any subsequent Commonwealth financial
3296 systems that replace CARS or are in addition to CARS, but shall have its own financial reporting
3297 system. The College's financial reporting system shall provide (i) summary monthly reports for State
3298 agencies including, but not limited to, the Department of Accounts, the Department of Planning and
3299 Budget, the Joint Legislative Audit and Review Commission, the Auditor of Public Accounts, and the
3300 State Council of Higher Education for Virginia, and for the Chairmen of the Senate Committee on
3301 Finance and the House Committee on Appropriations at a sufficient level of detail, on such schedule,
3302 and using such format that is compatible with the Commonwealth's accounting system, as may be
3303 requested by the requesting State agency, and (ii) such other special reports as may be requested from
3304 time to time.

3305 VI. FINANCIAL MANAGEMENT POLICIES.

3306 The President, or designee, shall create and implement any and all financial management policies
3307 necessary to establish a financial management system with adequate risk management and internal
3308 control processes and procedures for the effective protection and management of all College financial
3309 resources. Such policies will not address the underlying accounting principles and policies employed by
3310 the Commonwealth and the College, but rather will focus on the internal operations of the College's
3311 financial management. These policies shall include, but need not be limited to, the development of a
3312 tailored set of finance and accounting practices that seek to support the College's specific business and
3313 administrative operating environment in order to improve the efficiency and effectiveness of its business
3314 and administrative functions. In general, the system of independent financial management policies shall
3315 be guided by the general principles contained in the Commonwealth's Accounting Policies and
3316 Procedures such as establishing strong risk management and internal accounting controls to ensure
3317 College financial resources are properly safeguarded and that appropriate stewardship of public funds is
3318 obtained through management's oversight of the effective and efficient use of such funds in the

performance of College programs.

Upon the Effective Date of its initial Management Agreement with the Commonwealth, the College shall continue to follow the Commonwealth's accounting policies until such time as specific alternate policies can be developed, approved and implemented. Such alternate policies shall include applicable accountability measures and shall be submitted to the State Comptroller for review and comment before they are implemented by the College.

VII. FINANCIAL RESOURCE RETENTION AND MANAGEMENT.

Under § 23-38.104(A)(i) of the Act, subject to applicable accountability measures and audits, the College shall have the power and authority to manage all monies received by it. All State general funds to be allocated to the College shall remain subject to the appropriations process.

Pursuant to subsection C of § 23-9.6:1.01 of the Code of Virginia, the State Council of Higher Education for Virginia (SCHEV) annually shall assess and certify to the Governor and General Assembly the degree to which each public institution of higher education of the Commonwealth has met the financial and administrative management and educational-related performance benchmarks called for by that subsection and approved as part of the Appropriation Act then in effect for the State goals and objectives set forth in subdivisions B 1 through B 11 of § 23-38.88 of the Act. Pursuant to § 2.2-5005 of the Code of Virginia, beginning with the fiscal year that immediately follows the first full fiscal year for which the financial and administrative management and educational-related performance benchmarks described in § 23-9.6:1.01 are effective, as provided in a general Appropriation Act, and for all fiscal years thereafter, each public institution of higher education of the Commonwealth that (i) has been certified during the fiscal year by SCHEV as having met such institutional performance benchmarks and (ii) meets the conditions prescribed in subsection B of § 23-38.88, shall receive certain financial incentives, including interest on the tuition and fees and other non-general fund Education and General Revenues deposited into the State Treasury by the public institution of higher education.

Consistent with the prior paragraph, beginning with the fiscal year following the first fiscal year for which it has received such certification from SCHEV, the College is authorized to hold and invest tuition, Educational and General (E&G) fees, research and sponsored program funds, auxiliary enterprise funds, and all other non-general fund revenues subject to the following requirements:

i) The College shall deposit such funds in the State Treasury pursuant to the State process in place at the time of such deposit;

ii) Such non-general funds deposited in the State Treasury shall be disbursed as provided in Section IX below;

iii) The College shall remit to the State Comptroller quarterly and the State Comptroller shall hold in escrow all interest earned on the College's tuition and fees and other non-general fund Educational and General Revenues. *Interest earned on the escrow account shall be deposited to the account.* Upon receipt of the required State Council of Higher Education for Virginia certification that the College has met such institutional performance benchmarks and the conditions prescribed in subsection B of § 23-38.88, the Governor shall include in the next budget bill a non-general fund appropriation, payable no later than July 1 of the immediately following fiscal year, equivalent to the amount deposited in the escrow account as the financial incentive provided in subdivision 1 of § 2.2-5005, after which time the College may expend the funds for purposes related to its mission. If public institutions of higher education of the Commonwealth are permitted, or the College in particular is permitted, by the Appropriation Act or other law to retain or be paid the interest the Commonwealth would have earned on sponsored programs and research funds, then this paragraph shall not apply to such interest on such funds, and such interest shall not be held in escrow.

iv) If in any given year the College does not receive the certification from the State Council of Higher Education for Virginia that it has met for that year the institutional benchmarks called for by subsection C of § 23-9.6:1.01 and approved in the then-current Appropriation Act, the Comptroller shall transfer to the general fund the balance in the escrow account as of June 30 of that year.

v) Beginning on the effective date of its initial Management Agreement with the College until the beginning of the first fiscal year following the fiscal year for which it has received the required certification from SCHEV, the College shall continue to deposit tuition and all other non-general funds with the State Treasurer by the same process that it would have been required to use if it had not entered into a Management Agreement with the Commonwealth.

vi) On the first business day of the first fiscal year following the fiscal year for which it has received the required certification from SCHEV, the College may draw down all cash balances held by the State Treasurer on behalf of the College related to tuition, E&G fees, research and sponsored programs, auxiliary enterprises, and all other non-general fund revenues.

vii) The Commonwealth shall retain all funds related to general fund appropriations, but shall pay these funds to the College as specified in Section IX below.

The College also shall have sum sufficient appropriation authority for all non-general funds as

3380 approved by the Governor and the General Assembly in the Commonwealth's biennial appropriations
3381 process, and shall report to the Department of Planning and Budget (i) its estimate of the non-general
3382 fund revenues for the sum sufficient appropriation to be included in the biennial Budget Bill for each of
3383 the two years in the next biennium by November 1 of each odd numbered year and the estimate to be
3384 included in the Budget Bill for the first and second year of the then-current biennium by November 1 of
3385 each even numbered year, and (ii) report its actual non-general fund revenues for each fiscal year to the
3386 Department of Planning and Budget by July 31 of the subsequent fiscal year.

3387 The Board of Visitors shall retain the authority to establish tuition, fee, room, board, and other
3388 charges, with appropriate commitment provided to need-based grant aid for middle- and lower-income
3389 undergraduate Virginians. Except as provided otherwise in the Appropriation Act then in effect, it is the
3390 intent of the Commonwealth and the College that the College shall be exempt from the revenue
3391 restrictions in the general provisions of the Appropriation Act related to non-general funds. In addition,
3392 unless prohibited by the Appropriation Act then in effect, it is the intent of the Commonwealth and the
3393 College that the College shall be entitled to retain non-general fund savings generated from changes in
3394 Commonwealth rates and charges, including but not limited to health, life, and disability insurance rates,
3395 retirement contribution rates, telecommunications charges, and utility rates, rather than reverting such
3396 savings back to the Commonwealth. This financial resource policy assists the College by providing the
3397 framework for retaining and managing non-general funds, for the receipt of general funds, and for the
3398 use and stewardship of all these funds.

3399 The President, or designee, shall continue to provide oversight of the College's cash management
3400 system which is the framework for the retention of non-general funds. The Internal Audit Department of
3401 the College shall periodically audit the College's cash management system in accordance with
3402 appropriate risk assessment models and make reports to the Audit Committee of the Board of Visitors.
3403 Additional oversight shall continue to be provided through the annual audit and assessment of internal
3404 controls performed by the Auditor of Public Accounts.

3405 For the receipt of general and non-general funds, the College shall conform to the Security for Public
3406 Deposits Act, Chapter 44 (§ 2.2-4400 et seq.) of Title 2.2 of the Code of Virginia, as it currently exists
3407 and from time to time may be amended.

3408 VIII. ACCOUNTS RECEIVABLE MANAGEMENT AND COLLECTION.

3409 The President, or designee, shall continue to be authorized to create and implement any and all
3410 Accounts Receivable Management and Collection policies as part of a system for the management of
3411 College financial resources. The policies shall be guided by the requirements of the Virginia Debt
3412 Collection Act, Chapter 48 (§ 2.2-4800 et seq.) of the Code of Virginia, such that the College shall take
3413 all appropriate and cost effective actions to aggressively collect accounts receivable in a timely manner.

3414 These shall include, but not be limited to, establishing the criteria for granting credit to College
3415 customers; establishing the nature and timing of collection procedures within the above general
3416 principles; and the independent authority to select and contract with collection agencies and, after
3417 consultation with the Office of the Attorney General, private attorneys as needed to perform any and all
3418 collection activities for all College accounts receivable such as reporting delinquent accounts to credit
3419 bureaus, obtaining judgments, garnishments, and liens against such debtors, and other actions. In
3420 accordance with sound collection activities, the College shall continue to utilize the Commonwealth's
3421 Debt Set Off Collection programs and procedures, shall develop procedures acceptable to the Tax
3422 Commissioner and the State Comptroller to implement such programs, and shall provide a quarterly
3423 summary report of receivables to the Department of Accounts in accordance with the reporting
3424 procedures established pursuant to the Virginia Debt Collection Act.

3425 IX. DISBURSEMENT MANAGEMENT.

3426 The President, or designee, shall continue to be authorized to create and implement any and all
3427 disbursement policies as part of a system for the management of College financial resources. The
3428 disbursement management policies shall continue to define the appropriate and reasonable uses of all
3429 funds, from whatever source derived, in the execution of the College's operations. These policies also
3430 shall continue to address the timing of appropriate and reasonable disbursements consistent with the
3431 Prompt Payment Act, and the appropriateness of certain goods or services relative to the College's
3432 mission, including travel-related disbursements. Further, the College's disbursement policy shall continue
3433 to provide for the mechanisms by which payments are made including the use of charge cards, warrants,
3434 and electronic payments. Since the College no longer will interface to the CARS system or any
3435 replacement for the CARS system for disbursements, the College shall establish its own mechanisms for
3436 electronic payments to vendors through Electronic Data Interchange (EDI) or similar process and
3437 payments to the Commonwealth's Debt Set Off Collection Programs.

3438 Beginning with the fiscal year after the first fiscal year for which it first receives the required
3439 certification from SCHEV, the College may draw down its general fund appropriations (subject to
3440 available cash) and tuition and E&G fees and other non-general fund revenues from the State Treasury.
3441 Such funds shall be available to the College for disbursement as provided in the then-current rules of the

Automated Clearing House (ACH) Network. The draw down of funds may be initiated in accordance with the following schedule:

i) The College may draw down one-twenty-fourth (1/24) of its annual general fund appropriation for Educational and General programs on *or about* the first and fifteenth days of each month *with adjustments as needed to meet short-term cash requirements associated with the Commonwealth's bimonthly pay dates*, and up to 50% of its annual general fund appropriation for Student Financial Assistance on or after September 1 of each year with the remaining 50% to be drawn on or after February 1 of each year in order to meet student obligations;

ii) The College may draw down the sum of all tuition and E&G fees and all other non-general revenues deposited to the State Treasury each day on the same business day they were deposited; and

iii) The College anticipates that expenditures could exceed available revenues from time to time during the year if the above disbursement schedule is used. When the College projects a cost deficit in activities supported by general fund appropriations, the College may make a request to the State Comptroller for an early draw on its appropriated general funds deposited in the State Treasury, in a form and within a timeframe agreeable to the parties, in order to cover expenditures.

These disbursement policies shall authorize the President, or designee, to independently select, engage, and contract for such consultants, accountants, and financial experts, and other such providers of expert advice and consultation, and, after consultation with the Office of the Attorney General, private attorneys, as may be necessary or desirable in his or her discretion. The policies also shall continue to include the ability to locally manage and administer the Commonwealth's credit card and cost recovery programs related to disbursements, subject to any restrictions contained in the Commonwealth's contracts governing those programs, provided that the College shall submit the credit card and cost recovery aspects of its financial and operations policies to the State Comptroller for review and comment prior to implementing those aspects of those policies. The disbursement policies shall ensure that adequate risk management and internal control procedures shall be maintained over previously decentralized processes for public records, payroll, and non-payroll disbursements. The College shall continue to provide summary quarterly prompt payment reports to the Department of Accounts in accordance with the reporting procedures established pursuant to the Prompt Payment Act.

The College's disbursement policies shall be guided by the principles of the Commonwealth's policies as included in the Commonwealth's Accounting Policy and Procedures Manual. Upon the Effective Date of its initial Management Agreement with the Commonwealth, the College shall continue to follow the Commonwealth's disbursement policies until such time as specific alternative policies can be developed, approved and implemented. Such alternate policies shall be submitted to the State Comptroller for review and comment prior to their implementation by the College.

X. DEBT MANAGEMENT.

The President, or designee, shall continue to be authorized to create and implement any and all debt management policies as part of a system for the management of College financial resources.

Pursuant to § 23-38.108(B) of the Act, the College shall have the authority to issue bonds, notes, or other obligations that do not constitute State Tax Supported Debt, as determined by the Treasury Board, and that are consistent with debt capacity and management policies and guidelines established by its Board of Visitors, without obtaining the consent of any legislative body, elected official, commission, board, bureau, or agency of the Commonwealth or of any political subdivision, and without any proceedings or conditions other than those specifically required by Subchapter 3 of the Act; provided that, the College shall notify the Treasurer of Virginia of its intention to issue bonds pursuant to this Policy at the time it adopts the bond issuance planning schedule for those bonds. Any new or revised debt capacity and management policy shall be submitted to the Treasurer of Virginia for review and comment prior to its adoption by the College.

The College recognizes that there are numerous types of financing structures and funding sources available each with specific benefits, risks, and costs. All potential funding sources shall be reviewed by the President, or designee, within the context of the overall portfolio to ensure that any financial product or structure is consistent with the College's objectives. Regardless of the financing structure(s) utilized, the President, or designee, shall obtain sufficient documentation to gain a full understanding of the transaction, including (i) the identification of potential risks and benefits, and (ii) an analysis of the impact on College creditworthiness and debt capacity. All such debt or financial products issued pursuant to the provisions of §§ 23.38-107 and 23.38-108 of the Act, shall be authorized by resolution of the Board of Visitors, providing that they do not constitute State Tax Supported Debt.

The College will establish guidelines relating to the total permissible amount of outstanding debt by monitoring College-wide ratios that measure debt compared to College balance-sheet resources and annual debt service burden. These measures will be monitored and reviewed regularly in light of the College's current strategic initiatives and expected debt requirements. The Board of Visitors shall periodically review and approve the College's debt capacity and debt management guidelines. Any

3503 change in the guidelines shall be submitted to the Treasurer of Virginia for review and comment prior to
3504 their adoption by the College.

3505 XI. INVESTMENT POLICY.

3506 It is the policy of the College to invest its operating and reserve funds solely in the interest of the
3507 College and in a manner that will provide the highest investment return with the maximum security
3508 while meeting daily cash flow demands and conforming to the Investment of Public Funds Act
3509 (§ 2.2-4500 et seq. of the Code of Virginia). Investments shall be made with the care, skill, prudence
3510 and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and
3511 familiar with such matters would use in the conduct of an enterprise of a like character and with like
3512 aims.

3513 Endowment investments shall be invested and managed in accordance with the Uniform Management
3514 of Institutional Funds Act, §§ 55-268.1 through 55-268.10, and § 23-76.1 of the Code of Virginia.

3515 The Board of Visitors shall periodically review and approve the investment guidelines governing the
3516 College's operating and reserve funds.

3517 XII. INSURANCE AND RISK MANAGEMENT.

3518 By July 1 of each odd-numbered year, the College shall inform the Secretary of Finance of any
3519 intent during the next biennium to withdraw from any insurance or risk management program made
3520 available to the College through the Commonwealth's Division of Risk Management and in which the
3521 College is then participating, to enable the Commonwealth to complete an adverse selection analysis of
3522 any such decision and to determine the additional costs to the Commonwealth that would result from
3523 any such withdrawal. If upon notice of such additional costs to the Commonwealth, the College
3524 proceeds to withdraw from the insurance or risk management program, the College shall reimburse the
3525 Commonwealth for all such additional costs attributable to such withdrawal, as determined by the
3526 Commonwealth's actuaries. Such payment shall be made in a manner agreeable to both the College and
3527 the Commonwealth.

3528 SECTION 4.3. Term of Agreement. This Management Agreement shall expire at midnight on June
3529 30, 20402012.

3530 EXHIBIT M

3531
3532 MANAGEMENT AGREEMENT
3533 BETWEEN
3534 THE COMMONWEALTH OF VIRGINIA
3535 AND

3536 THE UNIVERSITY OF VIRGINIA
3537 PURSUANT TO
3538 THE RESTRUCTURED HIGHER EDUCATION
3539 FINANCIAL AND ADMINISTRATIVE OPERATIONS
3540 ACT OF 2005

3541
3542 POLICY GOVERNING CAPITAL PROJECTS

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3544 THE RECTOR AND VISITORS OF THE UNIVERSITY OF VIRGINIA
3545 POLICY GOVERNING CAPITAL PROJECTS

3546 I. PREAMBLE.

3547 Chapters 995 and 933 of the 1996 Acts of Assembly (House Bill No. 884 and Senate Bill No. 389,
3548 respectively) delegated limited but significant autonomy to the University of Virginia to establish its
3549 own post-appropriation system for undertaking the implementation of non-general fund capital projects
3550 for the University of Virginia Medical Center. Similarly, § 4-5.08 of the 1996 Appropriation Act,
3551 delegated nearly identical limited autonomy to the University as a whole for non-general fund capital
3552 projects. Pursuant thereto, in 1996 the Board of Visitors adopted a Policy Statement Governing Exercise
3553 of Post-Appropriation Autonomy for Certain Non-General Fund Capital Projects (the Existing Policy
3554 Statement).

3555 The Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter
3556 4.10 of Title 23 of the Code of Virginia, provides that, upon becoming a Covered Institution, the
3557 University may be delegated the authority to establish its own system for undertaking the
3558 implementation of its capital projects. In general, status as a Covered Institution is designed to replace
3559 the post-authorization system of reviews, approvals, policies and procedures carried out by a variety of
3560 central State agencies, and also the traditional pre-authorization approval process for projects funded
3561 entirely with non-general funds and without any proceeds from State Tax Supported Debt. The
3562 University's system for carrying out its capital outlay process as a Covered Institution is to be governed
3563 by policies adopted by the Board of Visitors. The following provisions of this Policy, together with the
3564 Policy Governing the Procurement of Goods, Services, Insurance, and Construction, and the Disposition

of Surplus Materials adopted by the Board, and the Rules Governing Procurement of Goods, Services, Insurance, and Construction, which is attached as Attachment 1 to that Policy, constitute the adopted Board of Visitors policies regarding the University's capital projects, whether funded by a state general fund appropriation, State Tax Supported Debt, or funding from other sources.

This Policy is intended to encompass and implement the authority that may be granted to the University pursuant to Subchapter 3 of the Act. Any other powers and authorities granted to the University pursuant to the Appropriation Act, or any other sections of the Code of Virginia, including other provisions of the Act and the University's Enabling Legislation, are not affected by this Policy. In particular, other powers and authorities granted to the Medical Center by law, to the extent they exceed those granted to the University pursuant to Subchapter 3 of the Act, are not affected by this Policy.

II. DEFINITIONS.

As used in this policy, the following terms shall have the following meanings, unless the context requires otherwise:

"Academic Division" means that part of the University known as (State Agency 207).

"Act" means the Restructured Higher Education Financial and Administrative Operations Act, Chapter 4.10 of Title 23 of the Code of Virginia.

"Board of Visitors" or "Board" means the Rector and Visitors of the University of Virginia.

"Capital Lease" means a lease that is defined as such within Generally Accepted Accounting Principles pursuant to the pronouncement of the Financial Accounting Standards Board.

"Capital Professional Services" means professional engineering, architecture, land surveying and landscape architecture services related to capital projects.

"Capital project(s)" means the acquisition of any interest in land, including improvements on the acquired land at the time of acquisition, new construction, improvements or renovations, and Capital Leases.

"College" means that part of the University operated as the University of Virginia's College at Wise, also known as (State Agency 246).

"Covered Institution" means, on and after the Effective Date of its initial Management Agreement, a public institution of higher education of the Commonwealth of Virginia that has entered into a management agreement with the Commonwealth to be governed by the provisions of Subchapter 3 of the Act.

"Enabling Legislation" means those chapters, other than Chapter 4.10, of Title 23 of the Code of Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and missions of the individual public institutions of higher education of the Commonwealth, and as provided in §§ 2.2-2817.2, 2.2-2905, 51.1-126.3, and 51.1-1100 in the case of the Medical Center.

"Existing Policy Statement" means the Policy Statement Governing Exercise of Post-Appropriation Autonomy for Certain Non-General Fund Capital Projects adopted by the Board of Visitors in 1996.

"Major Capital Project(s)" means the acquisition of any interest in land, including improvements on the acquired land at the time of acquisition, new construction of 5,000 square feet or greater or costing \$1 million or more, improvements or renovations of \$1 million or more, and Capital Leases.

"Medical Center" means that part of the University consisting of the University of Virginia Medical Center (State Agency 209), and related health care and health maintenance facilities.

"State Tax Supported Debt" means bonds, notes or other obligations issued under Article X, Section 9(a), 9(b), or 9(c), or 9(d), if the debt service payments are made or ultimately are to be made from general government funds, as defined in the December 20, 2004 Report to the Governor and General Assembly of the Debt Capacity Advisory Committee or as that definition is amended from time to time.

"University" means the University of Virginia, consisting of the Academic Division, the College, and the Medical Center.

III. SCOPE OF POLICY.

This Policy applies to the planning and budget development for capital projects, capital project authorization, and the implementation of capital projects, whether funded by a general fund appropriation of the General Assembly, proceeds from State Tax Supported Debt, or funding from other sources.

This Policy provides guidance for 1) the process for developing one or more capital project programs for the University, 2) authorization of new capital projects, 3) procurement of Capital Professional Services and construction services, 4) design reviews and code approvals for capital projects, 5) environmental impact requirements, 6) building demolitions, 7) building and land acquisitions, 8) building and land dispositions, 9) project management systems, and 10) reporting requirements.

IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.

The Board of Visitors of the University shall at all times be fully and ultimately accountable for the proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant

3626 to its legally permissible procedures, specifically delegate either herein or by separate Board resolution
3627 the duties and responsibilities set forth in this Policy to a person or persons within the University, who,
3628 while continuing to be fully accountable for such duties and responsibilities, may further delegate the
3629 implementation of those duties and responsibilities pursuant to the University's usual delegation policies
3630 and procedures.

3631 V. CAPITAL PROGRAM.

3632 The President, acting through the Executive Vice President and Chief Operating Officer, shall adopt a
3633 system for developing one or more capital project programs that defines or define the capital needs of
3634 the University for a given period of time consistent with the University's published Master Plan. This
3635 process may or may not mirror the Commonwealth's requirements for capital plans. The Board of
3636 Visitors shall approve the program for Major Capital Projects. Major Capital Projects that are to be
3637 funded entirely or in part by a general fund appropriation of the General Assembly or proceeds from
3638 State Tax Supported Debt shall follow the Commonwealth's requirements for capital plans. The Board
3639 may approve amendments to the program for Major Capital Projects annually or more often if
3640 circumstances warrant.

3641 It shall be University policy that each capital project program shall meet the University's mission and
3642 institutional objectives, and be appropriately authorized by the University. Moreover, it shall be
3643 University policy that each capital project shall be of a size and scope to provide for the defined
3644 program needs, designed in accordance with all applicable building codes and handicapped accessibility
3645 standards as well as the University's design guidelines and standards, and costed to reflect current costs
3646 and escalated to the mid-point of anticipated construction.

3647 VI. AUTHORIZATION OF CAPITAL PROJECTS

3648 The Board of Visitors shall authorize the initiation of each Major Capital Project by approving its
3649 size, scope, budget, and funding. The President, acting through the Executive Vice President and Chief
3650 Operating Officer, shall adopt procedures for approving the size, scope, budget and funding of all other
3651 capital projects. Major Capital Projects that are to be funded entirely or in part by a general fund
3652 appropriation of the General Assembly or proceeds from State Tax Supported Debt, shall require both
3653 Board of Visitors approval and those pre-appropriation approvals of the State's governmental agencies
3654 then applicable, and shall follow the State's process for capital budget requests.

3655 It shall be the policy of the University that the implementation of capital projects shall be carried out
3656 so that the capital project as completed is the capital project approved by the Board for Major Capital
3657 Projects and according to the procedures adopted by the President, acting through the Executive Vice
3658 President and Chief Operating Officer, for all other capital projects. The President, acting through the
3659 Executive Vice President and Chief Operating Officer, shall ensure strict adherence to this requirement.

3660 Accordingly, the budget, size and scope of a capital project shall not be materially changed beyond
3661 the plans and justifications that were the basis for the capital project's approval, either before or during
3662 construction, unless approved in advance as described above. Minor changes shall be permissible if they
3663 are determined by the President, acting through the Executive Vice President and Chief Operating
3664 Officer, to be justified.

3665 Major Capital Projects may be submitted for Board of Visitors authorization at any time but must
3666 include a statement of urgency if not part of the approved Major Capital Project program.

3667 VII. PROCUREMENT OF CAPITAL PROFESSIONAL SERVICES AND CONSTRUCTION 3668 SERVICES.

3669 It shall be the policy of the University that procurements shall result in the purchase of high quality
3670 services and construction at reasonable prices and shall be consistent with the Policy Governing the
3671 Procurement of Goods, Services, Insurance, and Construction, and the Disposition of Surplus Materials
3672 adopted by the Board, and with the Rules Governing Procurement of Goods, Services, Insurance, and
3673 Construction, which is attached as Attachment 1 to that Policy. Specifically, the University is committed
3674 to:

3675 Seeking competition to the maximum practical degree, taking into account the size of the anticipated
3676 procurement, the term of the resulting contract and the likely extent of competition;

3677 Conducting all procurements in a fair and impartial manner and avoiding any impropriety or the
3678 appearance of any impropriety prohibited by State law or University policy;

3679 Making procurement rules clear in advance of any competition;

3680 Providing access to the University's business to all qualified vendors, firms and contractors, with no
3681 potential bidder or offeror excluded arbitrarily or capriciously, while allowing the flexibility to engage in
3682 cooperative procurements and to meet special needs of the University;

3683 Including in contracts of more than \$10,000 the contractor's agreement not to discriminate against
3684 employees or applicants because of race, religion, color, sex, national origin, age, disability or other
3685 basis prohibited by State law except where there is a bona fide occupational qualification reasonably
3686 necessary to the contractor's normal operations; and

3687 Providing for a non-discriminatory procurement process, and including appropriate and lawful

provisions to effectuate fair and reasonable consideration of women-owned, minority-owned and small businesses and to promote and encourage a diversity of suppliers.

The President, acting through the Executive Vice President and Chief Operating Officer, is authorized to develop implementing procedures for the procurement of Capital Professional Services and construction services at the University. The procedures shall implement this Policy and provide for:

A system of competitive negotiation for Capital Professional Services, including a procedure for expedited procurement of Capital Professional Services under \$50,000, pursuant to (i) subdivisions 1, 2, and 3 a of the defined term "competitive negotiation" in Rule 4 of the Rules Governing Procurement of Goods, Services, Insurance, and Construction, and (ii) § 4-5.06 of the 2004-2006 Appropriation Act;

A prequalification procedure for contractors or products;

A procedure for special construction contracting methods, including but not limited to design-build and construction management contracts; and

A prompt payment procedure.

The University also may enter into cooperative arrangements with other private or public health or educational institutions, healthcare provider alliances, purchasing organizations or state agencies where, in the judgment of the University, the purposes of this Policy will be furthered.

VIII. DESIGN REVIEWS AND CODE APPROVALS.

The Board of Visitors shall review the design of all Major Capital Projects and shall provide final Major Capital Project authorization based on the size, scope and cost estimate provided with the design. Unless stipulated by the Board of Visitors at the design review, no further design reviews shall be required. For all capital projects other than Major Capital Projects, the President, acting through the Executive Vice President and Chief Operating Officer, shall adopt procedures for design review and project authorization based on the size, scope and cost estimate provided with the design. It shall be the University's policy that all capital projects shall be designed and constructed in accordance with applicable Virginia Uniform Statewide Building Code (VUSBC) standards and the applicable accessibility code.

The President, acting through the Executive Vice President and Chief Operating Officer, shall designate a Building Official responsible for building code compliance by either (i) hiring an individual to be the University Building Official, or (ii) continuing to use the services of the Department of General Services, Division of Engineering and Buildings, to perform the Building Official function. If option (i) is selected, the individual hired as the University Building Official shall be a full-time employee, a registered professional architect or engineer, and certified by the Department of Housing and Community Development to perform this Building Official function. The University Building Official shall issue building permits for each capital project required by the VUSBC to have a building permit, and shall determine the suitability for occupancy of, and shall issue certifications for building occupancy for, all capital projects requiring such certification. Prior to issuing any such certification, this individual shall ensure that the VUSBC and accessibility requirements are met for that capital project and that such capital project has been inspected by the State Fire Marshal or his designee *as required*. When serving as the University Building Official, such individual shall organizationally report directly and exclusively to the Board of Visitors. If the University hires its own University Building Official, it shall fulfill the code review requirement by maintaining a review unit *of licensed professional architects or engineers supported by resources and staff* who are certified by the Department of Housing and Community Development in accordance with § 36-137 of the Code of Virginia, for such purpose and who shall review plans, specifications and documents for compliance with building codes and standards and perform required inspections of work in progress and the completed capital project. No individual licensed professional architect or engineer hired *under the University's personnel system as a member of the review unit or contracted with to perform these functions* shall also perform other building code-related design, construction, facilities-related project management or facilities management functions for the University ~~on the same capital project~~.

IX. ENVIRONMENTAL IMPACT REPORTS.

It shall be the policy of the University to assess the environmental, historic preservation, and conservation impacts of all capital projects and to minimize and otherwise mitigate all adverse impacts to the extent practicable. The University shall develop a procedure for the preparation and approval of environmental impact reports for capital projects, in accordance with State environmental, historic preservation, and conservation requirements generally applicable to capital projects otherwise meeting the definition of Major Capital Projects but, pursuant to § 23-38.109 C 1 of the Act, with a cost of \$300,000 or more.

X. BUILDING DEMOLITIONS.

It shall be the policy of the University to consider the environmental and historical aspects of any proposed demolitions. The Board of Visitors shall be responsible for approving demolition requests. The University shall develop a procedure for the preparation and review of demolition requests,

3749 including any necessary reviews by the Department of Historic Resources and the Art and Architectural
3750 Review Board in accordance with State historic preservation requirements generally applicable to capital
3751 projects in the Commonwealth. Further, for any property that was acquired or constructed with funding
3752 from a general fund appropriation of the General Assembly or from proceeds from State Tax Supported
3753 Debt, general laws applicable to State owned property shall apply.

3754 XI. BUILDING OR LAND ACQUISITIONS.

3755 It is the policy of the University that capital projects involving building or land acquisition shall be
3756 subjected to thorough inquiry and due diligence prior to closing on the acquisition of such real property.
3757 The President, acting through the Executive Vice President and Chief Operating Officer, shall ensure
3758 that the project management system implemented pursuant to Section XIII below provides for a review
3759 and analysis of all pertinent matters relating to the acquisition of buildings and land as any prudent
3760 purchaser would perform to the end that any building or land acquired by the University shall be
3761 suitable for its intended purpose, that the acquisition can be made without substantial risk of liability to
3762 the University and that the cost of the real property to be acquired, together with any contemplated
3763 development thereof, shall be such that compliance with the provisions of Section VI of this Policy is
3764 achieved. In addition, the President, acting through the Executive Vice President and Chief Operating
3765 Officer, shall ensure that, where feasible and appropriate to do so, the following specific policies
3766 pertaining to the acquisition of buildings or land for capital projects are carried out.

3767 A. Environmental and Land Use Considerations.

3768 It is the policy of the University to reasonably cooperate with each locality affected by the
3769 acquisition. Such cooperation shall include but not be limited to furnishing any information that the
3770 locality may reasonably request and reviewing any requests by the locality with regard to any such
3771 acquisition. The University shall consider the zoning and comprehensive plan designation by the locality
3772 of the building or land and surrounding parcels, as well as any designation by State or federal agencies
3773 of historically or archeologically significant areas on the land. Nothing herein shall be construed as
3774 requiring the University to comply with local zoning laws and ordinances.

3775 B. Infrastructure and Site Condition.

3776 The President, acting through the Executive Vice President and Chief Operating Officer, shall ensure
3777 that, in the case of capital projects involving the acquisition of buildings or land, the project
3778 management systems implemented under Section XIII below provide for a review of the following
3779 matters prior to acquisition of the building or land: that any land can be developed for its intended
3780 purpose without extraordinary cost; that an environmental engineer has been engaged by the University
3781 to provide an assessment of any environmental conditions on the land; that there is adequate vehicular
3782 ingress and egress to serve the contemplated use of the building or land; that utilities and other services
3783 to the land are adequate or can reasonably be provided or have been provided in the case of building
3784 acquisitions; and that the condition and grade of the soils have been examined to determine if any
3785 conditions exist that would require extraordinary site work or foundation systems.

3786 C. Title and Survey.

3787 A survey shall be prepared for any real property acquired, and an examination of title to the real
3788 property shall be conducted by a licensed attorney or, in the alternative, a commitment for title
3789 insurance shall be procured from a title insurance company authorized to do business in the
3790 Commonwealth. Based upon the survey and title examination or report, the President, acting through the
3791 Executive Vice President and Chief Operating Officer, shall conclude, prior to acquisition of the real
3792 property, that title thereto will be conveyed to the University in fee simple, free and clear of all liens,
3793 encumbrances, covenants, restrictions, easements or other matters that may have a significant adverse
3794 effect upon the University's ability to own, occupy, convey or develop the real property.

3795 D. Appraisal.

3796 An appraisal shall be conducted of the real property to be acquired to determine its fair market value
3797 and the consistency of the fair market value with the price agreed upon by the University.

3798 XII. BUILDING OR LAND DISPOSITIONS.

3799 The Board of Visitors shall approve the disposition of any building or land. Disposition of land or
3800 buildings, the acquisition or construction of which was funded entirely or in part by a general fund
3801 appropriation of the General Assembly or proceeds from State Tax Supported Debt, shall require both
3802 Board of Visitors approval and other approvals in accordance with general law applicable to
3803 State-owned property and with the University's Enabling Legislation.

3804 XIII. PROJECT MANAGEMENT SYSTEMS.

3805 The President, acting through the Executive Vice President and Chief Operating Officer, shall
3806 implement one or more systems for the management of capital projects for the University. The systems
3807 may include the delegation of project management authority to appropriate University officials, including
3808 a grant of authority to such officials to engage in further delegation of authority as the President, acting
3809 through the Executive Vice President and Chief Operating Officer, deems appropriate.

3810 The project management systems for capital projects shall be designed to ensure that such projects

comply with the provisions of this Policy and other Board of Visitors policies applicable to closely related subjects such as selection of architects or policies applicable to University buildings and grounds. The project management systems may include one or more reporting systems applicable to capital projects whereby University officials responsible for the management of such projects provide appropriate and timely reports to the President, acting through the Executive Vice President and Chief Operating Officer, on the status of such projects during construction.

XIV. REPORTING REQUIREMENTS.

In addition to complying with any internal reporting systems contained in the University's project management systems, as described in Section XIII above, the University shall comply with State reporting requirements for those Major Capital Projects funded entirely or in part by a general fund appropriation by the General Assembly or State Tax Supported Debt. Additionally, if any capital project constructs improvements on land, or renovates property, that originally was acquired or constructed in whole or in part with a general fund appropriation for that purpose or proceeds from State Tax Supported Debt, and such improvements or renovations are undertaken entirely with funds not appropriated by the General Assembly and, if the cost of such improvements or renovations is reasonably expected to exceed two million dollars, the decision to undertake such improvements or renovations shall be communicated as required by § 23-38.109 C 3 of the Act. As a matter of routine, the President, acting through the Executive Vice President and Chief Operating Officer, shall report to the Department of General Services on the status of such capital projects at the initiation of the project, prior to the commencement of construction, and at the time of acceptance of any such capital project.

ATTACHMENT 1

Rules Governing Procurement of Goods, Services, Insurance, and Construction by a Public Institution of Higher Education of the Commonwealth of Virginia Governed by Subchapter 3 of the

Restructured Higher Education Financial and Administrative Operations Act, Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia

In accordance with the provisions of the Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia, and in particular § 23-38.110 of the Act, the governing body of a public institution of higher education of the Commonwealth of Virginia that has entered into a Management Agreement with the Commonwealth pursuant to Subchapter 3 of the Act has adopted the following Rules Governing Procurement of Goods, Services, Insurance, and Construction to govern the procurement of goods, services, insurance, and construction by the Institution, excluding the University of Virginia Medical Center:

§ 1. Purpose. -

The purpose of these Rules is to enunciate the public policies pertaining to procurement of good, services, insurance, and construction by the Institution from nongovernmental sources, to include governmental procurement that may or may not result in monetary consideration for either party. These Rules shall apply whether the consideration is monetary or nonmonetary and regardless of whether the Institution, the contractor, or some third party is providing the consideration.

§ 2. Scope of Procurement Authority. -

Subject to these Rules, and the Institution's continued substantial compliance with the terms and conditions of its Management Agreement with the Commonwealth pursuant to § 23-38.88(D)(4) and the requirements of Chapter 4.10 of the Act, the Institution shall have and shall be authorized to have and exercise all of the authority relating to procurement of goods, services, insurance, and construction, including but not limited to capital outlay-related procurement and information technology-related procurement, that Institutions are authorized to exercise pursuant to Subchapter 3 of the Restructuring Act.

§ 3. Competition is the Priority. -

To the end that the Institution shall obtain high quality goods and services at reasonable cost, that all procurement procedures be conducted in an open, fair and impartial manner with avoidance of any impropriety or appearance of impropriety, that all qualified vendors have access to the Institution's business and that no offeror be arbitrarily or capriciously excluded, it is the intent of the governing body of the Institution that competition be sought to the maximum feasible degree, that procurement procedures involve openness and administrative efficiency, that individual public bodies enjoy broad flexibility in fashioning details of such competition, that the rules governing contract awards be made clear in advance of the competition, that specifications reflect the procurement needs of the purchasing body rather than being drawn to favor a particular vendor, and that the purchaser and vendor freely exchange information concerning what is sought to be procured and what is offered. The Institution may consider best value concepts when procuring goods and nonprofessional services, but not construction or professional services. Professional services will be procured using a qualification-based

3872 selection process. The criteria, factors, and basis for consideration of best value and the process for the
3873 consideration of best value shall be as stated in the procurement solicitation.

3874 § 4. Definitions. -

3875 As used in these Rules:

3876 "Affiliate" means an individual or business that controls, is controlled by, or is under common
3877 control with another individual or business. A person controls an entity if the person owns, directly or
3878 indirectly, more than 10% of the voting securities of the entity. For the purposes of this definition
3879 "voting security" means a security that (i) confers upon the holder the right to vote for the election of
3880 members of the board of directors or similar governing body of the business or (ii) is convertible into,
3881 or entitles the holder to receive, upon its exercise, a security that confers such a right to vote. A general
3882 partnership interest shall be deemed to be a voting security.

3883 "Best value," as predetermined in the solicitation, means the overall combination of quality, price,
3884 and various elements of required services that in total are optimal relative to the Institution's needs.

3885 "Business" means any type of corporation, partnership, limited liability company, association, or sole
3886 proprietorship operated for profit.

3887 "Competitive negotiation" is a method of contractor selection that includes the following elements:

3888 1. Issuance of a written Request for Proposal indicating in general terms that which is sought to be
3889 procured, specifying the factors that will be used in evaluating the proposal and containing or
3890 incorporating by reference the other applicable contractual terms and conditions, including any unique
3891 capabilities or qualifications that will be required of the contractor.

3892 2. Public notice of the Request for Proposal at least 10 days prior to the date set for receipt of
3893 proposals by publication in a newspaper or newspapers of general circulation in the area in which the
3894 contract is to be performed so as to provide reasonable notice to the maximum number of offerors that
3895 can be reasonably anticipated to submit proposals in response to the particular request. Public notice
3896 also shall be published on the Department of General Services' central electronic procurement website
3897 and may be published on other appropriate websites. In addition, proposals may be solicited directly
3898 from potential contractors.

3899 3. a. Procurement of professional services. The procurement of professional services for capital
3900 projects shall be conducted using a qualification-based selection process. The Institution shall engage in
3901 individual discussions with two or more offerors deemed fully qualified, responsible and suitable on the
3902 basis of initial responses and with emphasis on professional competence, to provide the required
3903 services. Repetitive informal interviews shall be permissible. The offerors shall be encouraged to
3904 elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project,
3905 as well as alternative concepts. The Request for Proposal shall not, however, request that offerors
3906 furnish estimates of man-hours or cost for services. At the discussion stage, the Institution may discuss
3907 nonbinding estimates of total project costs, including, but not limited to, life-cycle costing, and where
3908 appropriate, nonbinding estimates of price for services. Proprietary information from competing offerors
3909 shall not be disclosed to the public or to competitors. At the conclusion of discussion, outlined in this
3910 subdivision, on the basis of evaluation factors published in the Request for Proposal and all information
3911 developed in the selection process to this point, the Institution shall select in the order of preference two
3912 or more offerors whose professional qualifications and proposed services are deemed most meritorious.
3913 Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract satisfactory
3914 and advantageous to the Institution can be negotiated at a price considered fair and reasonable, the
3915 award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first shall be
3916 formally terminated and negotiations conducted with the offeror ranked second, and so on until such a
3917 contract can be negotiated at a fair and reasonable price. Should the Institution determine in writing and
3918 in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly
3919 qualified and suitable than the others under consideration, a contract may be negotiated and awarded to
3920 that offeror.

3921 A contract for architectural or professional engineering services relating to construction projects may
3922 be negotiated by the Institution, for multiple projects provided (i) the projects require similar experience
3923 and expertise, and (ii) the nature of the projects is clearly identified in the Request for Proposal. Under
3924 such contract, (a) the fair and reasonable prices, as negotiated, shall be used in determining the cost of
3925 each project performed, (b) the sum of all projects performed in one contract term shall be as set in the
3926 Request for Proposal; and (c) the project fee of any single project shall not exceed the term limit as set
3927 in the Request for Proposal. Any unused amounts from any contract term may be carried forward.
3928 Competitive negotiations for such contracts may result in awards to more than one offeror provided the
3929 Request for Proposal stated the potential for a multi-vendor award.

3930 Multiphase professional services contracts satisfactory and advantageous to the Institution for
3931 environmental, location, design and inspection work regarding construction of infrastructure projects may
3932 be negotiated and awarded based on qualifications at a fair and reasonable price for the first phase only,
3933 when completion of the earlier phases is necessary to provide information critical to the negotiation of a

fair and reasonable price for succeeding phases. Prior to the procurement of any such contract, the Institution shall state the anticipated intended total scope of the project and determine in writing that the nature of the work is such that the best interests of such Institution require awarding the contract.

b. Procurement of other than professional services. Selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals, on the basis of the factors involved in the Request for Proposal, including price if so stated in the Request for Proposal. Negotiations shall then be conducted with each of the offerors so selected. Price shall be considered, but need not be the sole determining factor. After negotiations have been conducted with each offeror so selected, the Institution shall select the offeror which, in its opinion, has made the best proposal, and shall award the contract to that offeror. When the terms and conditions of multiple awards are so provided in the Request for Proposal, awards may be made to more than one offeror. Should the Institution determine in writing and in its sole discretion that only one offeror has made the best proposal, a contract may be negotiated and awarded to that offeror.

"Competitive sealed bidding" is a method of contractor selection, other than for professional services, which includes the following elements:

1. Issuance of a written Invitation to Bid containing or incorporating by reference the specifications and contractual terms and conditions applicable to the procurement. Unless the Institution has provided for prequalification of bidders, the Invitation to Bid shall include a statement of any requisite qualifications of potential contractors. When it is impractical to prepare initially a purchase description to support an award based on prices, an Invitation to Bid may be issued requesting the submission of unpriced offers to be followed by an Invitation to Bid limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation.

2. Public notice of the Invitation to Bid at least 10 days prior to the date set for receipt of bids by publication on the Department of General Services' central electronic procurement website. Public notice also may be published in a newspaper of general circulation or on other appropriate websites, or both. In addition, bids may be solicited directly from potential contractors. Any additional solicitations shall include businesses selected from a list made available by the Department of Minority Business Enterprise.

3. Public opening and announcement of all bids received.

4. Evaluation of bids based upon the requirements set forth in the invitation, which may include special qualifications of potential contractors, life-cycle costing, value analysis, and any other criteria such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose, which are helpful in determining acceptability.

5. Award to the lowest responsive and responsible bidder. When the terms and conditions of multiple awards are so provided in the Invitation to Bid, awards may be made to more than one bidder.

"Construction" means building, altering, repairing, improving or demolishing any structure, building or highway, and any draining, dredging, excavation, grading or similar work upon real property.

"Construction management contract" means a contract in which a party is retained by the owner to coordinate and administer contracts for construction services for the benefit of the owner, and may also include, if provided in the contract, the furnishing of construction services to the owner.

"Covered Institution" or "Institution" means, on and after the effective date of the initial management agreement with the Commonwealth of Virginia, a public institution of higher education of the Commonwealth that has entered into a management agreement with the Commonwealth to be governed by the provisions of Subchapter 3 of the Restructuring Act.

"Design-build contract" means a contract between the Institution and another party in which the party contracting with the Institution agrees to both design and build the structure, roadway or other item specified in the contract.

"Goods" means all material, equipment, supplies, and printing, including information technology and telecommunications goods such as automated data processing hardware and software.

"Informality" means a minor defect or variation of a bid or proposal from the exact requirements of the Invitation to Bid, or the Request for Proposal, which does not affect the price, quality, quantity or delivery schedule for the goods, services or construction being procured.

"Multiphase professional services contract" means a contract for the providing of professional services where the total scope of work of the second or subsequent phase of the contract cannot be specified without the results of the first or prior phase of the contract.

"Nonprofessional services" means any services not specifically identified as professional services in the definition of professional services and includes small construction projects valued not over \$1 million; provided that subdivision 3a of the definition of "competitive negotiation" in this section shall still apply to professional services for such small construction projects.

"Potential bidder or offeror" for the purposes of §§ 50 and 54 of these Rules means a person who, at the time the Institution negotiates and awards or proposes to award a contract, is engaged in the sale or

3995 lease of goods, or the sale of services, insurance or construction, of the type to be procured under the
3996 contract, and who at such time is eligible and qualified in all respects to perform that contract, and who
3997 would have been eligible and qualified to submit a bid or proposal had the contract been procured
3998 through competitive sealed bidding or competitive negotiation.

3999 "Professional services" means work performed by an independent contractor within the scope of the
4000 practice of accounting, actuarial services, architecture, land surveying, landscape architecture, law,
4001 dentistry, medicine, optometry, pharmacy or professional engineering.

4002 "Public body" means any legislative, executive or judicial body, agency, office, department, authority,
4003 post, commission, committee, institution, board or political subdivision created by law to exercise some
4004 sovereign power or to perform some governmental duty, and empowered by law to undertake the
4005 activities described in these Rules.

4006 "Public contract" means an agreement between the Institution and a nongovernmental source that is
4007 enforceable in a court of law.

4008 "Responsible bidder" or "offeror" means a person who has the capability, in all respects, to perform
4009 fully the contract requirements and the moral and business integrity and reliability that will assure good
4010 faith performance, and who has been prequalified, if required.

4011 "Responsive bidder" means a person who has submitted a bid that conforms in all material respects
4012 to the Invitation to Bid.

4013 "Restructuring Act" or "Act" means the Restructured Higher Education Financial and Administrative
4014 Operations Act, Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia.

4015 "Rules" means these Rules Governing Procurement of Goods, Services, Insurance, and Construction
4016 adopted by the governing body of the Covered Institution.

4017 "Reverse auctioning" means a procurement method wherein bidders are invited to bid on specified
4018 goods or nonprofessional services through real-time electronic bidding, with the award being made to
4019 the lowest responsive and responsible bidder. During the bidding process, bidders' prices are revealed
4020 and bidders shall have the opportunity to modify their bid prices for the duration of the time period
4021 established for bid opening.

4022 "Services" means any work performed by an independent contractor wherein the service rendered
4023 does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials
4024 and supplies.

4025 "Sheltered workshop" means a work-oriented rehabilitative facility with a controlled working
4026 environment and individual goals that utilizes work experience and related services for assisting the
4027 handicapped person to progress toward normal living and a productive vocational status.

4028 § 5. Methods of procurement. -

4029 A. All public contracts with nongovernmental contractors for the purchase or lease of goods, or for
4030 the purchase of services, insurance, or construction, shall be awarded after competitive sealed bidding, or
4031 competitive negotiation as provided in this section, unless otherwise authorized by law.

4032 B. Professional services shall be procured by competitive negotiation. Qualification-based selection
4033 shall be used for design services.

4034 C. Goods, services, or insurance may be procured by competitive negotiation.

4035 D. Construction may be procured only by competitive sealed bidding, except that competitive
4036 negotiation may be used in the following instances upon a determination made in advance by the
4037 Institution and set forth in writing that competitive sealed bidding is either not practicable or not fiscally
4038 advantageous to the public, which writing shall document the basis for this determination:

4039 1. By the Institution on a fixed price design-build basis or construction management basis under § 7;

4040 2. By the Institution for the construction, alteration, repair, renovation or demolition of buildings; or

4041 3. By the Institution for the construction of highways and any draining, dredging, excavation,
4042 grading or similar work upon real property.

4043 E. Upon a determination in writing that there is only one source practicably available for that which
4044 is to be procured, a contract may be negotiated and awarded to that source without competitive sealed
4045 bidding or competitive negotiation. The writing shall document the basis for this determination. The
4046 Institution shall issue a written notice stating that only one source was determined to be practicably
4047 available, and identifying that which is being procured, the contractor selected, and the date on which
4048 the contract was or will be awarded. This notice shall be posted in a designated public area, which may
4049 be the Department of General Services' website for the Commonwealth's central electronic procurement
4050 system, or published in a newspaper of general circulation on the day the Institution awards or
4051 announces its decision to award the contract, whichever occurs first. Public notice shall also be
4052 published on the Department of General Services' website for the Commonwealth's central electronic
4053 procurement system and may be published on other appropriate websites.

4054 F. In case of emergency, a contract may be awarded without competitive sealed bidding or
4055 competitive negotiation; however, such procurement shall be made with such competition as is
4056 practicable under the circumstances. A written determination of the basis for the emergency and for the

selection of the particular contractor shall be included in the contract file. The Institution shall issue a written notice stating that the contract is being awarded on an emergency basis, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted in a designated public area, which may be the Department of General Services' website for the Commonwealth's central electronic procurement system, or published in a newspaper of general circulation on the day the Institution awards or announces its decision to award the contract, whichever occurs first, or as soon thereafter as is practicable. Public notice may also be published on the Department of General Services' website for the Commonwealth's central electronic procurement system and other appropriate websites.

G. The Institution may establish purchase procedures, if adopted in writing, not requiring competitive sealed bids or competitive negotiation for single or term contracts for goods and services other than professional services if the aggregate or the sum of all phases is not expected to exceed \$50,000; however, such small purchase procedures shall provide for competition wherever practicable.

H. The Institution may establish purchase procedures, if adopted in writing, not requiring competitive negotiation for single or term contracts for professional services if the aggregate or the sum of all phases is not expected to exceed \$50,000; however such small purchase procedures shall provide for competition wherever practicable.

I. Upon a determination made in advance by the Institution and set forth in writing that the purchase of goods, products or commodities from a public auction sale is in the best interests of the public, such items may be purchased at the auction, including online public auctions. The writing shall document the basis for this determination.

J. The purchase of goods or nonprofessional services, but not construction or professional services, may be made by reverse auctioning.

§ 6. Cooperative procurement. -

A. In circumstances where the Institution determines and documents that statewide contracts for goods and services, including information technology and telecommunications goods and services, do not provide goods and services to the Institution that meet its business goals and objectives, the Institution is authorized to participate in, sponsor, conduct, or administer a cooperative procurement arrangement on behalf of or in conjunction with public bodies, public or private health or educational institutions, other public or private organizations or entities, including public-private partnerships, charitable organizations, health care provider alliances or purchasing organizations or entities, or with public agencies or institutions or group purchasing organizations of the several states, territories of the United States, or the District of Columbia, for the purpose of combining requirements to effect cost savings or reduce administrative expense in any acquisition of goods and services, other than professional services. The Institution may purchase from any authority, department, agency, institution, city, county, town, or other political subdivision of the Commonwealth's contract even if it did not participate in the request for proposal or invitation to bid, if the request for proposal or invitation to bid specified that the procurement was being conducted on behalf of other public bodies. In such instances, deviation from the procurement procedures set forth in these Rules and the administrative policies and procedures established to implement these Rules shall be permitted. Notwithstanding all of the above, use of cooperative contracts shall conform to the business requirements of the Commonwealth's electronic procurement system, including the requirement for payment of applicable fees. Nothing herein shall prohibit the payment by direct or indirect means of any administrative fee that will allow for participation in any such arrangement.

B. In circumstances where statewide contracts for goods and services, including information technology and telecommunications goods and services, do not provide goods and services to meet the Institution's business goals and objectives, and as authorized by the United States Congress and consistent with applicable federal regulations, and provided the terms of the contract permit such purchases:

1. The Institution may purchase goods and nonprofessional services, from a United States General Services Administration contract or a contract awarded by any other agency of the United States government; and

2. The Institution may purchase telecommunications and information technology goods and nonprofessional services from a United States General Services Administration contract or a contract awarded by any other agency of the United States government.

§ 7. Design-build or construction management contracts authorized. -

A. Notwithstanding any other provisions of law, the Institution may enter into contracts on a fixed price design-build basis or construction management basis in accordance with the provisions of this section.

B. Procurement of construction by the design-build or construction management method shall be a two-step competitive negotiation process. In the first step, offerors shall be requested to submit their

4118 qualifications. Based upon the information submitted and any other relevant information which the
4119 Commonwealth may obtain, no more than five offerors deemed most suitable for the project shall be
4120 selected by the Commonwealth and requested to submit proposals.

4121 § 8. Modification of the contract. -

4122 A. A contract awarded by the Institution may include provisions for modification of the contract
4123 during performance, but no fixed-price contract may be increased by more than 25% of the amount of
4124 the contract or \$50,000, whichever is greater, without the advance written approval of the Institution's
4125 president or his designee. In no event may the amount of any contract, without adequate consideration,
4126 be increased for any purpose, including, but not limited to, relief of an offeror from the consequences of
4127 an error in its bid or offer.

4128 B. The Institution may extend the term of an existing contract for services to allow completion of
4129 any work undertaken but not completed during the original term of the contract.

4130 C. Nothing in this section shall prevent the Institution from placing greater restrictions on contract
4131 modifications.

4132 § 9. Discrimination prohibited; participation of small, women- and minority-owned business. -

4133 A. In the solicitation or awarding of contracts, the Institution shall not discriminate against a bidder
4134 or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis
4135 prohibited by state law relating to discrimination in employment. Whenever solicitations are made, the
4136 Institution shall include businesses selected from a list made available by the Department of Minority
4137 Business Enterprise.

4138 B. The Institution shall establish programs consistent with this section to facilitate the participation
4139 of small businesses and businesses owned by women and minorities in procurement transactions. The
4140 programs established shall be in writing and shall include cooperation with the Department of Minority
4141 Business Enterprise, the United States Small Business Administration, and other public or private
4142 agencies. The Institution shall submit annual progress reports on minority business procurement to the
4143 Department of Minority Business Enterprise.

4144 C. Whenever there exists (i) a rational basis for small business enhancement or (ii) a persuasive
4145 analysis that documents a statistically significant disparity between the availability and utilization of
4146 women- and minority-owned businesses, the Governor is by law authorized and encouraged to require
4147 the Institution to implement appropriate enhancement or remedial measures consistent with prevailing
4148 law.

4149 D. In the solicitation or awarding of contracts, the Institution shall not discriminate against a bidder
4150 or offeror because the bidder or offeror employs ex-offenders unless it has made a written determination
4151 that employing ex-offenders on the specific contract is not in its best interest.

4152 § 10. Employment discrimination by contractor prohibited; required contract provisions. -

4153 The Institution shall include in every contract of more than \$10,000 the following provisions:

4154 1. During the performance of this contract, the contractor agrees as follows:

4155 a. The contractor will not discriminate against any employee or applicant for employment because of
4156 race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to
4157 discrimination in employment, except where there is a bona fide occupational qualification reasonably
4158 necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places,
4159 available to employees and applicants for employment, notices setting forth the provisions of this
4160 nondiscrimination clause.

4161 b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the
4162 contractor, will state that such contractor is an equal opportunity employer.

4163 c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation
4164 shall be deemed sufficient for the purpose of meeting the requirements of this section.

4165 2. The contractor will include the provisions of the foregoing paragraphs a, b and c in every
4166 subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each
4167 subcontractor or vendor.

4168 § 11. Drug-free workplace to be maintained by contractor; required contract provisions. -

4169 The Institution shall include in every contract over \$10,000 the following provisions:

4170 During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace
4171 for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for
4172 employment, a statement notifying employees that the unlawful manufacture, sale, distribution,
4173 dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's
4174 workplace and specifying the actions that will be taken against employees for violations of such
4175 prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the
4176 contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the
4177 foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be
4178 binding upon each subcontractor or vendor.

4179 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 in accordance with these Rules, 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.

§ 12. Use of brand names. -

Unless otherwise provided in the Invitation to Bid, the name of a certain brand, make or manufacturer shall not restrict bidders to the specific brand, make or manufacturer named and shall be deemed to convey the general style, type, character, and quality of the article desired. Any article that the Institution in its sole discretion determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted.

§ 13. Comments concerning specifications. -

The Institution shall establish procedures whereby comments concerning specifications or other provisions in Invitations to Bid or Requests for Proposal can be received and considered prior to the time set for receipt of bids or proposals or award of the contract.

§ 14. Prequalification generally; prequalification for construction. -

A. Prospective contractors may be prequalified for particular types of supplies, services, insurance or construction, and consideration of bids or proposals limited to prequalified contractors. Any prequalification procedure shall be established in writing and sufficiently in advance of its implementation to allow potential contractors a fair opportunity to complete the process.

B. Any prequalification of prospective contractors for construction by the Institution shall be pursuant to a prequalification process for construction projects adopted by the Institution. The process shall be consistent with the provisions of this section.

The application form used in such process shall set forth the criteria upon which the qualifications of prospective contractors will be evaluated. The application form shall request of prospective contractors only such information as is appropriate for an objective evaluation of all prospective contractors pursuant to such criteria. The form shall allow the prospective contractor seeking prequalification to request, by checking the appropriate box, that all information voluntarily submitted by the contractor pursuant to this subsection shall be considered a trade secret or proprietary information subject to the provisions of subsection D of § 34 of these Rules.

In all instances in which the Institution requires prequalification of potential contractors for construction projects, advance notice shall be given of the deadline for the submission of prequalification applications. The deadline for submission shall be sufficiently in advance of the date set for the submission of bids for such construction so as to allow the procedures set forth in this subsection to be accomplished.

At least 30 days prior to the date established for submission of bids or proposals under the procurement of the contract for which the prequalification applies, the Institution shall advise in writing each contractor who submitted an application whether that contractor has been prequalified. In the event that a contractor is denied prequalification, the written notification to the contractor shall state the reasons for the denial of prequalification and the factual basis of such reasons.

A decision by the Institution denying prequalification under the provisions of this subsection shall be final and conclusive unless the contractor appeals the decision as provided in § 54 of these Rules.

C. The Institution may deny prequalification to any contractor only if the Institution finds one of the following:

1. The contractor does not have sufficient financial ability to perform the contract that would result from such procurement. If a bond is required to ensure performance of a contract, evidence that the contractor can acquire a surety bond from a corporation included on the United States Treasury list of acceptable surety corporations in the amount and type required by the Institution shall be sufficient to establish the financial ability of the contractor to perform the contract resulting from such procurement;

2. The contractor does not have appropriate experience to perform the construction project in question;

3. The contractor or any officer, director or owner thereof has had judgments entered against him within the past 10 years for the breach of contracts for governmental or nongovernmental construction, including, but not limited to, design-build or construction management;

4. The contractor has been in substantial noncompliance with the terms and conditions of prior construction contracts with the Institution without good cause. If the Institution has not contracted with a contractor in any prior construction contracts, the Institution may deny prequalification if the contractor has been in substantial noncompliance with the terms and conditions of comparable construction contracts with another public body without good cause. The Institution may not utilize this provision to deny prequalification unless the facts underlying such substantial noncompliance were documented in writing in the prior construction project file and such information relating thereto given to the contractor at that time, with the opportunity to respond;

4241 5. The contractor or any officer, director, owner, project manager, procurement manager or chief
4242 financial official thereof has been convicted within the past 10 years of a crime related to governmental
4243 or nongovernmental construction or contracting, including, but not limited to, a violation of (i) Article 6
4244 (§ 2.2-4367 et seq.) of Chapter 43 of Title 2.2 of the Code of Virginia, (ii) the Virginia Governmental
4245 Frauds Act (§ 18.2-498.1 et seq.), (iii) Chapter 4.2 (§ 59.1-68.6 et seq.) of Title 59.1, or (iv) any
4246 substantially similar law of the United States or another state;

4247 6. The contractor or any officer, director or owner thereof is currently debarred pursuant to an
4248 established debarment procedure from bidding or contracting by any public body, agency of another
4249 state or agency of the federal government; and

4250 7. The contractor failed to provide to the Institution in a timely manner any information requested
4251 by the Institution relevant to subdivisions 1 through 6 of this subsection.

4252 § 15. Negotiation with lowest responsible bidder. -

4253 Unless canceled or rejected, a responsive bid from the lowest responsible bidder shall be accepted as
4254 submitted, except that if the bid from the lowest responsible bidder exceeds available funds, the
4255 Institution may negotiate with the apparent low bidder to obtain a contract price within available funds.
4256 However, the negotiation may be undertaken only under conditions and procedures described in writing
4257 and approved by the Institution prior to issuance of the Invitation to Bid and summarized therein.

4258 § 16. Cancellation, rejection of bids; waiver of informalities. -

4259 A. An Invitation to Bid, a Request for Proposal, any other solicitation, or any and all bids or
4260 proposals, may be canceled or rejected. The reasons for cancellation or rejection shall be made part of
4261 the contract file. The Institution shall not cancel or reject an Invitation to Bid, a Request for Proposal,
4262 any other solicitation, bid or proposal pursuant to this section solely to avoid awarding a contract to a
4263 particular responsive and responsible bidder or offeror.

4264 B. The Institution may waive informalities in bids.

4265 § 17. Exclusion of insurance bids prohibited. -

4266 Notwithstanding any other provision of law, no insurer licensed to transact the business of insurance
4267 in the Commonwealth or approved to issue surplus lines insurance in the Commonwealth shall be
4268 excluded from presenting an insurance bid proposal to the Institution in response to a request for
4269 proposal or an invitation to bid. Nothing in this section shall preclude the Institution from debarring a
4270 prospective insurer pursuant to § 18.

4271 § 18. Debarment. -

4272 Prospective contractors may be debarred from contracting for particular types of supplies, services,
4273 insurance or construction, for specified periods of time. Any debarment procedure shall be established in
4274 writing by the Institution. Any debarment procedure may provide for debarment on the basis of a
4275 contractor's unsatisfactory performance for the Institution.

4276 § 19. Purchase programs for recycled goods; Institution responsibilities. -

4277 A. The Institution may implement a purchase program for recycled goods and may coordinate its
4278 efforts so as to achieve the goals and objectives set forth in §§ 10.1-1425.6, 10.1-1425.7, and
4279 10.1-1425.8 of the Code of Virginia, and §§ 20 and 22 of these Rules.

4280 B. The Department of Environmental Quality, with advice from the Virginia Recycling Markets
4281 Development Council, shall advise the Institution concerning the designation of recycled goods.

4282 § 20. Preference for Virginia products with recycled content and for Virginia firms. -

4283 A. In the case of a tie bid, preference shall be given to goods produced in Virginia, goods or
4284 services or construction provided by Virginia persons, firms or corporations; otherwise the tie shall be
4285 decided by lot.

4286 B. Whenever any bidder is a resident of any other state and such state under its laws allows a
4287 resident contractor of that state a preference, a like preference may be allowed by the Institution to the
4288 lowest responsive and responsible bidder who is a resident of Virginia.

4289 C. Notwithstanding the provisions of subsections A and B, in the case of a tie bid in instances where
4290 goods are being offered, and existing price preferences have already been taken into account, preference
4291 shall be given to the bidder whose goods contain the greatest amount of recycled content.

4292 § 21. Preference for Virginia coal used in the Institution. -

4293 In determining the award of any contract for coal to be purchased for use in the Institution with state
4294 funds, the Institution shall procure using competitive sealed bidding and shall award to the lowest
4295 responsive and responsible bidder offering coal mined in Virginia so long as its bid price is not more
4296 than 4% greater than the bid price of the low responsive and responsible bidder offering coal mined
4297 elsewhere.

4298 § 22. Preference for recycled paper and paper products used by the Institution. -

4299 A. In determining the award of any contract for paper and paper products to be purchased for use
4300 by the Institution, it shall competitively procure recycled paper and paper products of a quality suitable
4301 for the purpose intended, so long as the price is not more than 10% greater than the price of the low
4302 responsive and responsible bidder or offeror offering a product that does not qualify under subsection B.

B. For purposes of this section, recycled paper and paper products means any paper or paper products meeting the EPA Recommended Content Standards as defined in 40 C.F.R. Part 247.

§ 23. Withdrawal of bid due to error. -

A. A bidder for a public construction contract, other than a contract for construction or maintenance of public highways, may withdraw his bid from consideration if the price bid was substantially lower than the other bids due solely to a mistake in the bid, provided the bid was submitted in good faith, and the mistake was a clerical mistake as opposed to a judgment mistake, and was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn.

If a bid contains both clerical and judgment mistakes, a bidder may withdraw his bid from consideration if the price bid would have been substantially lower than the other bids due solely to the clerical mistake, that was an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid that shall be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn.

One of the following procedures for withdrawal of a bid shall be selected by the Institution and stated in the advertisement for bids: (i) the bidder shall give notice in writing of his claim of right to withdraw his bid within two business days after the conclusion of the bid opening procedure and shall submit original work papers with such notice; or (ii) the bidder shall submit to the Institution or designated official his original work papers, documents and materials used in the preparation of the bid within one day after the date fixed for submission of bids. The work papers shall be delivered by the bidder in person or by registered mail at or prior to the time fixed for the opening of bids. In either instance, the work papers, documents and materials may be considered as trade secrets or proprietary information subject to the conditions of subsection F of § 34 of these Rules. The bids shall be opened one day following the time fixed by the Institution for the submission of bids. Thereafter, the bidder shall have two hours after the opening of bids within which to claim in writing any mistake as defined herein and withdraw his bid. The contract shall not be awarded by the Institution until the two-hour period has elapsed. The mistake shall be proved only from the original work papers, documents and materials delivered as required herein.

B. The Institution may establish procedures for the withdrawal of bids for other than construction contracts.

C. No bid shall be withdrawn under this section when the result would be the awarding of the contract on another bid of the same bidder or of another bidder in which the ownership of the withdrawing bidder is more than 5%.

D. If a bid is withdrawn in accordance with this section, the lowest remaining bid shall be deemed to be the low bid.

E. No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid was submitted.

F. If the Institution denies the withdrawal of a bid under the provisions of this section, it shall notify the bidder in writing stating the reasons for its decision and award the contract to such bidder at the bid price, provided such bidder is a responsible and responsive bidder.

§ 24. Contract Pricing Arrangements. -

A. Public contracts may be awarded on a fixed price or cost reimbursement basis, or on any other basis that is not prohibited by these Rules.

B. Except in case of emergency affecting the public health, safety or welfare, no public contract shall be awarded on the basis of cost plus a percentage of cost.

C. A policy or contract of insurance or prepaid coverage having a premium computed on the basis of claims paid or incurred, plus the insurance carrier's administrative costs and retention stated in whole or part as a percentage of such claims, shall not be prohibited by this section.

§ 25. Workers' compensation requirements for construction contractors and subcontractors. -

A. No contractor shall perform any work on a construction project of the Institution unless he (i) has obtained, and continues to maintain for the duration of the work, workers' compensation coverage required pursuant to the provisions of Chapter 8 (§ 65.2-800 et seq.) of Title 65.2 of the Code of Virginia, and (ii) provides prior to the award of contract, on a form furnished by the Institution, evidence of such coverage.

B. The Department of General Services shall provide the form to the Institution. Failure of the Institution to provide the form prior to the award of contract shall waive the requirements of clause (ii)

4364 of subsection A.

4365 C. No subcontractor shall perform any work on a construction project of the Institution unless he
4366 has obtained, and continues to maintain for the duration of such work, workers' compensation coverage
4367 required pursuant to the provisions of Chapter 8 (§ 65.2-800 et seq.) of Title 65.2 of the Code of
4368 Virginia.

4369 § 26. Retainage on construction contracts. -

4370 A. In any contract issued by the Institution for construction that provides for progress payments in
4371 installments based upon an estimated percentage of completion, the contractor shall be paid at least 95%
4372 of the earned sum when payment is due, with no more than 5% being retained to ensure faithful
4373 performance of the contract. All amounts withheld may be included in the final payment.

4374 B. Any subcontract for a public project that provides for similar progress payments shall be subject
4375 to the provisions of this section.

4376 § 27. Public construction contract provisions barring damages for unreasonable delays declared void.

4377 -
4378 A. Any provision contained in any public construction contract of the Institution that purports to
4379 waive, release, or extinguish the rights of a contractor to recover costs or damages for unreasonable
4380 delay in performing such contract, either on his behalf or on behalf of his subcontractor if and to the
4381 extent the delay is caused by acts or omissions of the Institution, its agents or employees and due to
4382 causes within their control shall be void and unenforceable as against public policy.

4383 B. Subsection A shall not be construed to render void any provision of a public construction
4384 contract awarded by the Institution that:

4385 1. Allows the recovery of that portion of delay costs caused by the acts or omissions of the
4386 contractor, or its subcontractors, agents or employees;

4387 2. Requires notice of any delay by the party claiming the delay;

4388 3. Provides for liquidated damages for delay; or

4389 4. Provides for arbitration or any other procedure designed to settle contract disputes.

4390 C. A contractor making a claim against the Institution for costs or damages due to the alleged
4391 delaying of the contractor in the performance of its work under any public construction contract of the
4392 Institution shall be liable to the Institution and shall pay it for a percentage of all costs incurred by the
4393 Institution in investigating, analyzing, negotiating, litigating and arbitrating the claim, which percentage
4394 shall be equal to the percentage of the contractor's total delay claim that is determined through litigation
4395 or arbitration to be false or to have no basis in law or in fact.

4396 D. If the Institution denies a contractor's claim for costs or damages due to the alleged delaying of
4397 the contractor in the performance of work under any public construction contract for the Institution, it
4398 shall be liable to and shall pay such contractor a percentage of all costs incurred by the contractor to
4399 investigate, analyze, negotiate, litigate and arbitrate the claim. The percentage paid by the Institution
4400 shall be equal to the percentage of the contractor's total delay claim for which the Institution's denial is
4401 determined through litigation or arbitration to have been made in bad faith.

4402 § 28. Bid bonds. -

4403 A. Except in cases of emergency, all bids or proposals for construction contracts in excess of \$1
4404 million shall be accompanied by a bid bond from a surety company selected by the bidder that is
4405 authorized to do business in Virginia, as a guarantee that if the contract is awarded to the bidder, he will
4406 enter into the contract for the work mentioned in the bid. The amount of the bid bond shall not exceed
4407 5% of the amount bid.

4408 B. No forfeiture under a bid bond shall exceed the lesser of (i) the difference between the bid for
4409 which the bond was written and the next low bid, or (ii) the face amount of the bid bond.

4410 C. Nothing in this section shall preclude the Institution from requiring bid bonds to accompany bids
4411 or proposals for construction contracts anticipated to be less than \$1 million.

4412 § 29. Performance and payment bonds. -

4413 A. Upon the award by the Institution of any (i) public construction contract exceeding \$1 million
4414 awarded to any prime contractor or (ii) public construction contract exceeding \$1 million awarded to
4415 any prime contractor requiring the performance of labor or the furnishing of materials for buildings,
4416 structures or other improvements to real property owned by the Institution, the contractor shall furnish to
4417 the Institution the following bonds:

4418 1. Except for transportation-related projects, a performance bond in the sum of the contract amount
4419 conditioned upon the faithful performance of the contract in strict conformity with the plans,
4420 specifications and conditions of the contract. For transportation-related projects, such bond shall be in a
4421 form and amount satisfactory to the Institution.

4422 2. A payment bond in the sum of the contract amount. The bond shall be for the protection of
4423 claimants who have and fulfill contracts to supply labor or materials to the prime contractor to whom
4424 the contract was awarded, or to any subcontractors, in furtherance of the work provided for in the
4425 contract, and shall be conditioned upon the prompt payment for all materials furnished or labor supplied

or performed in the furtherance of the work.

"Labor or materials" shall include public utility services and reasonable rentals of equipment, but only for periods when the equipment rented is actually used at the site.

B. Each of the bonds shall be executed by one or more surety companies selected by the contractor that are authorized to do business in Virginia.

C. The bonds shall be payable to the Commonwealth of Virginia naming also the Institution.

D. Each of the bonds shall be filed with the Institution, or a designated office or official thereof.

E. Nothing in this section shall preclude the Institution from requiring payment or performance bonds for construction contracts below \$1 million.

F. Nothing in this section shall preclude the contractor from requiring each subcontractor to furnish a payment bond with surety thereon in the sum of the full amount of the contract with such subcontractor conditioned upon the payment to all persons who have and fulfill contracts that are directly with the subcontractor for performing labor and furnishing materials in the prosecution of the work provided for in the subcontract.

§ 30. Alternative forms of security. -

A. In lieu of a bid, payment, or performance bond, a bidder may furnish a certified check or cash escrow in the face amount required for the bond.

B. If approved by the Institution's General Counsel or his equivalent, a bidder may furnish to the Institution a personal bond, property bond, or bank or savings institution's letter of credit on certain designated funds in the face amount required for the bid, payment or performance bond. Approval shall be granted only upon a determination that the alternative form of security proffered affords protection to the Institution equivalent to a corporate surety's bond.

§ 31. Bonds on other than construction contracts. -

The Institution may require bid, payment, or performance bonds for contracts for goods or services if provided in the Invitation to Bid or Request for Proposal.

§ 32. Action on performance bond. -

No action against the surety on a performance bond shall be brought by the Institution unless brought within one year after (i) completion of the contract, including the expiration of all warranties and guarantees, or (ii) discovery of the defect or breach of warranty that gave rise to the action.

§ 33. Actions on payment bonds; waiver of right to sue. -

A. Subject to the provisions of subsection B, any claimant who has performed labor or furnished material in accordance with the contract documents in furtherance of the work provided in any contract for which a payment bond has been given, and who has not been paid in full before the expiration of 90 days after the day on which the claimant performed the last of the labor or furnished the last of the materials for which he claims payment, may bring an action on the payment bond to recover any amount due him for the labor or material. The obligee named in the bond need not be named a party to the action.

B. Any claimant who has a direct contractual relationship with any subcontractor but who has no contractual relationship, express or implied, with the contractor, may bring an action on the contractor's payment bond only if he has given written notice to the contractor within 180 days from the day on which the claimant performed the last of the labor or furnished the last of the materials for which he claims payment, stating with substantial accuracy the amount claimed and the name of the person for whom the work was performed or to whom the material was furnished. Notice to the contractor shall be served by registered or certified mail, postage prepaid, in an envelope addressed to such contractor at any place where his office is regularly maintained for the transaction of business. Claims for sums withheld as retainages with respect to labor performed or materials furnished, shall not be subject to the time limitations stated in this subsection.

C. Any action on a payment bond shall be brought within one year after the day on which the person bringing such action last performed labor or last furnished or supplied materials.

D. Any waiver of the right to sue on the payment bond required by this section shall be void unless it is in writing, signed by the person whose right is waived, and executed after such person has performed labor or furnished material in accordance with the contract documents.

§ 34. Public inspection of certain records. -

A. Except as provided in this section, all proceedings, records, contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen, or any interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

B. Cost estimates relating to a proposed procurement transaction prepared by or for the Institution shall not be open to public inspection.

C. Any competitive sealed bidding bidder, upon request, shall be afforded the opportunity to inspect bid records within a reasonable time after the opening of all bids but prior to award, except in the event

that the Institution decides not to accept any of the bids and to reopen the contract. Otherwise, bid records shall be open to public inspection only after award of the contract.

D. Any competitive negotiation offeror, upon request, shall be afforded the opportunity to inspect proposal records within a reasonable time after the evaluation and negotiations of proposals are completed but prior to award, except in the event that the Institution decides not to accept any of the proposals and to reopen the contract. Otherwise, proposal records shall be open to public inspection only after award of the contract.

E. Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records.

F. Trade secrets or proprietary information submitted by a bidder, offeror or contractor in connection with a procurement transaction or prequalification application submitted pursuant to subsection B of § 14 shall not be subject to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.); however, the bidder, offeror or contractor shall (i) invoke the protections of this section prior to or upon submission of the data or other materials, (ii) identify the data or other materials to be protected, and (iii) state the reasons why protection is necessary.

§ 35. Exemption for certain transactions. -

A. The provisions of these Rules shall not apply to:

1. The selection of services related to the management and investment of the Institution's endowment funds, endowment income, or gifts pursuant to § 23-76.1. However, selection of these services shall be governed by the Uniform Management of Institutional Funds Act (§ 55-268.1 et seq.) as required by § 23-76.1.

2. The purchase of items for resale at retail bookstores and similar retail outlets operated by the Institution. However, such purchase procedures shall provide for competition where practicable.

3. Procurement of any construction or planning and design services for construction by the Institution when (i) the planning, design or construction is \$50,000 or less or (ii) the Institution is obligated to conform to procurement procedures that are established by federal statutes or regulations, whether or not those federal procedures are in conformance with the provisions of these Rules.

4. The University of Virginia Medical Center.

5. The purchase of goods and services by the Institution when such purchases are made under a remedial plan established by the Governor pursuant to subsection C of § 9 of these Rules.

B. Where a procurement transaction involves the expenditure of federal assistance or contract funds, the receipt of which is conditioned upon compliance with mandatory requirements in federal laws or regulations not in conformance with the provisions of these Rules, the Institution may comply with such federal requirements, notwithstanding the provisions of these Rules, only upon the written determination of the Institution's President or his designee that acceptance of the grant or contract funds under the applicable conditions is in the public interest. Such determination shall state the specific provision of these Rules in conflict with the conditions of the grant or contract.

§ 36. Permitted contracts with certain religious organizations; purpose; limitations. -

A. The Opportunity Reconciliation Act of 1996, P.L. 104-193, authorizes public bodies to enter into contracts with faith-based organizations for the purposes described in this section on the same basis as any other nongovernmental source without impairing the religious character of such organization, and without diminishing the religious freedom of the beneficiaries of assistance provided under this section.

B. For the purposes of this section, "faith-based organization" means a religious organization that is or applies to be a contractor to provide goods or services for programs funded by the block grant provided pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193.

C. The Institution, in procuring goods or services, or in making disbursements pursuant to this section, shall not (i) discriminate against a faith-based organization on the basis of the organization's religious character or (ii) impose conditions that (a) restrict the religious character of the faith-based organization, except as provided in subsection F, or (b) impair, diminish, or discourage the exercise of religious freedom by the recipients of such goods, services, or disbursements.

D. The Institution shall ensure that all invitations to bid, requests for proposals, contracts, and purchase orders prominently display a nondiscrimination statement indicating that it does not discriminate against faith-based organizations.

E. A faith-based organization contracting with the Institution (i) shall not discriminate against any recipient of goods, services, or disbursements made pursuant to a contract authorized by this section 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 (ii) 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 Institution. Nothing in clause (ii) shall be construed to supersede or otherwise override any other applicable state law.

F. Consistent with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193, funds provided for expenditure pursuant to contracts with public bodies shall not be spent for sectarian worship, instruction, or proselytizing; however, this prohibition shall not apply to expenditures pursuant to contracts, if any, for the services of chaplains.

G. Nothing in this section shall be construed as barring or prohibiting a faith-based organization from any opportunity to make a bid or proposal or contract on the grounds that the faith-based organization has exercised the right, as expressed in 42 U.S.C. (§ 2000e-1 et seq.), to employ persons of a particular religion.

H. If an individual, who applies for or receives goods, services, or disbursements provided pursuant to a contract between the Institution and a faith-based organization, objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the Institution 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.

The Institution shall provide to each individual who applies for or receives goods, services, or disbursements provided pursuant to a contract between the Institution and a faith-based organization a notice in bold face type that states: "Neither the Institution's selection of a charitable or faith-based provider of services nor the expenditure of funds under this contract is an endorsement of the provider's charitable or religious character, practices, or expression. No provider of services may discriminate against you on the basis of religion, a religious belief, or your refusal to actively participate in a religious practice. If you object to a particular provider because of its religious character, you may request assignment to a different provider. If you believe that your rights have been violated, please discuss the complaint with your provider or notify the appropriate person as indicated in this form."

§ 37. Exemptions from competition for certain transactions. -

The Institution may enter into contracts without competition, as that term is described in subsections A through J of § 5 (Methods of procurement) of these Rules, for:

1. The purchase of goods or services that are produced or performed by or related to:
 - a. Persons, or in schools or workshops, under the supervision of the Virginia Department for the Blind and Vision Impaired;
 - b. Nonprofit sheltered workshops or other nonprofit organizations that offer transitional or supported employment services serving the handicapped;
 - c. Private educational institutions; or
 - d. Other public educational institutions.
2. Speakers and performing artists;
3. Memberships and Association dues;
4. Sponsored research grant sub-awards and contract sub-awards, not to include the purchase of goods or services by the Institution;
5. Group travel in foreign countries;
6. Conference facilities and services;
7. Participation in intercollegiate athletic tournaments and events including team travel and lodging, registration and tournament fees;
8. Royalties; or

9. The purchase of legal services, provided that the Office of the Attorney General has been consulted, or expert witnesses or other services associated with litigation or regulatory proceedings; or

10. *Maintenance contract renewals for scientific research equipment and software, provided that the institution has posted the renewal to eVa and documented that there was only one response or less and such documentation includes a statement signed by the buyer indicating that no firm other than the original manufacturer/developer offers the service.*

§ 38. Exemptions from competitive sealed bidding and competitive negotiation for certain transactions; limitations. -

The Institution may enter into contracts for insurance or electric utility service without competitive sealed bidding or competitive negotiation if purchased through an association of which the Institution is a member if the association was formed and is maintained for the purpose of promoting the interest and welfare of and developing close relationships with similar public bodies, provided such association has procured the insurance or electric utility services by use of competitive principles and provided that the Institution has made a determination in advance after reasonable notice to the public and set forth in writing that competitive sealed bidding and competitive negotiation are not fiscally advantageous to the public. The writing shall document the basis for this determination.

§ 39. Definitions. -

As used in §§ 39 through 46, unless the context requires a different meaning:

"Contractor" means the entity that has a direct contract with the Institution.

"Debtor" means any individual, business, or group having a delinquent debt or account with any state

4610 agency that obligation has not been satisfied or set aside by court order or discharged in bankruptcy.

4611 "Payment date" means either (i) the date on which payment is due under the terms of a contract for
4612 provision of goods or services; or (ii) if such date has not been established by contract, (a) 30 days after
4613 receipt of a proper invoice by the Institution or its agent or (b) 30 days after receipt of the goods or
4614 services by the Institution.

4615 "Subcontractor" means any entity that has a contract to supply labor or materials to the contractor to
4616 whom the contract was awarded or to any subcontractor in the performance of the work provided for in
4617 such contract.

4618 § 40. Exemptions. -

4619 The provisions of §§ 39 through 46 shall not apply to the late payment provisions contained in any
4620 public utility tariffs prescribed by the State Corporation Commission.

4621 § 41. Retainage to remain valid. -

4622 Notwithstanding the provisions of §§ 39 through 46, the provisions of § 26 relating to retainage shall
4623 remain valid.

4624 § 42. Prompt payment of bills by the Institution. -

4625 A. The Institution shall promptly pay for the completely delivered goods or services by the required
4626 payment date.

4627 Payment shall be deemed to have been made when offset proceedings have been instituted, as
4628 authorized under the Virginia Debt Collection Act (§ 2.2-4800 et seq.).

4629 B. Separate payment dates may be specified for contracts under which goods or services are
4630 provided in a series of partial deliveries or executions to the extent that such contract provides for
4631 separate payment for such partial delivery or execution.

4632 § 43. Defect or impropriety in the invoice or goods and/or services received. -

4633 In instances where there is a defect or impropriety in an invoice or in the goods or services received,
4634 the Institution shall notify the supplier of the defect or impropriety, if the defect or impropriety would
4635 prevent payment by the payment date. The notice shall be sent within 15 days after receipt of the
4636 invoice or the goods or services.

4637 § 44. Date of postmark deemed to be date payment is made. -

4638 In those cases where payment is made by mail, the date of postmark shall be deemed to be the date
4639 payment is made for purposes of these Rules.

4640 § 45. Payment clauses to be included in contracts. -

4641 Any contract awarded by the Institution shall include:

4642 1. A payment clause that obligates the contractor to take one of the two following actions within
4643 seven days after receipt of amounts paid to the contractor by the Institution for work performed by the
4644 subcontractor under that contract:

4645 a. Pay the subcontractor for the proportionate share of the total payment received from the
4646 Institution attributable to the work performed by the subcontractor under that contract; or

4647 b. Notify the Institution and subcontractor, in writing, of his intention to withhold all or a part of the
4648 subcontractor's payment with the reason for nonpayment.

4649 2. A payment clause that requires (i) individual contractors to provide their social security numbers
4650 and (ii) proprietorships, partnerships, and corporations to provide their federal employer identification
4651 numbers.

4652 3. An interest clause that obligates the contractor to pay interest to the subcontractor on all amounts
4653 owed by the contractor that remain unpaid after seven days following receipt by the contractor of
4654 payment from the Institution for work performed by the subcontractor under that contract, except for
4655 amounts withheld as allowed in subdivision 1.

4656 4. An interest rate clause stating, "Unless otherwise provided under the terms of this contract,
4657 interest shall accrue at the rate of 1% per month."

4658 Any such contract awarded shall further require the contractor to include in each of its subcontracts a
4659 provision requiring each subcontractor to include or otherwise be subject to the same payment and
4660 interest requirements with respect to each lower-tier subcontractor.

4661 A contractor's obligation to pay an interest charge to a subcontractor pursuant to the payment clause
4662 in this section shall not be construed to be an obligation of the Institution. A contract modification shall
4663 not be made for the purpose of providing reimbursement for the interest charge. A cost reimbursement
4664 claim shall not include any amount for reimbursement for the interest charge.

4665 § 46. Interest penalty; exceptions. -

4666 A. Interest shall accrue, at the rate determined pursuant to subsection B, on all amounts owed by the
4667 Institution to a vendor that remain unpaid after seven days following the payment date. However,
4668 nothing in this section shall affect any contract providing for a different rate of interest, or for the
4669 payment of interest in a different manner.

4670 B. The rate of interest charged the Institution pursuant to subsection A shall be the base rate on
4671 corporate loans (prime rate) at large United States money center commercial banks as reported daily in

the publication entitled The Wall Street Journal. Whenever a split prime rate is published, the lower of the two rates shall be used. However, in no event shall the rate of interest charged exceed the rate of interest established pursuant to § 58.1-1812 of the Code of Virginia.

C. Notwithstanding subsection A, no interest penalty shall be charged when payment is delayed because of disagreement between the Institution and a vendor regarding the quantity, quality or time of delivery of goods or services or the accuracy of any invoice received for the goods or services. The exception from the interest penalty provided by this subsection shall apply only to that portion of a delayed payment that is actually the subject of the disagreement and shall apply only for the duration of the disagreement.

D. This section shall not apply to § 26 pertaining to retainage on construction contracts, during the period of time prior to the date the final payment is due. Nothing contained herein shall prevent a contractor from receiving interest on such funds under an approved escrow agreement.

E. Notwithstanding subsection A, no interest penalty shall be paid to any debtor on any payment, or portion thereof, withheld pursuant to the Comptroller's Debt Setoff Program, as authorized by the Virginia Debt Collection Act (§ 2.2-4800 et seq. of the Code of Virginia), 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, then interest shall accrue at the rate determined pursuant to subsection B on amounts withheld that remain unpaid after seven days following the payment date.

§ 47. Ineligibility. -

A. Any bidder, offeror or contractor refused permission to participate, or disqualified from participation, in public contracts to be issued by the Institution shall be notified in writing. Prior to the issuance of a written determination of disqualification or ineligibility, the Institution shall (i) notify the bidder in writing of the results of the evaluation, (ii) disclose the factual support for the determination, and (iii) allow the bidder an opportunity to inspect any documents that relate to the determination, if so requested by the bidder within five business days after receipt of the notice.

Within 10 business days after receipt of the notice, the bidder may submit rebuttal information challenging the evaluation. The Institution shall issue its written determination of disqualification or ineligibility based on all information in the possession of the Institution, including any rebuttal information, within five business days of the date the Institution received such rebuttal information.

If the evaluation reveals that the bidder, offeror or contractor should be allowed permission to participate in the public contract, the Institution shall cancel the proposed disqualification action. If the evaluation reveals that the bidder should be refused permission to participate, or disqualified from participation, in the public contract, the Institution shall so notify the bidder, offeror or contractor. The notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within 10 days after receipt of the notice by invoking administrative procedures meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting legal action as provided in § 54.

B. If, upon appeal, it is determined that the action taken was arbitrary or capricious, or not in accordance with the Constitution of Virginia, applicable state law or regulations, the sole relief shall be restoration of eligibility.

§ 48. Appeal of denial of withdrawal of bid. -

A. A decision denying withdrawal of bid under the provisions of § 23 of these Rules shall be final and conclusive unless the bidder appeals the decision within 10 days after receipt of the decision by invoking administrative procedures meeting the standards of § 55, if available, or in the alternative by instituting legal action as provided in § 54.

B. If no bid bond was posted, a bidder refused withdrawal of a bid under the provisions of § 23, prior to appealing, shall deliver to the Institution a certified check or cash bond in the amount of the difference between the bid sought to be withdrawn and the next low bid. Such security shall be released only upon a final determination that the bidder was entitled to withdraw the bid.

C. If, upon appeal, it is determined that the decision refusing withdrawal of the bid was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid, the sole relief shall be withdrawal of the bid.

§ 49. Determination of nonresponsibility. -

A. Following public opening and announcement of bids received on an Invitation to Bid, the Institution shall evaluate the bids in accordance with element 4 of the definition of "Competitive sealed bidding" in § 4 of these Rules. At the same time, the Institution shall determine whether the apparent low bidder is responsible. If the Institution so determines, then it may proceed with an award in accordance with element 5 of the definition of "Competitive sealed bidding" in § 4. If the Institution determines that the apparent low bidder is not responsible, it shall proceed as follows:

1. Prior to the issuance of a written determination of nonresponsibility, the Institution shall (i) notify the apparent low bidder in writing of the results of the evaluation, (ii) disclose the factual support for the determination, and (iii) allow the apparent low bidder an opportunity to inspect any documents that relate to the determination, if so requested by the bidder within five business days after receipt of the notice.

2. Within 10 business days after receipt of the notice, the bidder may submit rebuttal information challenging the evaluation. The Institution shall issue its written determination of responsibility based on all information in the possession of the Institution, including any rebuttal information, within five business days of the date the Institution received the rebuttal information. At the same time, the Institution shall notify, with return receipt requested, the bidder in writing of its determination.

3. Such notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within 10 days after receipt of the notice by invoking administrative procedures meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting legal action as provided in § 54.

The provisions of this subsection shall not apply to procurements involving the prequalification of bidders and the rights of any potential bidders under such prequalification to appeal a decision that such bidders are not responsible.

B. If, upon appeal pursuant to § 54 or 55 of these Rules, it is determined that the decision of the Institution was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid, and the award of the contract in question has not been made, the sole relief shall be a finding that the bidder is a responsible bidder for the contract in question or directed award as provided in subsection A of § 54, or both.

If it is determined that the decision of the Institution was not an honest exercise of discretion, but rather was arbitrary or capricious or not in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid, and an award of the contract has been made, the relief shall be as set forth in subsection B of § 54 of these Rules.

C. A bidder contesting a determination that he is not a responsible bidder for a particular contract shall proceed under this section, and may not protest the award or proposed award under the provisions of § 50 of these Rules.

D. Nothing contained in this section shall be construed to require the Institution, when procuring by competitive negotiation, to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous.

§ 50. Protest of award or decision to award. -

A. Any bidder or offeror, who desires to protest the award or decision to award a contract shall submit the protest in writing to the Institution, or an official designated by the Institution, no later than 10 days after the award or the announcement of the decision to award, whichever occurs first. Public notice of the award or the announcement of the decision to award shall be given by the Institution in the manner prescribed in the terms or conditions of the Invitation to Bid or Request for Proposal. Any potential bidder or offeror on a contract negotiated on a sole source or emergency basis who desires to protest the award or decision to award such contract shall submit the protest in the same manner no later than 10 days after posting or publication of the notice of such contract as provided in § 5 of these Rules. However, if the protest of any actual or potential bidder or offeror depends in whole or in part upon information contained in public records pertaining to the procurement transaction that are subject to inspection under § 34 of these Rules, then the time within which the protest shall be submitted shall expire 10 days after those records are available for inspection by such bidder or offeror under § 34, or at such later time as provided in this section. No protest shall lie for a claim that the selected bidder or offeror is not a responsible bidder or offeror. The written protest shall include the basis for the protest and the relief sought. The Institution or designated official shall issue a decision in writing within 10 days stating the reasons for the action taken. This decision shall be final unless the bidder or offeror appeals within 10 days of receipt of the written decision by invoking administrative procedures meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting legal action as provided in § 54. Nothing in this subsection shall be construed to permit a bidder to challenge the validity of the terms or conditions of the Invitation to Bid or Request for Proposal. The use of Alternative Dispute Resolution (ADR) shall constitute an administrative appeal procedure meeting the standards of § 55 of these Rules.

B. If prior to an award it is determined that the decision to award is arbitrary or capricious, then the sole relief shall be a finding to that effect. The Institution shall cancel the proposed award or revise it to comply with the law. If, after an award, it is determined that an award of a contract was arbitrary or capricious, then the sole relief shall be as hereinafter provided.

Where the award has been made but performance has not begun, the performance of the contract may be enjoined. Where the award has been made and performance has begun, the Institution may

declare the contract void upon a finding that this action is in the best interest of the public. Where a contract is declared void, the performing contractor shall be compensated for the cost of performance up to the time of such declaration. In no event shall the performing contractor be entitled to lost profits.

C. Where the Institution, an official designated by it, or an appeals board determines, after a hearing held following reasonable notice to all bidders, that there is probable cause to believe that a decision to award was based on fraud or corruption or on an act in violation of these Rules, the Institution, designated official or appeals board may enjoin the award of the contract to a particular bidder.

§ 51. Effect of appeal upon contract. -

Pending final determination of a protest or appeal, the validity of a contract awarded and accepted in good faith in accordance with these Rules shall not be affected by the fact that a protest or appeal has been filed.

§ 52. Stay of award during protest. -

An award need not be delayed for the period allowed a bidder or offeror to protest, but in the event of a timely protest as provided in § 50 of these Rules, or the filing of a timely legal action as provided in § 54, no further action to award the contract shall be taken unless there is a written determination that proceeding without delay is necessary to protect the public interest or unless the bid or offer would expire.

§ 53. Contractual disputes. -

A. Contractual claims, whether for money or other relief, shall be submitted in writing no later than 60 days after final payment. However, written notice of the contractor's intention to file a claim shall be given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing herein shall preclude a contract from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of claims shall not delay payment of amounts agreed due in the final payment.

B. The Institution shall include in its contracts a procedure for consideration of contractual claims. Such procedure, which may be contained in the contract or may be specifically incorporated into the contract by reference and made available to the contractor, shall establish a time limit for a final decision in writing by the Institution. If the Institution has established administrative procedures meeting the standards of § 55 of these Rules, such procedures shall be contained in the contract or specifically incorporated in the contract by reference and made available to the contractor. The Institution may require the submission of contractual claims pursuant to any contract to Alternative Dispute Resolution (ADR) as an administrative procedure.

C. A contractor may not invoke administrative procedures meeting the standards of § 55 of these Rules, if available, or institute legal action as provided in § 54, prior to receipt of the Institution's decision on the claim, unless the Institution fails to render such decision within the time specified in the contract.

D. The decision of the Institution shall be final and conclusive unless the contractor appeals within six months of the date of the final decision on the claim by the Institution by invoking administrative procedures meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting legal action as provided in § 54.

§ 54. Legal actions. -

A. A bidder or offeror, actual or prospective, who is refused permission or disqualified from participation in bidding or competitive negotiation, or who is determined not to be a responsible bidder or offeror for a particular contract, may bring an action in the appropriate circuit court challenging that decision, which shall be reversed only if the petitioner establishes that the decision was not (i) an honest exercise of discretion, but rather was arbitrary or capricious; (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid; or (iii) in the case of denial of prequalification, based upon the criteria for denial of prequalification set forth in subsection B of § 14 of these Rules. In the event the apparent low bidder, having been previously determined by the Institution to be not responsible in accordance with § 4, is found by the court to be a responsible bidder, the court may direct the Institution to award the contract to such bidder in accordance with the requirements of this section and the Invitation to Bid.

B. A bidder denied withdrawal of a bid under § 23 of these Rules may bring an action in the appropriate circuit court challenging that decision, which shall be reversed only if the bidder establishes that the decision of the Institution was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid.

C. A bidder, offeror or contractor, or a potential bidder or offeror on a contract negotiated on a sole source or emergency basis in the manner provided in § 5 of these Rules, whose protest of an award or decision to award under § 50 of these Rules is denied, may bring an action in the appropriate circuit court challenging a proposed award or the award of a contract, which shall be reversed only if the

petitioner establishes that the proposed award or the award is not (i) an honest exercise of discretion, but rather is arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms and conditions of the Invitation to Bid or Request for Proposal.

D. If injunctive relief is granted, the court, upon request of the Institution, shall require the posting of reasonable security to protect the Institution.

E. A contractor may bring an action involving a contract dispute with the Institution in the appropriate circuit court. Notwithstanding any other provision of law, the Comptroller shall not be named as a defendant in any action brought pursuant to these Rules or § 33.1-387 of the Code of Virginia, except for disputes involving contracts of the Office of the Comptroller or the Department of Accounts.

F. A bidder, offeror or contractor need not utilize administrative procedures meeting the standards of § 55 of these Rules, if available, but if those procedures are invoked by the bidder, offeror or contractor, the procedures shall be exhausted prior to instituting legal action concerning the same procurement transaction unless the Institution agrees otherwise.

G. Nothing herein shall be construed to prevent the Institution from instituting legal action against a contractor.

§ 55. Administrative appeals procedure. -

A. The Institution may establish an administrative procedure for hearing (i) protests of a decision to award or an award, (ii) appeals from refusals to allow withdrawal of bids, (iii) appeals from disqualifications and determinations of nonresponsibility, and (iv) appeals from decisions on disputes arising during the performance of a contract, or (v) any of these. Such administrative procedure may include the use of Alternative Dispute Resolution (ADR) or shall provide for a hearing before a disinterested person or panel, the opportunity to present pertinent information and the issuance of a written decision containing findings of fact. The disinterested person or panel shall not be an employee of the governmental entity against whom the claim has been filed. The findings of fact shall be final and conclusive and shall not be set aside unless the same are (a) fraudulent, arbitrary or capricious; (b) so grossly erroneous as to imply bad faith; or (c) in the case of denial of prequalification, the findings were not based upon the criteria for denial of prequalification set forth in subsection B of § 14 of these Rules. No determination on an issue of law shall be final if appropriate legal action is instituted in a timely manner. The Institution may seek advice and input from the Alternative Dispute Resolution Council in establishing an Alternative Dispute Resolution (ADR) procedure.

B. Any party to the administrative procedure, including the Institution, shall be entitled to institute judicial review if such action is brought within 30 days of receipt of the written decision.

§ 56. Alternative dispute resolution. -

The Institution may enter into agreements to submit disputes arising from contracts entered into pursuant to these Rules to arbitration and utilize mediation and other alternative dispute resolution procedures. However, such procedures shall be nonbinding and subject to § 2.2-514 of the Code of Virginia, as applicable.

§ 57. Ethics in public contracting. -

The Institution and its governing body, officers and employees shall be governed by the Ethics in Public Contracting provisions of the Virginia Public Procurement Act, Article 6 (§ 2.2-4367 et seq.) of Chapter 43 of Title 2.2 of the Code of Virginia.

ATTACHMENT 2

Memorandum of Agreement The Commonwealth of Virginia and the University of Virginia ERP/SciQuest Implementation with eVA

The Commonwealth of Virginia (CoVA) and the University of Virginia (University) agree to the following:

I. The University will use ERP/SciQuest integration as best fits its needs with its ERP system (Oracle).

II. Initially, all nonexempt orders produced by the ERP/SciQuest integration will be transmitted to eVA through an ERP-to-eVA interface that conforms to the existing eVA interface standard format. Longer term a more real-time option may be mutually agreed by the Department of General Services/Division of Purchasing and Supply (DGS/DPS) and the University and implemented between the ERP and eVA systems.

III. The University may request that eVA contract vendors provide a version of their contract catalog for loading into ERP/SciQuest. Should the vendor indicate a preference to only provide its catalog through eVA, then the University will access these catalogs as described in item B8 of the Metrics section of this document. In any event, the University shall be responsible for payment of all eVA transaction fees for nonexempt orders to unregistered vendors and exempt orders the University chooses to issue to unregistered and registered vendors through eVA.

IV. eVA will load all nonexempt University orders into the eVA Data Warehouse. For clarity, it is understood that exempt orders are purchase transactions specifically exempted, in writing by DPS, from mandatory processing through eVA.

V. In lieu of processing individual orders for requirements through eVA, a more efficient administrative approach is to establish a blanket or standing order. The University is authorized to use such an approach where it makes good business sense. The University will ensure vendors understand that eVA transaction fees will be invoiced at the time blanket or standing orders are issued, that the transaction fee will be based on the total order amount, and the vendor is required to pay the total transaction fee within 30 days of the invoice date regardless of the performance/delivery schedule specified in the order.

VI. eVA will deliver University nonexempt orders to vendors that are identified as accepting electronic orders (Fax, Email, EDI, cXML). The University or SciQuest will print/mail/deliver all other orders to vendors. Whereas the University maintains a University specific electronic vendor record that identifies vendors that do not agree to the eVA terms and conditions, including payment of the eVA order transaction fee, the University may deviate from the policy/procedure set forth in Section 3 of the eVA Business Plan as follows:

A. For vendors that refuse to accept the eVA terms and conditions, the University will transmit the appropriate R02, S02, E02, or P02 Purchase Order Category and a Purchase Order Comment that includes the statement "Vendor refuses eVA terms and conditions." The University agrees that it will pay the eVA transaction fees for these orders.

For vendors that agree to accept the eVA terms and conditions, the University will transmit the appropriate R01, S01, E01, or P01 Purchase Order Category and a Purchase Order Comment that includes the statement "Vendor accepts eVA terms and conditions - University eVA Vendor Manager, e-mail address and phone number." The University agrees that, for these orders, it will resolve any vendor dispute related to payment of eVA transaction fees by working directly with the vendor whether such vendor contacts the university directly or the dispute is referred to the university by DGS/DPS or CGI-AMS.

The University further agrees that:

1. It will provide the DGS/DPS eVA Business Manager (or designee) email notification of the resolution agreed to by the University and the vendor within 10 business days, unless otherwise agreed on a case-by-case basis by the DGS/DPS eVA Business Manager (or designee);

2. It will pay the eVA transaction fee unless it notifies the eVA Business Manager (or designee) within the specified time that the dispute has been resolved and the vendor agreed to pay the fee; and

3. In the event the University does not provide resolution notification to the eVA Business Manager (or designee) within the specified timeframe, DGS/DPS will automatically execute a manual adjustment reversing disputed transaction fees from the vendor to the University and the University will pay the fee.

VII. The University will not require separate vendor registrations as a prerequisite for responding to University solicitations. The University will participate in an enterprise workgroup to determine the best means to capture W-9 information on behalf of the whole enterprise. The process for collecting W-9 information will be supported in eVA in such a way as to provide CoVA verified vendor information to entities. The University will have the option to receive a subset of vendor related data. Until an enterprise W-9 process is established, the University will be responsible for collection of W-9 information.

VIII. For major system changes, DGS/DPS will collaborate in advance (advance notice defined as at least six (6) months prior to change or as soon as any new plan is proposed) with the University regarding any proposed replacement to the CoVA's electronic procurement system and on changes that may affect the technical changes described herein.

IX. Integration of the University's electronic procurement solution with the University's ERP is the responsibility of the University. The solution must provide for orders, change orders and cancellations. Guidelines

1. The establishment of this agreement is intended to formulate the basis for a long-term solution for electronic procurement between the University and the CoVA.

2. Orders may be batched and transmitted to eVA as often as needed except between the hours of 8 p.m. and 4 a.m. eVA will transmit registered vendor orders it receives within 15 minutes or less.

3. Nonexempt orders to unregistered vendors are to be transmitted to eVA for loading to the Data Warehouse. The University shall be responsible for payment of all eVA transaction fees for nonexempt orders to unregistered vendors and exempt orders the University chooses to issue to unregistered and registered vendors through eVA. See eVA Business Plan Section 3 for specific processing requirements for unregistered vendor orders.

4. Change Orders are to be transmitted to eVA as replacement orders complying with the eVA standard format.

- 4979 5. Cancellations are to be transmitted to eVA complying with the eVA standard format.
- 4980 6. eVA Interface standard does not currently support PCard orders; however these orders may be
- 4981 processed via the interface as (a) confirming orders or (b) orders for PCards on file with the vendor.
- 4982 Schedule
- 4983 The University shall implement this agreement no later than December 2006.
- 4984 Metrics
- 4985 A. The University shall comply with the following Governor's eVA Management:
- 4986 Objective
- 4987 ~~Ninety-five~~Eighty percent of all nonexempt orders to be processed by eVA. Includes nonexempt
- 4988 orders issued by end users (PCard & LPO) and the central purchasing office. Nonexempt orders to
- 4989 unregistered vendors received into the eVA Data Warehouse are considered compliant orders. For
- 4990 clarity, it is understood that exempt orders are purchase transactions specifically exempted, in writing by
- 4991 DPS, from mandatory processing through eVA. All nonexempt orders not processed by eVA shall be
- 4992 reported on the eVA Dashboard and the corresponding non-use fee paid by the University.
- 4993 B. The University shall meet the following management objectives for electronic procurement:
- 4994 1. Provide end users, including purchase-card users, access to an electronic system for buying;
- 4995 2. Conduct business with eVA registered vendors whenever possible;
- 4996 3. Place nonexempt orders, including change orders and cancellations, to eVA suppliers electronically
- 4997 using eVA;
- 4998 4. To the greatest extent possible, transmit real-time electronic purchase orders, regardless of dollar
- 4999 value, that include commodity codes, complete item descriptions, quantities, and unit prices;
- 5000 5. To the greatest extent feasible, the University will transmit confirming orders to eVA within five
- 5001 (5) business days after placing the order. Commodity codes, complete item descriptions, quantities, and
- 5002 unit prices will be provided for all confirming orders. DGS/DPS will provide periodic reports on the
- 5003 number and timeliness of confirming orders enabling the University and DGS/DPS to work together to
- 5004 monitor the usage of confirming orders with the objective of reducing their numbers to the extent
- 5005 possible.
- 5006 The University agrees that, for confirming orders, it will resolve any vendor dispute, including
- 5007 disputes related to payment of eVA transaction fees, by working directly with the vendor whether such
- 5008 vendor contacts the University directly or the dispute is referred to the University by DGS/DPS or
- 5009 CGI-AMS.
- 5010 The University further agrees that:
- 5011 a. It will provide the DGS/DPS eVA Business Manager (or designee) email notification of the
- 5012 resolution agreed to by the university and the vendor within 10 business days, unless otherwise agreed
- 5013 on a case-by-case basis by the DGS/DPS eVA Business Manager (or designee);
- 5014 b. It will pay the eVA transaction fee unless it notifies the eVA Business Manager (or designee)
- 5015 within the specified time that the dispute has been resolved and the vendor agreed to pay the fee; and
- 5016 c. In the event the University does not provide resolution notification to the eVA Business Manager
- 5017 (or designee) within the specified timeframe, DGS/DPS will automatically execute a manual adjustment
- 5018 reversing disputed transaction fees from the vendor to the University and the University will pay the fee.
- 5019 6. Timely process electronic change orders and cancellations;
- 5020 7. Post all solicitations and business opportunities greater than \$50,000 on the eVA website except as
- 5021 specifically exempted by DPS;
- 5022 8. To the extent technically feasible, make eVA catalogs, especially contract catalogs, available to
- 5023 end users using the ERP/SciQuest Integration system. The University will be responsible for the
- 5024 accuracy of contract catalog pricing loaded into the ERP/SciQuest;
- 5025 9. Use eVA electronic vendor notification for procurement opportunities (per plans to post
- 5026 solicitations specified in item 7 above and the use of Quick Quote/Reverse Auctions specified in item 10
- 5027 below);
- 5028 10. Use eVA on-line bidding functions of Quick Quote and Reverse Auction for appropriate
- 5029 commodities, when such are identified;
- 5030 11. Complete and certify the monthly eVA Dashboard Report; and
- 5031 12. Timely remit any eVA transaction and non-use fees incurred by the institution.
- 5032 C. The University shall be subject to eVA fees assessed per the eVA Business Plan.
- 5033 The University shall assure that payments to CGI-AMS are current.
- 5034

EXHIBIT R

MANAGEMENT AGREEMENT
BETWEEN
THE COMMONWEALTH OF VIRGINIA
AND

THE UNIVERSITY OF VIRGINIA
PURSUANT TO
THE RESTRUCTURED HIGHER EDUCATION
FINANCIAL AND ADMINISTRATIVE OPERATIONS
ACT OF 2005

POLICY GOVERNING
FINANCIAL OPERATIONS AND MANAGEMENT

THE RECTOR AND VISITORS OF THE UNIVERSITY OF VIRGINIA
POLICY GOVERNING FINANCIAL OPERATIONS AND MANAGEMENT

I. PREAMBLE.

The Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia, establishes by law a process for granting additional authority to institutions of higher education for financial operations and management, subject to the adoption of policies by their governing boards and the approval of management agreements to be negotiated with the Commonwealth.

The following provisions of this Policy constitute the adopted Board of Visitors policies regarding the University of Virginia's financial operations and management.

This Policy is intended to cover the authority that may be granted to the University pursuant to Subchapter 3 of the Act. Any other powers and authorities granted to the University pursuant to the Appropriation Act, or any other sections of the Code of Virginia, including other provisions of the Act and the University's Enabling Legislation, are not affected by this Policy. In particular, other powers and authorities granted to the Medical Center by law, to the extent they exceed those granted to the University pursuant to Subchapter 3 of the Act, are not affected by this Policy Statement.

II. DEFINITIONS.

As used in this policy, the following terms shall have the following meanings, unless the context requires otherwise:

"Academic Division" means that part of the University known as (State Agency 207).

"Act" means the Restructured Higher Education Financial and Administrative Operations Act, Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia.

"Board of Visitors" or "Board" means the Rector and Board of Visitors of the University of Virginia.

"College" means that part of the University operated as the University of Virginia's College at Wise, also known as (State Agency 246).

"Covered Institution" means, on or after the Effective Date of its initial Management Agreement with the Commonwealth of Virginia, a public institution of higher education of the Commonwealth that has entered into a Management Agreement with the Commonwealth to be governed by the provisions of Subchapter 3 of the Act.

"Enabling Legislation" means those chapters, other than Chapter 4.10, of title 23 of the Code of Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and missions of the University, and as provided in §§ 2.2-2817.2, 2.2-2905, 51.1-126.3, and 51.1-1100 in the case of the University of Virginia Medical Center.

"Effective Date" means the effective date of the initial Management Agreement between the University and the Commonwealth.

"Management Agreement" means the agreement required by subsection D of § 23-38.88 of the Act between the University and the Commonwealth of Virginia.

"Medical Center" means that part of the University consisting of the University of Virginia Medical Center, known as (State Agency 209), and related health care and health maintenance facilities.

"State Tax Supported Debt" means bonds, notes or other obligations issued under Article X, Section 9(a), 9(b), or 9(c), or 9(d), if the debt service payments are made or ultimately are to be made from general government funds, as defined in the December 20, 2004 Report to the Governor and General Assembly of the Debt Capacity Advisory Committee or as that definition is amended from time to time.

"University" means the University of Virginia, consisting of the Academic Division, the College, and the Medical Center.

III. SCOPE OF POLICY.

This Policy applies to the University's responsibility for management, investment and stewardship of all its financial resources, including but not limited to, general, non-general and private funds. This responsibility includes maintaining an independent uniform system of accounting, financial reporting, and internal controls adequate to protect and account for the University's financial resources.

The University of Virginia's College at Wise shall receive the benefits of this Policy as it is implemented by the University on behalf of the College at Wise, but the College at Wise shall not

5102 receive any additional independent financial operations and management authority as a result of this
5103 Management Agreement beyond the independent financial operations and management authority that it
5104 had prior to the Effective Date of the University's initial Management Agreement with the
5105 Commonwealth or that it may be granted by law in the future.

5106 IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.

5107 The Board of Visitors of the University shall at all times be fully and ultimately accountable for the
5108 proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation
5109 of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant
5110 to its legally permissible procedures, specifically delegate either herein or by separate Board resolution
5111 the duties and responsibilities set forth in this Policy to a person or persons within the University, who,
5112 while continuing to be fully accountable for such duties and responsibilities, may further delegate the
5113 implementation of those duties and responsibilities pursuant to the University's usual delegation policies
5114 and procedures.

5115 V. FINANCIAL MANAGEMENT AND REPORTING SYSTEM.

5116 The President, acting through the Executive Vice President and Chief Operating Officer, shall
5117 continue to be authorized by the Board to maintain existing and implement new policies governing the
5118 management of University financial resources. These policies shall continue to (i) ensure compliance
5119 with Generally Accepted Accounting Principles, (ii) ensure consistency with the current accounting
5120 principles employed by the Commonwealth, including the use of fund accounting principles, with regard
5121 to the establishment of the underlying accounting records of the University and the allocation and
5122 utilization of resources within the accounting system, including the relevant guidance provided by the
5123 State Council of Higher Education for Virginia chart of accounts with regard to the allocation and
5124 proper use of funds from specific types of fund sources, (iii) provide adequate risk management and
5125 internal controls to protect and safeguard all financial resources, including moneys transferred to the
5126 University pursuant to a general fund appropriation, and ensure compliance with the requirements of the
5127 Appropriation Act.

5128 The financial management system shall continue to include a financial reporting system to satisfy
5129 both the requirements for inclusion into the Commonwealth's Comprehensive Annual Financial Report,
5130 as specified in the related State Comptroller's Directives, and the University's separately audited financial
5131 statements. To ensure observance of limitations and restrictions placed on the use of the resources
5132 available to the University, the accounting and bookkeeping system of the University shall continue to
5133 be maintained in accordance with the principles prescribed for governmental organizations by the
5134 Governmental Accounting Standards Board.

5135 In addition, the financial management system shall continue to provide financial reporting for the
5136 President, acting through the Executive Vice President and Chief Operating Officer, and the Board of
5137 Visitors to enable them to provide adequate oversight of the financial operations of the University.
5138 Upon the Effective Date of the initial Management Agreement between the University and the
5139 Commonwealth, except for the recordation of daily revenue deposits of State funds as specified in
5140 Section VII below, the University shall not be required to record its financial transactions in the
5141 Commonwealth's Accounting and Reporting System (CARS), including the current monthly interfacing
5142 with CARS, or to record its financial transactions in any subsequent Commonwealth financial systems
5143 that replace CARS or are in addition to CARS, but shall have its own financial reporting system. The
5144 University's financial reporting system shall provide (i) summary monthly reports for State agencies
5145 including, but not limited to, the Department of Accounts, the Department of Planning and Budget, the
5146 Joint Legislative Audit and Review Commission, the Department of Medical Assistance Services, the
5147 Auditor of Public Accounts, and the State Council of Higher Education for Virginia, and for the
5148 Chairmen of the Senate Committee on Finance and the House Committee on Appropriations at a
5149 sufficient level of detail, on such schedule, and using such format that is compatible with the
5150 Commonwealth's accounting system, as may be requested by the requesting State agency, and (ii) such
5151 other special reports as may be requested from time to time.

5152 VI. FINANCIAL MANAGEMENT POLICIES.

5153 The President, acting through the Executive Vice President and Chief Operating Officer, shall create
5154 and implement any and all financial management policies necessary to establish a financial management
5155 system with adequate risk management and internal control processes and procedures for the effective
5156 protection and management of all University financial resources. Such policies will not address the
5157 underlying accounting principles and policies employed by the Commonwealth and the University, but
5158 rather will focus on the internal operations of the University's financial management. These policies shall
5159 include, but need not be limited to, the development of a tailored set of finance and accounting practices
5160 that seek to support the University's specific business and administrative operating environment in order
5161 to improve the efficiency and effectiveness of its business and administrative functions. In general, the
5162 system of independent financial management policies shall be guided by the general principles contained
5163 in the Commonwealth's Accounting Policies and Procedures such as establishing strong risk management

and internal accounting controls to ensure University financial resources are properly safeguarded and that appropriate stewardship of public funds is obtained through management's oversight of the effective and efficient use of such funds in the performance of University programs.

Upon the Effective Date of its initial Management Agreement with the Commonwealth, the University shall continue to follow the Commonwealth's accounting policies until such time as specific alternate policies can be developed, approved and implemented. Such alternate policies shall include applicable accountability measures and shall be submitted to the State Comptroller for review and comment before they are implemented by the University.

VII. FINANCIAL RESOURCE RETENTION AND MANAGEMENT.

Under § 23-38.104(A)(i) of the Act, subject to applicable accountability measures and audits, the University shall have the power and authority to manage all monies received by it. All State general funds to be allocated to the University shall remain subject to the appropriations process.

Pursuant to subsection C of § 23-9.6:1.01 of the Code of Virginia, the State Council of Higher Education for Virginia (SCHEV) annually shall assess and certify to the Governor and General Assembly the degree to which each public institution of higher education of the Commonwealth has met the financial and administrative management and educational-related performance benchmarks called for by that subsection and approved as part of the Appropriation Act then in effect for the State goals and objectives set forth in subdivisions B 1 through B 11 of § 23-38.88 of the Act. Pursuant to § 2.2-5005 of the Code of Virginia, beginning with the fiscal year that immediately follows the first full fiscal year for which the financial and administrative management and educational-related performance benchmarks described in § 23-9.6:1.01 are effective, as provided in a general Appropriation Act, and for all fiscal years thereafter, each public institution of higher education of the Commonwealth that (i) has been certified during the fiscal year by SCHEV as having met such institutional performance benchmarks and (ii) meets the conditions prescribed in subsection B of § 23-38.88 shall receive certain financial incentives, including interest on the tuition and fees and other non-general fund Educational and General Revenues deposited into the State Treasury by the public institution of higher education.

Consistent with the prior paragraph, beginning with the fiscal year following the first fiscal year for which it has received such certification from SCHEV, the University is authorized to hold and invest tuition, Educational and General (E&G) fees, research and sponsored program funds, auxiliary enterprise funds, and all other non-general fund revenues subject to the following requirements:

i) The University shall deposit such funds in the State Treasury pursuant to the State process in place at the time of such deposit.

ii) Such non-general funds deposited in the State Treasury shall be disbursed as provided in Section IX below.

iii) The University shall remit to the State Comptroller quarterly and the State Comptroller shall hold in escrow all interest earned on the University's tuition and fees and other non-general fund Educational and General Revenues. *Interest earned on the escrow account shall be deposited to the account.* Upon receipt of the required State Council of Higher Education for Virginia certification that the University has met such institutional performance benchmarks and the conditions prescribed in subsection B of § 23-38.88, the Governor shall include in the next budget bill a non-general fund appropriation, payable no later than July 1 of the immediately following fiscal year, equivalent to the amount deposited in the escrow account as the financial incentive provided in subdivision 1 of § 2.2-5005, after which time the University may expend the funds for purposes related to its mission. If public institutions of higher education of the Commonwealth are permitted, or the University in particular is permitted, by the Appropriation Act or other law to retain or be paid the interest the Commonwealth would have earned on sponsored programs and research funds, then this paragraph shall not apply to such interest on such funds, and such interest shall not be held in escrow.

iv) If in any given year the University does not receive the certification from the State Council of Higher Education for Virginia that it has met for that year the institutional benchmarks called for by subsection C of § 23-9.6:1.01 and approved in the then-current Appropriation Act, the Comptroller shall transfer to the general fund the balance in the escrow account as of June 30 of that year.

v) Beginning on the effective date of its initial Management Agreement with the University until the beginning of the first fiscal year following the fiscal year for which it has received the required certification from SCHEV, the University shall continue to deposit tuition and all other non-general funds with the State Treasurer by the same process that it would have been required to use if it had not entered into a Management Agreement with the Commonwealth.

vi) On the first business day of the first fiscal year following the fiscal year for which it has received the required certification from SCHEV, the University may draw down all cash balances held by the State Treasurer on behalf of the University related to tuition, E&G fees, research and sponsored programs, auxiliary enterprises, and all other non-general fund revenues.

vii) The Commonwealth shall retain all funds related to general fund appropriations, but shall pay

5225 these funds to the University as specified in Section IX below.

5226 The University also shall have sum sufficient appropriation authority for all non-general funds as
5227 approved by the Governor and the General Assembly in the Commonwealth's biennial appropriations
5228 process, and shall report to the Department of Planning and Budget (i) its estimate of the non-general
5229 fund revenues for the sum sufficient appropriation to be included in the biennial Budget Bill for each of
5230 the two years in the next biennium by November 1 of each odd numbered year and the estimate to be
5231 included in the Budget Bill for the first and second year of the then-current biennium by November 1 of
5232 each even numbered year, and (ii) report its actual non-general fund revenues for each fiscal year to the
5233 Department of Planning and Budget by July 31 of the subsequent fiscal year.

5234 The Board of Visitors shall retain the authority to establish tuition, fee, room, board, and other
5235 charges, with appropriate commitment provided to need-based grant aid for middle- and lower-income
5236 undergraduate Virginians. Except as provided otherwise in the Appropriation Act then in effect, it is the
5237 intent of the Commonwealth and the University that the University shall be exempt from the revenue
5238 restrictions in the general provisions of the Appropriation Act related to non-general funds. In addition,
5239 unless prohibited by the Appropriation Act then in effect, it is the intent of the Commonwealth and the
5240 University that the University shall be entitled to retain non-general fund savings generated from
5241 changes in Commonwealth rates and charges, including but not limited to health, life, and disability
5242 insurance rates, retirement contribution rates, telecommunications charges, and utility rates, rather than
5243 reverting such savings back to the Commonwealth. This financial resource policy assists the University
5244 by providing the framework for retaining and managing non-general funds, for the receipt of general
5245 funds, and for the use and stewardship of all these funds.

5246 The President, acting through the Executive Vice President and Chief Operating Officer, shall
5247 continue to provide oversight of the University's cash management system which is the framework for
5248 the retention of non-general funds. The Internal Audit Department of the University shall periodically
5249 audit the University's cash management system in accordance with appropriate risk assessment models
5250 and make reports to the Audit and Compliance Committee of the Board of Visitors. Additional
5251 oversight shall continue to be provided through the annual audit and assessment of internal controls
5252 performed by the Auditor of Public Accounts.

5253 For the receipt of general and non-general funds, the University shall conform to the Security for
5254 Public Deposits Act, Chapter 44 (§ 2.2-4400 et seq.) of Title 2.2 of the Code of Virginia as it currently
5255 exists and from time to time may be amended.

5256 VIII. ACCOUNTS RECEIVABLE MANAGEMENT AND COLLECTION.

5257 The President, through the Executive Vice President and Chief Operating Officer, shall continue to
5258 be authorized to create and implement any and all Accounts Receivable Management and Collection
5259 policies as part of a system for the management of University financial resources. The policies shall be
5260 guided by the requirements of the Virginia Debt Collection Act, Chapter 48 (§ 2.2-4800 et seq.) of the
5261 Code of Virginia, such that the University shall take all appropriate and cost effective actions to
5262 aggressively collect accounts receivable in a timely manner.

5263 These shall include, but not be limited to, establishing the criteria for granting credit to University
5264 customers; establishing the nature and timing of collection procedures within the above general
5265 principles; and the independent authority to select and contract with collection agencies and, after
5266 consultation with the Office of the Attorney General, private attorneys as needed to perform any and all
5267 collection activities for all University accounts receivable such as reporting delinquent accounts to credit
5268 bureaus, obtaining judgments, garnishments, and liens against such debtors, and other actions. In
5269 accordance with sound collection activities, the University shall continue to utilize the Commonwealth's
5270 Debt Set-Off Collection Programs, shall develop procedures acceptable to the Tax Commissioner and the
5271 State Comptroller to implement such Programs, and shall provide a quarterly summary report of
5272 receivables to the Department of Accounts in accordance with the reporting procedures established
5273 pursuant to the Virginia Debt Collection Act.

5274 IX. DISBURSEMENT MANAGEMENT.

5275 The President, acting through the Executive Vice President and Chief Operating Officer, shall
5276 continue to be authorized to create and implement any and all disbursement policies as part of a system
5277 for the management of University financial resources. The disbursement management policies shall
5278 continue to define the appropriate and reasonable uses of all funds, from whatever source derived, in the
5279 execution of the University's operations. These policies also shall continue to address the timing of
5280 appropriate and reasonable disbursements consistent with the Prompt Payment Act, and the
5281 appropriateness of certain goods or services relative to the University's mission, including travel-related
5282 disbursements. Further, the University's disbursement policy shall continue to provide for the
5283 mechanisms by which payments are made including the use of charge cards, warrants, and electronic
5284 payments. Since the University no longer will interface to the CARS system or any replacement for the
5285 CARS system for disbursements, the University shall establish its own mechanisms for electronic
5286 payments to vendors through Electronic Data Interchange (EDI) or similar process and payments to the

Commonwealth's Debt Set-Off Collection Programs.

Beginning with the fiscal year after the first fiscal year for which it first receives the required certification from SCHEV, the University may draw down its general fund appropriations (subject to available cash) and tuition and E&G fees and other non-general fund revenues from the State Treasury. Such funds shall be available to the University for disbursement as provided in the then-current rules of the Automated Clearing House (ACH) Network. The draw down of funds may be initiated in accordance with the following schedule:

i) The University may draw down one-twenty-fourth (1/24) of its annual general fund appropriation for Educational and General programs on *or about* the first and fifteenth days of each month *with adjustments as needed to meet short-term cash requirements associated with the Commonwealth's bimonthly pay dates*, and up to 50% of its annual general fund appropriation for Student Financial Assistance on or after September 1 of each year with the remaining 50% to be drawn on or after February 1 of each year in order to meet student obligations;

ii) The University may draw down the sum of all tuition and E&G fees and all other non-general revenues deposited to the State Treasury each day on the same business day they were deposited; and

iii) The University anticipates that expenditures could exceed available revenues from time to time during the year if the above disbursement schedule is used. When the University projects a cash deficit is likely in activities supported by general fund appropriations, the University may make a request to the State Comptroller for an early draw on its appropriated general funds deposited in the State Treasury, in a form and within a timeframe agreeable to the parties, in order to cover expenditures.

These disbursement policies shall authorize the President, acting through the Executive Vice President and Chief Operating Officer, to independently select, engage, and contract for such consultants, accountants, and financial experts, and other such providers of expert advice and consultation, and, after consultation with the Office of the Attorney General, private attorneys, as may be necessary or desirable in his or her discretion. The policies also shall continue to include the ability to locally manage and administer the Commonwealth's credit card and cost recovery programs related to disbursements, subject to any restrictions contained in the Commonwealth's contracts governing those programs, provided that the University shall submit the credit card and cost recovery aspects of its financial and operations policies to the State Comptroller for review and comment prior to implementing those aspects of those policies. The disbursement policies shall ensure that adequate risk management and internal control procedures shall be maintained over previously decentralized processes for public records, payroll, and non-payroll disbursements. The University shall continue to provide summary quarterly prompt payment reports to the Department of Accounts in accordance with the reporting procedures established pursuant to the Prompt Payment Act.

The University's disbursement policies shall be guided by the principles of the Commonwealth's policies as included in the Commonwealth's Accounting Policy and Procedures Manual. Upon the Effective Date of its initial Management Agreement with the Commonwealth, the University shall continue to follow the Commonwealth's disbursement policies until such time as specific alternative policies can be developed, approved and implemented. Such alternate policies shall be submitted to the State Comptroller for review and comment prior to their implementation by the University.

X. DEBT MANAGEMENT.

The President, acting through the Executive Vice President and Chief Operating Officer, shall continue to be authorized to create and implement any and all debt management policies as part of a system for the management of University financial resources.

Pursuant to § 23-38.108(B) of the Act, the University shall have the authority to issue bonds, notes, or other obligations that do not constitute State Tax Supported Debt, as determined by the Treasury Board, and that are consistent with debt capacity and management policies and guidelines established by its Board of Visitors, without obtaining the consent of any legislative body, elected official, commission, board, bureau, or agency of the Commonwealth or of any political subdivision, and without any proceedings or conditions other than those specifically required by Subchapter 3 of the Act; provided that, the University shall notify the Treasurer of Virginia of its intention to issue bonds pursuant to this Policy at the time it adopts the bond issuance planning schedule for those bonds. Any new or revised debt capacity and management policy shall be submitted to the Treasurer of Virginia for review and comment prior to its adoption by the University.

The University recognizes that there are numerous types of financing structures and funding sources available each with specific benefits, risks, and costs. All potential funding sources shall be reviewed by the President, acting through the Executive Vice President and Chief Operating Officer, within the context of the overall portfolio to ensure that any financial product or structure is consistent with the University's objectives. Regardless of the financing structure(s) utilized, the President, acting through the Executive Vice President and Chief Operating Officer, shall obtain sufficient documentation to gain a full understanding of the transaction, including (i) the identification of potential risks and benefits, and

5348 (ii) an analysis of the impact on University creditworthiness and debt capacity. All such debt or
5349 financial products issued pursuant to the provisions of §§ 23.38-107 and 23.38-108 of the Act shall be
5350 authorized by resolution of the Board, providing that they do not constitute State Tax Supported Debt.

5351 The University currently has established guidelines relating to the total permissible amount of
5352 outstanding debt by monitoring University-wide ratios that measure debt compared to University
5353 balance-sheet resources and annual debt service burden. These measures are monitored and reviewed
5354 regularly in light of the University's current strategic initiatives and expected debt requirements. The
5355 Board of Visitors shall periodically review and approve the University's debt capacity and debt
5356 management guidelines. Any change in the current guidelines shall be submitted to the Treasurer of
5357 Virginia for review and comment prior to their adoption by the University.

5358 XI. INVESTMENT POLICY.

5359 It is the policy of the University to invest its operating and reserve funds solely in the interest of the
5360 University and in a manner that will provide the highest investment return with the maximum security
5361 while meeting daily cash flow demands and conforming to the Investment of Public Funds Act
5362 (§ 2.2-4500 et seq. of the Code of Virginia). Investments shall be made with the care, skill, prudence
5363 and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and
5364 familiar with such matters would use in the conduct of an enterprise of a like character and with like
5365 aims.

5366 Endowment investments shall be invested and managed in accordance with the Uniform Management
5367 of Institutional Funds Act, §§ 55-268.1 through 55-268.10, and § 23-76.1 of the Code of Virginia.

5368 The Board of Visitors shall periodically review and approve the investment guidelines governing the
5369 University's operating and reserve funds.

5370 XII. INSURANCE AND RISK MANAGEMENT.

5371 By July 1 of each odd-numbered year, the University shall inform the Secretary of Finance of any
5372 intent during the next biennium to withdraw from any insurance or risk management program made
5373 available to the University through the Commonwealth's Division of Risk Management and in which the
5374 University is then participating, to enable the Commonwealth to complete an adverse selection analysis
5375 of any such decision and to determine the additional costs to the Commonwealth that would result from
5376 any such withdrawal. If upon notice of such additional costs to the Commonwealth, the University
5377 proceeds to withdraw from the insurance or risk management program, the University shall reimburse
5378 the Commonwealth for all such additional costs attributable to such withdrawal, as determined by the
5379 Commonwealth's actuaries. Such payment shall be made in a manner agreeable to both the University
5380 and the Commonwealth.

5381 5. That the provisions of the first, second, and third enactments of this Act shall expire at midnight
5382 on June 30, ~~2010~~2012. The expiration of such enactments shall automatically result in the expiration of
5383 the provisions of any management agreement between the Commonwealth and Virginia Polytechnic
5384 Institute and State University, The College of William and Mary in Virginia, and The University of
5385 Virginia, respectively, which was entered into prior to January 1, 2006, and incorporated into this Act.