

VIRGINIA ACTS OF ASSEMBLY - CHAPTER

An Act 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; the fifth enactment of Chapters 933 and 943 of the Acts of Assembly of 2006; § 4.3, Attachment 1 of Exhibit D, and Exhibit F of the first enactment of Chapters 594 and 616 of the Acts of Assembly of 2008; and the third enactment of Chapters 594 and 616 of the Acts of Assembly of 2008 relating to the management agreements between the Commonwealth and Virginia Polytechnic Institute and State University, the College of William and Mary in Virginia, the University of Virginia, and Virginia Commonwealth University, respectively.

[H 2464]

Approved

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 Chapter 933 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 Chapter 933 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 Chapter 933 of the Acts of Assembly of 2006; and the fifth enactment of Chapter 933 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, ~~2010~~ 2012, *provided that on or before November 15, 2011, the Governor provides to the Chairmen of the House Committee on Appropriations and the Senate Committee on Finance written notification that this Management Agreement needs to be renegotiated or revised. If such notification is not received, this Management Agreement shall continue in effect until June 30, 2015.*

**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

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.

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 Board of Visitors of Virginia Polytechnic Institute and State University.

"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.

"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.

"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.

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

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

V. CAPITAL PROGRAM.

The President, acting through the Executive Vice President and Chief Operating Officer, shall adopt a system for developing one or more capital project programs that defines or define the capital needs of the University for a given period of time consistent with the University's published Master Plan. This process may or may not mirror the Commonwealth's requirements for capital plans. The Board of Visitors shall approve the program for Major 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 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

D. 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, including any necessary reviews by the Department of Historic Resources and the Art and Architectural Review Board in accordance with State historic preservation requirements generally applicable to capital projects in the Commonwealth. Further, for any property that was acquired or constructed with funding from a general fund appropriation of the General Assembly or from proceeds from State Tax Supported Debt, general laws applicable to State owned property shall apply.

XI. BUILDING OR LAND ACQUISITIONS.

It is the policy of the University that capital projects involving building or land acquisition shall be subjected to thorough inquiry and due diligence prior to closing on the acquisition of such real property. The President, acting through the Executive Vice President and Chief Operating Officer, shall ensure that the project management system implemented pursuant to Section XIII below provides for a review and analysis of all pertinent matters relating to the acquisition of buildings and land as any prudent

purchaser would perform to the end that any building or land acquired by the University shall be 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 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 lease of goods, or the sale of services, insurance or construction, of the type to be procured under the contract, and who at such time is eligible and qualified in all respects to perform that contract, and who would have been eligible and qualified to submit a bid or proposal had the contract been procured through competitive sealed bidding or competitive negotiation.

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

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

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

"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.

"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.

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

"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.

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 qualifications. Based upon the information submitted and any other relevant information which the Commonwealth may obtain, no more than five offerors deemed most suitable for the project shall be selected by the Commonwealth and requested to submit proposals.

§ 8. Modification of the contract. -

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

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

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

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

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

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

§ 15. Negotiation with lowest responsible bidder. -

Unless canceled or rejected, a responsive bid from the lowest responsible bidder shall be accepted as submitted, except that if the bid from the lowest responsible bidder exceeds available funds, the 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 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) of subsection A.

C. No subcontractor shall perform any work on a construction project of the Institution unless he has obtained, and continues to maintain for the duration of such 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.

§ 26. Retainage on construction contracts. -

A. In any contract issued by the Institution for construction that provides for progress payments in installments based upon an estimated percentage of completion, the contractor shall be paid at least 95%

of the earned sum when payment is due, with no more than 5% being retained to ensure faithful performance of the contract. All amounts withheld may be included in the final payment.

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

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

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

911 for construction contracts below \$1 million.

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

917 § 30. Alternative forms of security. -

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

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

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

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

928 § 32. Action on performance bond. -

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

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

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

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

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

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

955 § 34. Public inspection of certain records. -

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

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

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

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

971 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

1033 religion.

1034 H. If an individual, who applies for or receives goods, services, or disbursements provided pursuant
 1035 to a contract between the Institution and a faith-based organization, objects to the religious character of
 1036 the faith-based organization from which the individual receives or would receive the goods, services, or
 1037 disbursements, the Institution shall offer the individual, within a reasonable period of time after the date
 1038 of his objection, access to equivalent goods, services, or disbursements from an alternative provider.

1039 The Institution shall provide to each individual who applies for or receives goods, services, or
 1040 disbursements provided pursuant to a contract between the Institution and a faith-based organization a
 1041 notice in bold face type that states: "Neither the Institution's selection of a charitable or faith-based
 1042 provider of services nor the expenditure of funds under this contract is an endorsement of the provider's
 1043 charitable or religious character, practices, or expression. No provider of services may discriminate
 1044 against you on the basis of religion, a religious belief, or your refusal to actively participate in a
 1045 religious practice. If you object to a particular provider because of its religious character, you may
 1046 request assignment to a different provider. If you believe that your rights have been violated, please
 1047 discuss the complaint with your provider or notify the appropriate person as indicated in this form."

1048 § 37. Exemptions from competition for certain transactions. -

1049 The Institution may enter into contracts without competition, as that term is described in subsections
 1050 A through J of § 5 (Methods of procurement) of these Rules, for:

1051 1. The purchase of goods or services that are produced or performed by or related to:

1052 a. Persons, or in schools or workshops, under the supervision of the Virginia Department for the
 1053 Blind and Vision Impaired;

1054 b. Nonprofit sheltered workshops or other nonprofit organizations that offer transitional or supported
 1055 employment services serving the handicapped;

1056 c. Private educational institutions; or

1057 d. Other public educational institutions.

1058 2. Speakers and performing artists;

1059 3. Memberships and Association dues;

1060 4. Sponsored research grant sub-awards and contract sub-awards, not to include the purchase of
 1061 goods or services by the Institution;

1062 5. Group travel in foreign countries;

1063 6. Conference facilities and services;

1064 7. Participation in intercollegiate athletic tournaments and events including team travel and lodging,
 1065 registration and tournament fees;

1066 8. Royalties; or

1067 9. The purchase of legal services, provided that the Office of the Attorney General has been
 1068 consulted, or expert witnesses or other services associated with litigation or regulatory proceedings; or

1069 10. *Maintenance contract renewals for scientific research equipment and software, provided that the*
 1070 *institution has posted the renewal to eVA and documented that there was only one response or less and*
 1071 *such documentation includes a statement signed by the buyer indicating that no firm other than the*
 1072 *original manufacturer/developer offers the service.*

1073 § 38. Exemptions from competitive sealed bidding and competitive negotiation for certain
 1074 transactions; limitations. -

1075 The Institution may enter into contracts for insurance or electric utility service without competitive
 1076 sealed bidding or competitive negotiation if purchased through an association of which the Institution is
 1077 a member if the association was formed and is maintained for the purpose of promoting the interest and
 1078 welfare of and developing close relationships with similar public bodies, provided such association has
 1079 procured the insurance or electric utility services by use of competitive principles and provided that the
 1080 Institution has made a determination in advance after reasonable notice to the public and set forth in
 1081 writing that competitive sealed bidding and competitive negotiation are not fiscally advantageous to the
 1082 public. The writing shall document the basis for this determination.

1083 § 39. Definitions. -

1084 As used in §§ 39 through 46, unless the context requires a different meaning:

1085 "Contractor" means the entity that has a direct contract with the Institution.

1086 "Debtor" means any individual, business, or group having a delinquent debt or account with any state
 1087 agency that obligation has not been satisfied or set aside by court order or discharged in bankruptcy.

1088 "Payment date" means either (i) the date on which payment is due under the terms of a contract for
 1089 provision of goods or services; or (ii) if such date has not been established by contract, (a) 30 days after
 1090 receipt of a proper invoice by the Institution or its agent or (b) 30 days after receipt of the goods or
 1091 services by the Institution..

1092 "Subcontractor" means any entity that has a contract to supply labor or materials to the contractor to
 1093 whom the contract was awarded or to any subcontractor in the performance of the work provided for in

1094 such contract.

1095 § 40. Exemptions. -

1096 The provisions of §§ 39 through 46 shall not apply to the late payment provisions contained in any
1097 public utility tariffs prescribed by the State Corporation Commission.

1098 § 41. Retainage to remain valid. -

1099 Notwithstanding the provisions of §§ 39 through 46, the provisions of § 26 relating to retainage shall
1100 remain valid.

1101 § 42. Prompt payment of bills by the Institution. -

1102 A. The Institution shall promptly pay for the completely delivered goods or services by the required
1103 payment date.

1104 Payment shall be deemed to have been made when offset proceedings have been instituted, as
1105 authorized under the Virginia Debt Collection Act (§ 2.2-4800 et seq.) of the Code of Virginia.

1106 B. Separate payment dates may be specified for contracts under which goods or services are provided
1107 in a series of partial deliveries or executions to the extent that such contract provides for separate
1108 payment for such partial delivery or execution.

1109 § 43. Defect or impropriety in the invoice or goods and/or services received. -

1110 In instances where there is a defect or impropriety in an invoice or in the goods or services received,
1111 the Institution shall notify the supplier of the defect or impropriety, if the defect or impropriety would
1112 prevent payment by the payment date. The notice shall be sent within 15 days after receipt of the
1113 invoice or the goods or services.

1114 § 44. Date of postmark deemed to be date payment is made. -

1115 In those cases where payment is made by mail, the date of postmark shall be deemed to be the date
1116 payment is made for purposes of these Rules.

1117 § 45. Payment clauses to be included in contracts. -

1118 Any contract awarded by the Institution shall include:

1119 1. A payment clause that obligates the contractor to take one of the two following actions within
1120 seven days after receipt of amounts paid to the contractor by the Institution for work performed by the
1121 subcontractor under that contract:

1122 a. Pay the subcontractor for the proportionate share of the total payment received from the Institution
1123 attributable to the work performed by the subcontractor under that contract; or

1124 b. Notify the Institution and subcontractor, in writing, of his intention to withhold all or a part of the
1125 subcontractor's payment with the reason for nonpayment.

1126 2. A payment clause that requires (i) individual contractors to provide their social security numbers
1127 and (ii) proprietorships, partnerships, and corporations to provide their federal employer identification
1128 numbers.

1129 3. An interest clause that obligates the contractor to pay interest to the subcontractor on all amounts
1130 owed by the contractor that remain unpaid after seven days following receipt by the contractor of
1131 payment from the Institution for work performed by the subcontractor under that contract, except for
1132 amounts withheld as allowed in subdivision 1.

1133 4. An interest rate clause stating, "Unless otherwise provided under the terms of this contract, interest
1134 shall accrue at the rate of 1% per month."

1135 Any such contract awarded shall further require the contractor to include in each of its subcontracts a
1136 provision requiring each subcontractor to include or otherwise be subject to the same payment and
1137 interest requirements with respect to each lower-tier subcontractor.

1138 A contractor's obligation to pay an interest charge to a subcontractor pursuant to the payment clause
1139 in this section shall not be construed to be an obligation of the Institution. A contract modification shall
1140 not be made for the purpose of providing reimbursement for the interest charge. A cost reimbursement
1141 claim shall not include any amount for reimbursement for the interest charge.

1142 § 46. Interest penalty; exceptions. -

1143 A. Interest shall accrue, at the rate determined pursuant to subsection B, on all amounts owed by the
1144 Institution to a vendor that remain unpaid after seven days following the payment date. However,
1145 nothing in this section shall affect any contract providing for a different rate of interest, or for the
1146 payment of interest in a different manner.

1147 B. The rate of interest charged the Institution pursuant to subsection A shall be the base rate on
1148 corporate loans (prime rate) at large United States money center commercial banks as reported daily in
1149 the publication entitled The Wall Street Journal. Whenever a split prime rate is published, the lower of
1150 the two rates shall be used. However, in no event shall the rate of interest charged exceed the rate of
1151 interest established pursuant to § 58.1-1812 of the Code of Virginia.

1152 C. Notwithstanding subsection A, no interest penalty shall be charged when payment is delayed
1153 because of disagreement between the Institution and a vendor regarding the quantity, quality or time of
1154 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 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

1399 such an approach where it makes good business sense. The University will ensure vendors understand
 1400 that eVA transaction fees will be invoiced at the time blanket or standing orders are issued, that the
 1401 transaction fee will be based on the total order amount, and the vendor is required to pay the total
 1402 transaction fee within 30 days of the invoice date regardless of the performance/delivery schedule
 1403 specified in the order.

1404 VI. eVA will deliver University nonexempt orders to vendors that are identified as accepting
 1405 electronic orders (Fax, Email, EDI, cXML). The University or SciQuest will print/mail/deliver all other
 1406 orders to vendors. Whereas the University maintains a University specific electronic vendor record that
 1407 identifies vendors that do not agree to the eVA terms and conditions, including payment of the eVA
 1408 order transaction fee, the University may deviate from the policy/procedure set forth in Section 3 of the
 1409 eVA Business Plan as follows:

1410 A. For vendors that refuse to accept the eVA terms and conditions, the University will transmit the
 1411 appropriate R02, S02, E02, or P02 Purchase Order Category and a Purchase Order Comment that
 1412 includes the statement "Vendor refuses eVA terms and conditions." The University agrees that it will
 1413 pay the eVA transaction fees for these orders.

1414 B. For vendors that agree to accept the eVA terms and conditions, the University will transmit the
 1415 appropriate R01, S01, E01, or P01 Purchase Order Category and a Purchase Order Comment that
 1416 includes the statement "Vendor accepts eVA terms and conditions - University eVA Vendor Manager,
 1417 e-mail address and phone number." The University agrees that, for these orders, it will resolve any
 1418 vendor dispute related to payment of eVA transaction fees by working directly with the vendor whether
 1419 such vendor contacts the university directly or the dispute is referred to the university by DGS/DPS or
 1420 CGI-AMS.

1421 The University further agrees that:

1422 1. It will provide the DGS/DPS eVA Business Manager (or designee) email notification of the
 1423 resolution agreed to by the University and the vendor within 10 business days, unless otherwise agreed
 1424 on a case-by-case basis by the DGS/DPS eVA Business Manager (or designee);

1425 2. It will pay the eVA transaction fee unless it notifies the eVA Business Manager (or designee)
 1426 within the specified time that the dispute has been resolved and the vendor agreed to pay the fee; and

1427 3. In the event the University does not provide resolution notification to the eVA Business Manager
 1428 (or designee) within the specified timeframe, DGS/DPS will automatically execute a manual adjustment
 1429 reversing disputed transaction fees from the vendor to the University and the University will pay the fee.

1430 VII. The University will not require separate vendor registrations as a prerequisite for responding to
 1431 University solicitations. The University will participate in an enterprise workgroup to determine the best
 1432 means to capture W-9 information on behalf of the whole enterprise. The process for collecting W-9
 1433 information will be supported in eVA in such a way as to provide CoVA verified vendor information to
 1434 entities. The University will have the option to receive a subset of vendor related data. Until an
 1435 enterprise W-9 process is established, the University will be responsible for collection of W-9
 1436 information.

1437 VIII. For major system changes, DGS/DPS will collaborate in advance (advance notice defined as at
 1438 least six (6) months prior to change or as soon as any new plan is proposed) with the University
 1439 regarding any proposed replacement to the CoVA's electronic procurement system and on changes that
 1440 may affect the technical changes described herein.

1441 IX. Integration of the University's electronic procurement solution with the University's ERP is the
 1442 responsibility of the University. The solution must provide for orders, change orders and cancellations.

1443 Guidelines

1444 1. The establishment of this agreement is intended to formulate the basis for a long-term solution for
 1445 electronic procurement between the University and the CoVA.

1446 2. Orders may be batched and transmitted to eVA as often as needed except between the hours of 8
 1447 p.m. and 4 a.m. eVA will transmit registered vendor orders it receives within 15 minutes or less.

1448 3. Nonexempt orders to unregistered vendors are to be transmitted to eVA for loading to the Data
 1449 Warehouse. The University shall be responsible for payment of all eVA transaction fees for nonexempt
 1450 orders to unregistered vendors and exempt orders the University chooses to issue to unregistered and
 1451 registered vendors through eVA. See eVA Business Plan Section 3 for specific processing requirements
 1452 for unregistered vendor orders.

1453 4. Change Orders are to be transmitted to eVA as replacement orders complying with the eVA
 1454 standard format.

1455 5. Cancellations are to be transmitted to eVA complying with the eVA standard format.

1456 6. eVA Interface standard does not currently support PCard orders; however these orders may be
 1457 processed via the interface as (a) confirming orders or (b) orders for PCards on file with the vendor.

1458 Schedule

1459 The University shall implement this agreement no later than July 2006.

Metrics

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

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

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

1. Provide end users, including purchase-card users, access to an electronic system for buying;
2. Conduct business with eVA registered vendors whenever possible;
3. Place nonexempt orders, including change orders and cancellations, to eVA suppliers electronically using eVA;
4. To the greatest extent possible, transmit real-time electronic purchase orders, regardless of dollar value, that include commodity codes, complete item descriptions, quantities, and unit prices;

5. To the greatest extent feasible, the University will transmit confirming orders to eVA within five (5) business days after placing the order. Commodity codes, complete item descriptions, quantities, and unit prices will be provided for all confirming orders. DGS/DPS will provide periodic reports on the number and timeliness of confirming orders enabling the University and DGS/DPS to work together to monitor the usage of confirming orders with the objective of reducing their numbers to the extent possible.

The University agrees that, for confirming orders, it will resolve any vendor dispute, including disputes 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:

a. 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);

b. 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

c. 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.

6. Timely process electronic change orders and cancellations;

7. Post all solicitations and business opportunities greater than \$50,000 on the eVA website except as specifically exempted by DPS;

8. To the extent technically feasible, make eVA catalogs, especially contract catalogs, available to end users using the ERP/SciQuest Integration system. The University will be responsible for the accuracy of contract catalog pricing loaded into the ERP/SciQuest;

9. Use eVA electronic vendor notification for procurement opportunities (per plans to post solicitations specified in item 7 above and the use of Quick Quote/Reverse Auctions specified in item 10 below);

10. Use eVA on-line bidding functions of Quick Quote and Reverse Auction for appropriate commodities, when such are identified;

11. Complete and certify the monthly eVA Dashboard Report; and

12. Timely remit any eVA transaction and non-use fees incurred by the institution.

C. The University shall be subject to eVA fees assessed per the eVA Business Plan.

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 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 Virginia Polytechnic Institute and State University'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.

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 Board of Visitors of Virginia Polytechnic Institute and State University.

"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.

"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.

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

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.

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

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

and procedures.

V. FINANCIAL MANAGEMENT AND REPORTING SYSTEM.

The President, acting through the Executive Vice President and Chief Operating Officer, shall continue to be authorized by the Board to maintain existing and implement new policies governing the management of University financial resources. These policies shall continue to (i) ensure compliance with Generally Accepted Accounting Principles, (ii) ensure consistency with the current accounting 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 for which the financial and administrative management and educational-related performance benchmarks described in § 23-9.6:1.01 of the Code of Virginia, 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 of the Act, shall receive certain financial incentives, including the 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 of the Act, 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 these funds to the University as specified in Section IX below.

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

The Board of Visitors shall retain the authority to establish tuition, fee, room, board, and other charges, with appropriate commitment provided to need-based grant aid for middle- and lower-income

undergraduate Virginians. Except as provided otherwise in the Appropriation Act then in effect, it is the intent of the Commonwealth and the University that the University shall be exempt from the revenue restrictions in the general provisions of the Appropriation Act related to non-general funds. In addition, unless prohibited by the Appropriation Act then in effect, it is the intent of the Commonwealth and the University that the University shall be entitled to retain non-general fund savings generated from changes in Commonwealth rates and charges, including but not limited to health, life, and disability insurance rates, retirement contribution rates, telecommunications charges, and utility rates, rather than 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 bi-monthly pay dates*, and up to 50% of its annual general fund appropriation for Student Financial

1765 Assistance on or after September 1 of each year with the remaining 50% to be drawn on or after
 1766 February 1 of each year in order to meet student obligations;

1767 ii) The University may draw down the sum of all tuition and E&G fees and all other nongeneral
 1768 revenues deposited to the State Treasury each day on the same business day they were deposited; and

1769 iii) The University anticipates that expenditures could exceed available revenues from time to time
 1770 during the year if the above disbursement schedule is used. When the University projects a cash deficit
 1771 is likely in activities supported by general fund appropriations, the University may make a request to the
 1772 State Comptroller for an early draw on its appropriated general funds deposited in the State Treasury, in
 1773 a form and within a timeframe agreeable to the parties, in order to cover expenditures.

1774 These disbursement policies shall authorize the President, acting through the Executive Vice
 1775 President and Chief Operating Officer, to independently select, engage, and contract for such consultants,
 1776 accountants, and financial experts, and other such providers of expert advice and consultation, and, after
 1777 consultation with the Office of the Attorney General, private attorneys, as may be necessary or desirable
 1778 in his or her discretion. The policies also shall continue to include the ability to locally manage and
 1779 administer the Commonwealth's credit card and cost recovery programs related to disbursements, subject
 1780 to any restrictions contained in the Commonwealth's contracts governing those programs, provided that
 1781 the University shall submit the credit card and cost recovery aspects of its financial and operations
 1782 policies to the State Comptroller for review and comment prior to implementing those aspects of those
 1783 policies. The disbursement policies shall ensure that adequate risk management and internal control
 1784 procedures shall be maintained over previously decentralized processes for public records, payroll, and
 1785 non-payroll disbursements. The University shall continue to provide summary quarterly prompt payment
 1786 reports to the Department of Accounts in accordance with the reporting procedures established pursuant
 1787 to the Prompt Payment Act.

1788 The University's disbursement policies shall be guided by the principles of the Commonwealth's
 1789 policies as included in the Commonwealth's Accounting Policy and Procedures Manual. Upon the
 1790 Effective Date of its initial Management Agreement with the Commonwealth, the University shall
 1791 continue to follow the Commonwealth's disbursement policies until such time as specific alternative
 1792 policies can be developed, approved and implemented. Such alternate policies shall be submitted to the
 1793 State Comptroller for review and comment prior to their implementation by the University.

1794 X. DEBT MANAGEMENT.

1795 The President, acting through the Executive Vice President and Chief Operating Officer, shall
 1796 continue to be authorized to create and implement any and all debt management policies as part of a
 1797 system for the management of University financial resources.

1798 Pursuant to § 23-38.108(B) of the Act, the University shall have the authority to issue bonds, notes,
 1799 or other obligations that do not constitute State Tax Supported Debt, as determined by the Treasury
 1800 Board, and that are consistent with debt capacity and management policies and guidelines established by
 1801 its Board of Visitors, without obtaining the consent of any legislative body, elected official, commission,
 1802 board, bureau, or agency of the Commonwealth or of any political subdivision, and without any
 1803 proceedings or conditions other than those specifically required by Subchapter 3 of the Act; provided
 1804 that, the University shall notify the Treasurer of Virginia of its intention to issue bonds pursuant to this
 1805 Policy at the time it adopts the bond issuance planning schedule for those bonds. Any new or revised
 1806 debt capacity and management policy shall be submitted to the Treasurer of Virginia for review and
 1807 comment prior to its adoption by the University.

1808 The University recognizes that there are numerous types of financing structures and funding sources
 1809 available each with specific benefits, risks, and costs. All potential funding sources shall be reviewed by
 1810 the President, acting through the Executive Vice President and Chief Operating Officer, within the
 1811 context of the overall portfolio to ensure that any financial product or structure is consistent with the
 1812 University's objectives. Regardless of the financing structure(s) utilized, the President, acting through the
 1813 Executive Vice President and Chief Operating Officer, shall obtain sufficient documentation to gain a
 1814 full understanding of the transaction, including (i) the identification of potential risks and benefits, and
 1815 (ii) an analysis of the impact on University creditworthiness and debt capacity. All such debt or financial
 1816 products issued pursuant to the provisions of §§ 23.38-107 and 23.38-108 of the Act shall be authorized
 1817 by resolution of the Board, providing that they do not constitute State Tax Supported Debt.

1818 XI. INVESTMENT POLICY.

1819 It is the policy of the University to invest its operating and reserve funds solely in the interest of the
 1820 University and in a manner that will provide the highest investment return with the maximum security
 1821 while meeting daily cash flow demands and conforming to the Investment of Public Funds Act
 1822 (§ 2.2-4500 et seq.) of the Code of Virginia. Investments shall be made with the care, skill, prudence
 1823 and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and
 1824 familiar with such matters would use in the conduct of an enterprise of a like character and with like
 1825 aims.

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

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

XII. INSURANCE AND RISK MANAGEMENT.

By July 1 of each odd-numbered year, the University shall inform the Secretary of Finance of any intent during the next biennium to withdraw from any insurance or risk management program made available to the University through the Commonwealth's Division of Risk Management and in which the 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, ~~2010~~ 2012, *provided that on or before November 15, 2011, the Governor provides to the Chairmen of the House Committee on Appropriations and the Senate Committee on Finance written notification that this Management Agreement needs to be renegotiated or revised. If such notification is not received, this Management Agreement shall continue in effect until June 30, 2015.*

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

1887 Principles pursuant to the pronouncement of the Financial Accounting Standards Board.

1888 "Capital Professional Services" means professional engineering, architecture, land surveying and
1889 landscape architecture services related to capital projects.

1890 "Capital project(s)" means the acquisition of any interest in land, including improvements on the
1891 acquired land at the time of acquisition, new construction, improvements or renovations, and Capital
1892 Leases.

1893 "College" means the College of William and Mary in Virginia, (State Agency 204), and the Virginia
1894 Institute of Marine Science, (State Agency 268).

1895 "Covered Institution" means, on and after the Effective Date of its initial Management Agreement, a
1896 public institution of higher education of the Commonwealth of Virginia that has entered into a
1897 management agreement with the Commonwealth to be governed by the provisions of Subchapter 3 of
1898 the Act.

1899 "Enabling Legislation" means those chapters, other than Chapter 4.10, of Title 23 of the Code of
1900 Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and missions
1901 of the individual public institutions of higher education of the Commonwealth, and as provided in
1902 §§ 2.2-2817.2, 2.2-2905, and 51.1-126.3.

1903 "Major Capital Project(s)" means the acquisition of any interest in land, including improvements on
1904 the acquired land at the time of acquisition, new construction of 5,000 square feet or greater or costing
1905 \$1 million or more, improvements or renovations of \$1 million or more, and Capital Leases.

1906 "State Tax Supported Debt" means bonds, notes or other obligations issued under Article X, Section
1907 9(a), 9(b), or 9(c), or 9(d), if the debt service payments are made or ultimately are to be made from
1908 general government funds, as defined in the December 20, 2004 Report to the Governor and General
1909 Assembly of the Debt Capacity Advisory Committee or as that definition is amended from time to time.

1910 III. SCOPE OF POLICY.

1911 This Policy applies to the planning and budget development for capital projects, capital project
1912 authorization, and the implementation of capital projects, whether funded by a general fund
1913 appropriation of the General Assembly, proceeds from State Tax Supported Debt, or funding from other
1914 sources.

1915 This Policy provides guidance for 1) the process for developing one or more capital project programs
1916 for the College, 2) authorization of new capital projects, 3) procurement of Capital Professional Services
1917 and construction services, 4) design reviews and code approvals for capital projects, 5) environmental
1918 impact requirements, 6) building demolitions, 7) building and land acquisitions, 8) building and land
1919 dispositions, 9) project management systems, and 10) reporting requirements.

1920 IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.

1921 The Board of Visitors of the College shall at all times be fully and ultimately accountable for the
1922 proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation
1923 of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant
1924 to its legally permissible procedures, specifically delegate either herein or by separate Board resolution
1925 the duties and responsibilities set forth in this Policy to a person or persons within the College, who,
1926 while continuing to be fully accountable for such duties and responsibilities, may further delegate the
1927 implementation of those duties and responsibilities pursuant to the College's usual delegation policies
1928 and procedures.

1929 V. CAPITAL PROGRAM.

1930 The President shall adopt a system for developing one or more capital project programs that defines
1931 or define the capital needs of the College for a given period of time consistent with the College's
1932 published Master Plan. This process may or may not mirror the Commonwealth's requirements for
1933 capital plans. The Board of Visitors shall approve the program for Major Capital Projects. Major
1934 Capital Projects that are to be funded entirely or in part by a general fund appropriation of the General
1935 Assembly or proceeds from State Tax Supported Debt shall follow the Commonwealth's requirements
1936 for capital plans. The Board may approve amendments to the program for Major Capital Projects
1937 annually or more often if circumstances warrant.

1938 It shall be College policy that each capital project program shall meet the College's mission and
1939 institutional objectives, and be appropriately authorized by the College. Moreover, it shall be College
1940 policy that each capital project shall be of a size and scope to provide for the defined program needs,
1941 designed in accordance with all applicable building codes and handicapped accessibility standards as
1942 well as the College's design guidelines and standards, and costed to reflect current costs and escalated to
1943 the mid-point of anticipated construction.

1944 VI. AUTHORIZATION OF CAPITAL PROJECTS.

1945 The Board of Visitors shall authorize the initiation of each Major Capital Project by approving its
1946 size, scope, budget, and funding. The President, acting through his designee, shall adopt procedures for
1947 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 pre-appropriation 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 College 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 his designee, for all other capital projects. The President 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 his designee, 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 College 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 College is committed to:

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;

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

Making procurement rules clear in advance of any competition;

Providing access to the College'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 College;

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;

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 his designee, is authorized to develop implementing procedures for the procurement of Capital Professional Services and construction services at the College. 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 College 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 College, 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 his designee, 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 College'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 shall designate a Building Official responsible for building code compliance *at the*

2009 College, including the Virginia Institute of Marine Science and Richard Bland College, by either (i)
 2010 hiring an individual to be the College Building Official, or (ii) continuing to use the services of the
 2011 Department of General Services, Division of Engineering and Buildings, to perform the Building Official
 2012 function. If option (i) is selected, the individual hired as the College Building Official shall be a
 2013 ~~full-time~~ *an employee of the College who has no other assigned duties or responsibilities at the*
 2014 *institution and who is not employed by any firm or business providing facility services to the College*, a
 2015 registered professional architect or engineer, and certified by the Department of Housing and Community
 2016 Development to perform this Building Official function. The College Building Official shall issue
 2017 building permits for each capital project required by the VUSBC to have a building permit, and shall
 2018 determine the suitability for occupancy of, and shall issue certifications for building occupancy for, all
 2019 capital projects requiring such certification. Prior to issuing any such certification, this individual shall
 2020 ensure that the VUSBC and accessibility requirements are met for that capital project and that such
 2021 capital project has been inspected by the State Fire Marshal or his designee *as required*. When serving
 2022 as the College Building Official, such individual shall organizationally report directly and exclusively to
 2023 the Board of Visitors. If the College hires its own College Building Official, it shall fulfill the code
 2024 review requirement by maintaining a review unit *of licensed professional architects or engineers*
 2025 *supported by resources and staff* who are certified by the Department of Housing and Community
 2026 Development in accordance with § 36-137 of the Code of Virginia for such purpose and who shall
 2027 review plans, specifications and documents for compliance with building codes and standards and
 2028 perform required inspections of work in progress and the completed capital project. No individual
 2029 licensed professional architect or engineer hired *under the College's personnel system as a member of*
 2030 *the review unit or contracted with to perform these functions* shall also perform other building
 2031 code-related design, construction, facilities-related project management or facilities management
 2032 functions for the College ~~on the same capital project~~.

2033 IX. ENVIRONMENTAL IMPACT REPORTS.

2034 It shall be the policy of the College to assess the environmental, historic preservation, and
 2035 conservation impacts of all capital projects and to minimize and otherwise mitigate all adverse impacts
 2036 to the extent practicable. The College shall develop a procedure for the preparation and approval of
 2037 environmental impact reports for capital projects, in accordance with State environmental, historic
 2038 preservation, and conservation requirements generally applicable to capital projects otherwise meeting
 2039 the definition of Major Capital Projects but, pursuant to § 23-38.109 C 1 of the Act, with a cost of
 2040 \$300,000 or more.

2041 X. BUILDING DEMOLITIONS.

2042 It shall be the policy of the College to consider the environmental and historical aspects of any
 2043 proposed demolitions. The Board of Visitors shall be responsible for approving demolition requests.
 2044 The College shall develop a procedure for the preparation and review of demolition requests, including
 2045 any necessary reviews by the Department of Historic Resources and the Art and Architectural Review
 2046 Board in accordance with State historic preservation requirements generally applicable to capital projects
 2047 in the Commonwealth. Further, for any property that was acquired or constructed with funding from a
 2048 general fund appropriation of the General Assembly or from proceeds from State Tax Supported Debt,
 2049 general laws applicable to State owned property shall apply.

2050 XI. BUILDING OR LAND ACQUISITIONS.

2051 It is the policy of the College that capital projects involving building or land acquisition shall be
 2052 subjected to thorough inquiry and due diligence prior to closing on the acquisition of such real property.
 2053 The President, acting through his designee, shall ensure that the project management system
 2054 implemented pursuant to Section XIII below provides for a review and analysis of all pertinent matters
 2055 relating to the acquisition of buildings and land as any prudent purchaser would perform to the end that
 2056 any building or land acquired by the College shall be suitable for its intended purpose, that the
 2057 acquisition can be made without substantial risk of liability to the College and that the cost of the real
 2058 property to be acquired, together with any contemplated development thereof, shall be such that
 2059 compliance with the provisions of Section VI of this Policy is achieved. In addition, the President,
 2060 acting through his designee, shall ensure that, where feasible and appropriate to do so, the following
 2061 specific policies pertaining to the acquisition of buildings or land for capital projects are carried out.

2062 A. Environmental and Land Use Considerations.

2063 It is the policy of the College to reasonably cooperate with each locality affected by the acquisition.
 2064 Such cooperation shall include but not be limited to furnishing any information that the locality may
 2065 reasonably request and reviewing any requests by the locality with regard to any such acquisition. The
 2066 College shall consider the zoning and comprehensive plan designation by the locality of the building or
 2067 land and surrounding parcels, as well as any designation by State or federal agencies of historically or
 2068 archeologically significant areas on the land. Nothing herein shall be construed as requiring the College
 2069 to comply with local zoning laws and ordinances.

B. Infrastructure and Site Condition.

The President, acting through his designee, 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 College 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 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

2131 Operations Act (the Act), Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia, and in
 2132 particular § 23-38.110 of the Act, the governing body of a public institution of higher education of the
 2133 Commonwealth of Virginia that has entered into a Management Agreement with the Commonwealth
 2134 pursuant to Subchapter 3 of the Act, has adopted the following Rules Governing Procurement of Goods,
 2135 Services, Insurance, and Construction to govern the procurement of goods, services, insurance, and
 2136 construction by the Institution, excluding the University of Virginia Medical Center:

2137 § 1. Purpose. -

2138 The purpose of these Rules is to enunciate the public policies pertaining to procurement of good,
 2139 services, insurance, and construction by the Institution from nongovernmental sources, to include
 2140 governmental procurement that may or may not result in monetary consideration for either party. These
 2141 Rules shall apply whether the consideration is monetary or nonmonetary and regardless of whether the
 2142 Institution, the contractor, or some third party is providing the consideration.

2143 § 2. Scope of Procurement Authority. -

2144 Subject to these Rules, and the Institution's continued substantial compliance with the terms and
 2145 conditions of its Management Agreement with the Commonwealth pursuant to § 23-38.88(D)(4) and the
 2146 requirements of Chapter 4.10 of the Act, the Institution shall have and shall be authorized to have and
 2147 exercise all of the authority relating to procurement of goods, services, insurance, and construction,
 2148 including but not limited to capital outlay-related procurement and information technology-related
 2149 procurement, that Institutions are authorized to exercise pursuant to Subchapter 3 of the Restructuring
 2150 Act.

2151 § 3. Competition is the Priority. -

2152 To the end that the Institution shall obtain high quality goods and services at reasonable cost, that all
 2153 procurement procedures be conducted in an open, fair and impartial manner with avoidance of any
 2154 impropriety or appearance of impropriety, that all qualified vendors have access to the Institution's
 2155 business and that no offeror be arbitrarily or capriciously excluded, it is the intent of the governing body
 2156 of the Institution that competition be sought to the maximum feasible degree, that procurement
 2157 procedures involve openness and administrative efficiency, that individual public bodies enjoy broad
 2158 flexibility in fashioning details of such competition, that the rules governing contract awards be made
 2159 clear in advance of the competition, that specifications reflect the procurement needs of the purchasing
 2160 body rather than being drawn to favor a particular vendor, and that the purchaser and vendor freely
 2161 exchange information concerning what is sought to be procured and what is offered. The Institution
 2162 may consider best value concepts when procuring goods and nonprofessional services, but not
 2163 construction or professional services. Professional services will be procured using a qualification-based
 2164 selection process. The criteria, factors, and basis for consideration of best value and the process for the
 2165 consideration of best value shall be as stated in the procurement solicitation.

2166 § 4. Definitions. -

2167 As used in these Rules:

2168 "Affiliate" means an individual or business that controls, is controlled by, or is under common
 2169 control with another individual or business. A person controls an entity if the person owns, directly or
 2170 indirectly, more than 10% of the voting securities of the entity. For the purposes of this definition
 2171 "voting security" means a security that (i) confers upon the holder the right to vote for the election of
 2172 members of the board of directors or similar governing body of the business or (ii) is convertible into,
 2173 or entitles the holder to receive, upon its exercise, a security that confers such a right to vote. A general
 2174 partnership interest shall be deemed to be a voting security.

2175 "Best value," as predetermined in the solicitation, means the overall combination of quality, price,
 2176 and various elements of required services that in total are optimal relative to the Institution's needs.

2177 "Business" means any type of corporation, partnership, limited liability company, association, or sole
 2178 proprietorship operated for profit.

2179 "Competitive negotiation" is a method of contractor selection that includes the following elements:

2180 1. Issuance of a written Request for Proposal indicating in general terms that which is sought to be
 2181 procured, specifying the factors that will be used in evaluating the proposal and containing or
 2182 incorporating by reference the other applicable contractual terms and conditions, including any unique
 2183 capabilities or qualifications that will be required of the contractor.

2184 2. Public notice of the Request for Proposal at least 10 days prior to the date set for receipt of
 2185 proposals by publication in a newspaper or newspapers of general circulation in the area in which the
 2186 contract is to be performed so as to provide reasonable notice to the maximum number of offerors that
 2187 can be reasonably anticipated to submit proposals in response to the particular request. Public notice
 2188 also shall be published on the Department of General Services' central electronic procurement website
 2189 and may be published on other appropriate websites. In addition, proposals may be solicited directly
 2190 from potential contractors.

2191 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 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

2253 Enterprise.

2254 3. Public opening and announcement of all bids received.

2255 4. Evaluation of bids based upon the requirements set forth in the invitation, which may include

2256 special qualifications of potential contractors, life-cycle costing, value analysis, and any other criteria

2257 such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose, which

2258 are helpful in determining acceptability.

2259 5. Award to the lowest responsive and responsible bidder. When the terms and conditions of multiple

2260 awards are so provided in the Invitation to Bid, awards may be made to more than one bidder.

2261 "Construction" means building, altering, repairing, improving or demolishing any structure, building

2262 or highway, and any draining, dredging, excavation, grading or similar work upon real property.

2263 "Construction management contract" means a contract in which a party is retained by the owner to

2264 coordinate and administer contracts for construction services for the benefit of the owner, and may also

2265 include, if provided in the contract, the furnishing of construction services to the owner.

2266 "Covered Institution" or "Institution" means, on and after the effective date of the initial management

2267 agreement with the Commonwealth of Virginia, a public institution of higher education of the

2268 Commonwealth that has entered into a management agreement with the Commonwealth to be governed

2269 by the provisions of Subchapter 3 of the Restructuring Act.

2270 "Design-build contract" means a contract between the Institution and another party in which the party

2271 contracting with the Institution agrees to both design and build the structure, roadway or other item

2272 specified in the contract.

2273 "Goods" means all material, equipment, supplies, and printing, including information technology and

2274 telecommunications goods such as automated data processing hardware and software.

2275 "Informality" means a minor defect or variation of a bid or proposal from the exact requirements of

2276 the Invitation to Bid, or the Request for Proposal, which does not affect the price, quality, quantity or

2277 delivery schedule for the goods, services or construction being procured.

2278 "Multiphase professional services contract" means a contract for the providing of professional

2279 services where the total scope of work of the second or subsequent phase of the contract cannot be

2280 specified without the results of the first or prior phase of the contract.

2281 "Nonprofessional services" means any services not specifically identified as professional services in

2282 the definition of professional services and includes small construction projects valued not over \$1

2283 million; provided that subdivision 3a of the definition of "competitive negotiation" in this section shall

2284 still apply to professional services for such small construction projects.

2285 "Potential bidder or offeror" for the purposes of §§ 50 and 54 of these Rules means a person who, at

2286 the time the Institution negotiates and awards or proposes to award a contract, is engaged in the sale or

2287 lease of goods, or the sale of services, insurance or construction, of the type to be procured under the

2288 contract, and who at such time is eligible and qualified in all respects to perform that contract, and who

2289 would have been eligible and qualified to submit a bid or proposal had the contract been procured

2290 through competitive sealed bidding or competitive negotiation.

2291 "Professional services" means work performed by an independent contractor within the scope of the

2292 practice of accounting, actuarial services, architecture, land surveying, landscape architecture, law,

2293 dentistry, medicine, optometry, pharmacy or professional engineering.

2294 "Public body" means any legislative, executive or judicial body, agency, office, department, authority,

2295 post, commission, committee, institution, board or political subdivision created by law to exercise some

2296 sovereign power or to perform some governmental duty, and empowered by law to undertake the

2297 activities described in these Rules.

2298 "Public contract" means an agreement between the Institution and a nongovernmental source that is

2299 enforceable in a court of law.

2300 "Responsible bidder" or "offeror" means a person who has the capability, in all respects, to perform

2301 fully the contract requirements and the moral and business integrity and reliability that will assure good

2302 faith performance, and who has been prequalified, if required.

2303 "Responsive bidder" means a person who has submitted a bid that conforms in all material respects

2304 to the Invitation to Bid.

2305 "Restructuring Act" or "Act" means the Restructured Higher Education Financial and Administrative

2306 Operations Act, Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia.

2307 "Reverse auctioning" means a procurement method wherein bidders are invited to bid on specified

2308 goods or nonprofessional services through real-time electronic bidding, with the award being made to

2309 the lowest responsive and responsible bidder. During the bidding process, bidders' prices are revealed

2310 and bidders shall have the opportunity to modify their bid prices for the duration of the time period

2311 established for bid opening.

2312 "Rules" means these Rules Governing Procurement of Goods, Services, Insurance, and Construction

2313 adopted by the governing body of the Covered Institution.

"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.

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

2375 provide goods and services to the Institution that meet its business goals and objectives, the Institution is
 2376 authorized to participate in, sponsor, conduct, or administer a cooperative procurement arrangement on
 2377 behalf of or in conjunction with public bodies, public or private health or educational institutions, other
 2378 public or private organizations or entities, including public-private partnerships, charitable organizations,
 2379 health care provider alliances or purchasing organizations or entities, or with public agencies or
 2380 institutions or group purchasing organizations of the several states, territories of the United States, or the
 2381 District of Columbia, for the purpose of combining requirements to effect cost savings or reduce
 2382 administrative expense in any acquisition of goods and services, other than professional services. The
 2383 Institution may purchase from any authority, department, agency, institution, city, county, town, or other
 2384 political subdivision of the Commonwealth's contract even if it did not participate in the request for
 2385 proposal or invitation to bid, if the request for proposal or invitation to bid specified that the
 2386 procurement was being conducted on behalf of other public bodies. In such instances, deviation from the
 2387 procurement procedures set forth in these Rules and the administrative policies and procedures
 2388 established to implement these Rules shall be permitted. Notwithstanding all of the above, use of
 2389 cooperative contracts shall conform to the business requirements of the Commonwealth's electronic
 2390 procurement system, including the requirement for payment of applicable fees. Nothing herein shall
 2391 prohibit the payment by direct or indirect means of any administrative fee that will allow for
 2392 participation in any such arrangement.

2393 B. In circumstances where statewide contracts for goods and services, including information
 2394 technology and telecommunications goods and services, do not provide goods and services to meet the
 2395 Institution's business goals and objectives, and as authorized by the United States Congress and
 2396 consistent with applicable federal regulations, and provided the terms of the contract permit such
 2397 purchases:

2398 1. The Institution may purchase goods and nonprofessional services, from a United States General
 2399 Services Administration contract or a contract awarded by any other agency of the United States
 2400 government; and

2401 2. The Institution may purchase telecommunications and information technology goods and
 2402 nonprofessional services from a United States General Services Administration contract or a contract
 2403 awarded by any other agency of the United States government.

2404 § 7. Design-build or construction management contracts authorized. -

2405 A. Notwithstanding any other provisions of law, the Institution may enter into contracts on a fixed
 2406 price design-build basis or construction management basis in accordance with the provisions of this
 2407 section.

2408 B. Procurement of construction by the design-build or construction management method shall be a
 2409 two-step competitive negotiation process. In the first step, offerors shall be requested to submit their
 2410 qualifications. Based upon the information submitted and any other relevant information which the
 2411 Commonwealth may obtain, no more than five offerors deemed most suitable for the project shall be
 2412 selected by the Commonwealth and requested to submit proposals.

2413 § 8. Modification of the contract. -

2414 A. A contract awarded by the Institution may include provisions for modification of the contract
 2415 during performance, but no fixed-price contract may be increased by more than 25% of the amount of
 2416 the contract or \$50,000, whichever is greater, without the advance written approval of the Institution's
 2417 president or his designee. In no event may the amount of any contract, without adequate consideration,
 2418 be increased for any purpose, including, but not limited to, relief of an offeror from the consequences of
 2419 an error in its bid or offer.

2420 B. The Institution may extend the term of an existing contract for services to allow completion of
 2421 any work undertaken but not completed during the original term of the contract.

2422 C. Nothing in this section shall prevent the Institution from placing greater restrictions on contract
 2423 modifications.

2424 § 9. Discrimination prohibited; participation of small, women- and minority-owned business. -

2425 A. In the solicitation or awarding of contracts, the Institution shall not discriminate against a bidder
 2426 or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis
 2427 prohibited by state law relating to discrimination in employment. Whenever solicitations are made, the
 2428 Institution shall include businesses selected from a list made available by the Department of Minority
 2429 Business Enterprise.

2430 B. The Institution shall establish programs consistent with this section to facilitate the participation of
 2431 small businesses and businesses owned by women and minorities in procurement transactions. The
 2432 programs established shall be in writing and shall include cooperation with the Department of Minority
 2433 Business Enterprise, the United States Small Business Administration, and other public or private
 2434 agencies. The Institution shall submit annual progress reports on minority business procurement to the
 2435 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 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

2497 pursuant to such criteria. The form shall allow the prospective contractor seeking prequalification to
 2498 request, by checking the appropriate box, that all information voluntarily submitted by the contractor
 2499 pursuant to this subsection shall be considered a trade secret or proprietary information subject to the
 2500 provisions of subsection D of § 34 of these Rules.

2501 In all instances in which the Institution requires prequalification of potential contractors for
 2502 construction projects, advance notice shall be given of the deadline for the submission of
 2503 prequalification applications. The deadline for submission shall be sufficiently in advance of the date set
 2504 for the submission of bids for such construction so as to allow the procedures set forth in this subsection
 2505 to be accomplished.

2506 At least 30 days prior to the date established for submission of bids or proposals under the
 2507 procurement of the contract for which the prequalification applies, the Institution shall advise in writing
 2508 each contractor who submitted an application whether that contractor has been prequalified. In the event
 2509 that a contractor is denied prequalification, the written notification to the contractor shall state the
 2510 reasons for the denial of prequalification and the factual basis of such reasons.

2511 A decision by the Institution denying prequalification under the provisions of this subsection shall be
 2512 final and conclusive unless the contractor appeals the decision as provided in § 54 of these Rules.

2513 C. The Institution may deny prequalification to any contractor only if the Institution finds one of the
 2514 following:

2515 1. The contractor does not have sufficient financial ability to perform the contract that would result
 2516 from such procurement. If a bond is required to ensure performance of a contract, evidence that the
 2517 contractor can acquire a surety bond from a corporation included on the United States Treasury list of
 2518 acceptable surety corporations in the amount and type required by the Institution shall be sufficient to
 2519 establish the financial ability of the contractor to perform the contract resulting from such procurement;

2520 2. The contractor does not have appropriate experience to perform the construction project in
 2521 question;

2522 3. The contractor or any officer, director or owner thereof has had judgments entered against him
 2523 within the past 10 years for the breach of contracts for governmental or nongovernmental construction,
 2524 including, but not limited to, design-build or construction management;

2525 4. The contractor has been in substantial noncompliance with the terms and conditions of prior
 2526 construction contracts with the Institution without good cause. If the Institution has not contracted with a
 2527 contractor in any prior construction contracts, the Institution may deny prequalification if the contractor
 2528 has been in substantial noncompliance with the terms and conditions of comparable construction
 2529 contracts with another public body without good cause. The Institution may not utilize this provision to
 2530 deny prequalification unless the facts underlying such substantial noncompliance were documented in
 2531 writing in the prior construction project file and such information relating thereto given to the contractor
 2532 at that time, with the opportunity to respond;

2533 5. The contractor or any officer, director, owner, project manager, procurement manager or chief
 2534 financial official thereof has been convicted within the past 10 years of a crime related to governmental
 2535 or nongovernmental construction or contracting, including, but not limited to, a violation of (i) Article 6
 2536 (§ 2.2-4367 et seq.) of Chapter 43 of Title 2.2 of the Code of Virginia, (ii) the Virginia Governmental
 2537 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
 2538 substantially similar law of the United States or another state;

2539 6. The contractor or any officer, director or owner thereof is currently debarred pursuant to an
 2540 established debarment procedure from bidding or contracting by any public body, agency of another
 2541 state or agency of the federal government; and

2542 7. The contractor failed to provide to the Institution in a timely manner any information requested by
 2543 the Institution relevant to subdivisions 1 through 6 of this subsection.

2544 § 15. Negotiation with lowest responsible bidder. -

2545 Unless canceled or rejected, a responsive bid from the lowest responsible bidder shall be accepted as
 2546 submitted, except that if the bid from the lowest responsible bidder exceeds available funds, the
 2547 Institution may negotiate with the apparent low bidder to obtain a contract price within available funds.
 2548 However, the negotiation may be undertaken only under conditions and procedures described in writing
 2549 and approved by the Institution prior to issuance of the Invitation to Bid and summarized therein.

2550 § 16. Cancellation, rejection of bids; waiver of informalities. -

2551 A. An Invitation to Bid, a Request for Proposal, any other solicitation, or any and all bids or
 2552 proposals, may be canceled or rejected. The reasons for cancellation or rejection shall be made part of
 2553 the contract file. The Institution shall not cancel or reject an Invitation to Bid, a Request for Proposal,
 2554 any other solicitation, bid or proposal pursuant to this section solely to avoid awarding a contract to a
 2555 particular responsive and responsible bidder or offeror.

2556 B. The Institution may waive informalities in bids.

2557 § 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 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) of subsection A.

C. No subcontractor shall perform any work on a construction project of the Institution unless he has obtained, and continues to maintain for the duration of such 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.

§ 26. Retainage on construction contracts. -

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

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

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

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 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

2741 provided in the Invitation to Bid or Request for Proposal.

2742 § 32. Action on performance bond. -

2743 No action against the surety on a performance bond shall be brought by the Institution unless
2744 brought within one year after (i) completion of the contract, including the expiration of all warranties
2745 and guarantees, or (ii) discovery of the defect or breach of warranty that gave rise to the action.

2746 § 33. Actions on payment bonds; waiver of right to sue. -

2747 A. Subject to the provisions of subsection B, any claimant who has performed labor or furnished
2748 material in accordance with the contract documents in furtherance of the work provided in any contract
2749 for which a payment bond has been given, and who has not been paid in full before the expiration of 90
2750 days after the day on which the claimant performed the last of the labor or furnished the last of the
2751 materials for which he claims payment, may bring an action on the payment bond to recover any
2752 amount due him for the labor or material. The obligee named in the bond need not be named a party to
2753 the action.

2754 B. Any claimant who has a direct contractual relationship with any subcontractor but who has no
2755 contractual relationship, express or implied, with the contractor, may bring an action on the contractor's
2756 payment bond only if he has given written notice to the contractor within 180 days from the day on
2757 which the claimant performed the last of the labor or furnished the last of the materials for which he
2758 claims payment, stating with substantial accuracy the amount claimed and the name of the person for
2759 whom the work was performed or to whom the material was furnished. Notice to the contractor shall be
2760 served by registered or certified mail, postage prepaid, in an envelope addressed to such contractor at
2761 any place where his office is regularly maintained for the transaction of business. Claims for sums
2762 withheld as retainages with respect to labor performed or materials furnished, shall not be subject to the
2763 time limitations stated in this subsection.

2764 C. Any action on a payment bond shall be brought within one year after the day on which the
2765 person bringing such action last performed labor or last furnished or supplied materials.

2766 D. Any waiver of the right to sue on the payment bond required by this section shall be void unless
2767 it is in writing, signed by the person whose right is waived, and executed after such person has
2768 performed labor or furnished material in accordance with the contract documents.

2769 § 34. Public inspection of certain records. -

2770 A. Except as provided in this section, all proceedings, records, contracts and other public records
2771 relating to procurement transactions shall be open to the inspection of any citizen, or any interested
2772 person, firm or corporation, in accordance with the Virginia Freedom of Information Act (§ 2.2-3700 et
2773 seq.).

2774 B. Cost estimates relating to a proposed procurement transaction prepared by or for the Institution
2775 shall not be open to public inspection.

2776 C. Any competitive sealed bidding bidder, upon request, shall be afforded the opportunity to inspect
2777 bid records within a reasonable time after the opening of all bids but prior to award, except in the event
2778 that the Institution decides not to accept any of the bids and to reopen the contract. Otherwise, bid
2779 records shall be open to public inspection only after award of the contract.

2780 D. Any competitive negotiation offeror, upon request, shall be afforded the opportunity to inspect
2781 proposal records within a reasonable time after the evaluation and negotiations of proposals are
2782 completed but prior to award, except in the event that the Institution decides not to accept any of the
2783 proposals and to reopen the contract. Otherwise, proposal records shall be open to public inspection
2784 only after award of the contract.

2785 E. Any inspection of procurement transaction records under this section shall be subject to reasonable
2786 restrictions to ensure the security and integrity of the records.

2787 F. Trade secrets or proprietary information submitted by a bidder, offeror or contractor in connection
2788 with a procurement transaction or prequalification application submitted pursuant to subsection B of § 14
2789 shall not be subject to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.); however, the
2790 bidder, offeror or contractor shall (i) invoke the protections of this section prior to or upon submission
2791 of the data or other materials, (ii) identify the data or other materials to be protected, and (iii) state the
2792 reasons why protection is necessary.

2793 § 35. Exemption for certain transactions. -

2794 A. The provisions of these Rules shall not apply to:

2795 1. The selection of services related to the management and investment of the Institution's endowment
2796 funds, endowment income, or gifts pursuant to § 23-76.1. However, selection of these services shall be
2797 governed by the Uniform Management of Institutional Funds Act (§ 55-268.1 et seq.) as required by
2798 § 23-76.1.

2799 2. The purchase of items for resale at retail bookstores and similar retail outlets operated by the
2800 Institution. However, such purchase procedures shall provide for competition where practicable.

2801 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~~ *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. -

2863 The Institution may enter into contracts without competition, as that term is described in subsections
 2864 A through J of § 5 (Methods of procurement) of these Rules, for:

- 2865 1. The purchase of goods or services that are produced or performed by or related to:
 - 2866 a. Persons, or in schools or workshops, under the supervision of the Virginia Department for the
 - 2867 Blind and Vision Impaired;
 - 2868 b. Nonprofit sheltered workshops or other nonprofit organizations that offer transitional or supported
 - 2869 employment services serving the handicapped;
 - 2870 c. Private educational institutions; or
 - 2871 d. Other public educational institutions.
- 2872 2. Speakers and performing artists;
- 2873 3. Memberships and Association dues;
- 2874 4. Sponsored research grant sub-awards and contract sub-awards, not to include the purchase of
- 2875 goods or services by the Institution;
- 2876 5. Group travel in foreign countries;
- 2877 6. Conference facilities and services;
- 2878 7. Participation in intercollegiate athletic tournaments and events including team travel and lodging,
- 2879 registration and tournament fees;
- 2880 8. Royalties; ~~or~~
- 2881 9. The purchase of legal services, provided that the Office of the Attorney General has been
- 2882 consulted, or expert witnesses or other services associated with litigation or regulatory proceedings; *or*
- 2883 10. *Maintenance contract renewals for scientific research equipment and software, provided that the*
- 2884 *institution has posted the renewal to eVA and documented that there was only one response or less and*
- 2885 *such documentation includes a statement signed by the buyer indicating that no firm other than the*
- 2886 *original manufacturer/developer offers the service.*

2887 § 38. Exemptions from competitive sealed bidding and competitive negotiation for certain
 2888 transactions; limitations. -

2889 The Institution may enter into contracts for insurance or electric utility service without competitive
 2890 sealed bidding or competitive negotiation if purchased through an association of which the Institution is
 2891 a member if the association was formed and is maintained for the purpose of promoting the interest and
 2892 welfare of and developing close relationships with similar public bodies, provided such association has
 2893 procured the insurance or electric utility services by use of competitive principles and provided that the
 2894 Institution has made a determination in advance after reasonable notice to the public and set forth in
 2895 writing that competitive sealed bidding and competitive negotiation are not fiscally advantageous to the
 2896 public. The writing shall document the basis for this determination.

2897 § 39. Definitions. -

2898 As used in §§ 39 through 46, unless the context requires a different meaning:

2899 "Contractor" means the entity that has a direct contract with the Institution.

2900 "Debtor" means any individual, business, or group having a delinquent debt or account with any state
 2901 agency that obligation has not been satisfied or set aside by court order or discharged in bankruptcy.

2902 "Payment date" means either (i) the date on which payment is due under the terms of a contract for
 2903 provision of goods or services; or (ii) if such date has not been established by contract, (a) 30 days after
 2904 receipt of a proper invoice by the Institution or its agent or (b) 30 days after receipt of the goods or
 2905 services by the Institution.

2906 "Subcontractor" means any entity that has a contract to supply labor or materials to the contractor to
 2907 whom the contract was awarded or to any subcontractor in the performance of the work provided for in
 2908 such contract.

2909 § 40. Exemptions. -

2910 The provisions of §§ 39 through 46 shall not apply to the late payment provisions contained in any
 2911 public utility tariffs prescribed by the State Corporation Commission.

2912 § 41. Retainage to remain valid. -

2913 Notwithstanding the provisions of §§ 39 through 46, the provisions of § 26 relating to retainage shall
 2914 remain valid.

2915 § 42. Prompt payment of bills by the Institution. -

2916 A. The Institution shall promptly pay for the completely delivered goods or services by the required
 2917 payment date.

2918 Payment shall be deemed to have been made when offset proceedings have been instituted, as
 2919 authorized under the Virginia Debt Collection Act (§ 2.2-4800 et seq.) of the Code of Virginia.

2920 B. Separate payment dates may be specified for contracts under which goods or services are provided
 2921 in a series of partial deliveries or executions to the extent that such contract provides for separate
 2922 payment for such partial delivery or execution.

2923 § 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 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

3107 herein shall preclude a contract from requiring submission of an invoice for final payment within a
 3108 certain time after completion and acceptance of the work or acceptance of the goods. Pendency of
 3109 claims shall not delay payment of amounts agreed due in the final payment.

3110 B. The Institution shall include in its contracts a procedure for consideration of contractual claims.
 3111 Such procedure, which may be contained in the contract or may be specifically incorporated into the
 3112 contract by reference and made available to the contractor, shall establish a time limit for a final
 3113 decision in writing by the Institution. If the Institution has established administrative procedures meeting
 3114 the standards of § 55 of these Rules, such procedures shall be contained in the contract or specifically
 3115 incorporated in the contract by reference and made available to the contractor. The Institution may
 3116 require the submission of contractual claims pursuant to any contract to Alternative Dispute Resolution
 3117 (ADR) as an administrative procedure.

3118 C. A contractor may not invoke administrative procedures meeting the standards of § 55 of these
 3119 Rules, if available, or institute legal action as provided in § 54, prior to receipt of the Institution's
 3120 decision on the claim, unless the Institution fails to render such decision within the time specified in the
 3121 contract.

3122 D. The decision of the Institution shall be final and conclusive unless the contractor appeals within
 3123 six months of the date of the final decision on the claim by the Institution by invoking administrative
 3124 procedures meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting
 3125 legal action as provided in § 54.

3126 § 54. Legal actions. -

3127 A. A bidder or offeror, actual or prospective, who is refused permission or disqualified from
 3128 participation in bidding or competitive negotiation, or who is determined not to be a responsible bidder
 3129 or offeror for a particular contract, may bring an action in the appropriate circuit court challenging that
 3130 decision, which shall be reversed only if the petitioner establishes that the decision was not (i) an honest
 3131 exercise of discretion, but rather was arbitrary or capricious; (ii) in accordance with the Constitution of
 3132 Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid; or (iii) in
 3133 the case of denial of prequalification, based upon the criteria for denial of prequalification set forth in
 3134 subsection B of § 14 of these Rules. In the event the apparent low bidder, having been previously
 3135 determined by the Institution to be not responsible in accordance with § 4, is found by the court to be a
 3136 responsible bidder, the court may direct the Institution to award the contract to such bidder in
 3137 accordance with the requirements of this section and the Invitation to Bid.

3138 B. A bidder denied withdrawal of a bid under § 23 of these Rules may bring an action in the
 3139 appropriate circuit court challenging that decision, which shall be reversed only if the bidder establishes
 3140 that the decision of the Institution was not (i) an honest exercise of discretion, but rather was arbitrary
 3141 or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation,
 3142 or the terms or conditions of the Invitation to Bid.

3143 C. A bidder, offeror or contractor, or a potential bidder or offeror on a contract negotiated on a sole
 3144 source or emergency basis in the manner provided in § 5 of these Rules, whose protest of an award or
 3145 decision to award under § 50 of these Rules is denied, may bring an action in the appropriate circuit
 3146 court challenging a proposed award or the award of a contract, which shall be reversed only if the
 3147 petitioner establishes that the proposed award or the award is not (i) an honest exercise of discretion, but
 3148 rather is arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state
 3149 law or regulation, or the terms and conditions of the Invitation to Bid or Request for Proposal.

3150 D. If injunctive relief is granted, the court, upon request of the Institution, shall require the posting
 3151 of reasonable security to protect the Institution.

3152 E. A contractor may bring an action involving a contract dispute with the Institution in the
 3153 appropriate circuit court. Notwithstanding any other provision of law, the Comptroller shall not be
 3154 named as a defendant in any action brought pursuant to these Rules or § 33.1-387 of the Code of
 3155 Virginia, except for disputes involving contracts of the Office of the Comptroller or the Department of
 3156 Accounts.

3157 F. A bidder, offeror or contractor need not utilize administrative procedures meeting the standards of
 3158 § 55 of these Rules, if available, but if those procedures are invoked by the bidder, offeror or contractor,
 3159 the procedures shall be exhausted prior to instituting legal action concerning the same procurement
 3160 transaction unless the Institution agrees otherwise.

3161 G. Nothing herein shall be construed to prevent the Institution from instituting legal action against a
 3162 contractor.

3163 § 55. Administrative appeals procedure. -

3164 A. The Institution may establish an administrative procedure for hearing (i) protests of a decision to
 3165 award or an award, (ii) appeals from refusals to allow withdrawal of bids, (iii) appeals from
 3166 disqualifications and determinations of nonresponsibility, and (iv) appeals from decisions on disputes
 3167 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.

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.

3229 "Enabling Legislation" means those chapters, other than Chapter 4.10, of title 23 of the Code of
 3230 Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and missions
 3231 of the College.

3232 "Effective Date" means the effective date of the initial Management Agreement between the College
 3233 and the Commonwealth.

3234 "Management Agreement" means the agreement required by subsection D of § 23-38.88 of the Act
 3235 between the College and the Commonwealth of Virginia.

3236 "State Tax Supported Debt" means bonds, notes or other obligations issued under Article X, Section
 3237 9(a), 9(b), or 9(c), or 9(d), if the debt service payments are made or ultimately are to be made from
 3238 general government funds, as defined in the December 20, 2004 Report to the Governor and General
 3239 Assembly of the Debt Capacity Advisory Committee or as that definition is amended from time to time.

3240 III. SCOPE OF POLICY.

3241 This Policy applies to the College's responsibility for management, investment and stewardship of all
 3242 its financial resources, including but not limited to, general, non-general and private funds. This
 3243 responsibility includes maintaining an independent uniform system of accounting, financial reporting,
 3244 and internal controls adequate to protect and account for the College's financial resources.

3245 The Virginia Institute of Marine Science (the Institute) shall receive the benefits of this Policy as it
 3246 is implemented by the College on behalf of the Institute, but the Institute shall not receive any
 3247 additional independent financial operations and management authority as a result of this Management
 3248 Agreement beyond the independent financial operations and management authority that it had prior to
 3249 the Effective Date of the College's initial Management Agreement with the Commonwealth or that it
 3250 may be granted by law in the future.

3251 IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.

3252 The Board of Visitors of the College shall at all times be fully and ultimately accountable for the
 3253 proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation
 3254 of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant
 3255 to its legally permissible procedures, specifically delegate either herein or by separate Board resolution
 3256 the duties and responsibilities set forth in this Policy to a person or persons within the College, who,
 3257 while continuing to be fully accountable for such duties and responsibilities, may further delegate the
 3258 implementation of those duties and responsibilities pursuant to the College's usual delegation policies
 3259 and procedures.

3260 V. FINANCIAL MANAGEMENT AND REPORTING SYSTEM.

3261 The President, or designee, shall continue to be authorized by the Board to maintain existing and
 3262 implement new policies governing the management of College financial resources. These policies shall
 3263 continue to (i) ensure compliance with Generally Accepted Accounting Principles, (ii) ensure consistency
 3264 with the current accounting principles employed by the Commonwealth, including the use of fund
 3265 accounting principles, with regard to the establishment of the underlying accounting records of the
 3266 College and the allocation and utilization of resources within the accounting system, including the
 3267 relevant guidance provided by the State Council of Higher Education for Virginia chart of accounts with
 3268 regard to the allocation and proper use of funds from specific types of fund sources, (iii) provide
 3269 adequate risk management and internal controls to protect and safeguard all financial resources,
 3270 including moneys transferred to the College pursuant to a general fund appropriation, and ensure
 3271 compliance with the requirements of the Appropriation Act.

3272 The financial management system shall continue to include a financial reporting system to satisfy
 3273 both the requirements for inclusion into the Commonwealth's Comprehensive Annual Financial Report,
 3274 as specified in the related State Comptroller's Directives, and the College's separately audited financial
 3275 statements. To ensure observance of limitations and restrictions placed on the use of the resources
 3276 available to the College, the accounting and bookkeeping system of the College shall continue to be
 3277 maintained in accordance with the principles prescribed for governmental organizations by the
 3278 Governmental Accounting Standards Board.

3279 In addition, the financial management system shall continue to provide financial reporting for the
 3280 President, or designee, and the Board of Visitors to enable them to provide adequate oversight of the
 3281 financial operations of the College. Upon the Effective Date of the initial Management Agreement
 3282 between the College and the Commonwealth, except for the recordation of daily revenue deposits of
 3283 State funds as specified in Section VII below, the College shall not be required to record its financial
 3284 transactions in of the Commonwealth's Accounting and Reporting System ("CARS"), including the
 3285 current monthly interfacing with CARS , or be a part of any subsequent Commonwealth financial
 3286 systems that replace CARS or are in addition to CARS, but shall have its own financial reporting
 3287 system. The College's financial reporting system shall provide (i) summary monthly reports for State
 3288 agencies including, but not limited to, the Department of Accounts, the Department of Planning and
 3289 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, or designee, 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 College financial resources. Such policies will not address the underlying accounting principles and policies employed by the Commonwealth and the College, but rather will focus on the internal operations of the College'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 College'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 College 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 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

3351 Appropriation Act or other law to retain or be paid the interest the Commonwealth would have earned
 3352 on sponsored programs and research funds, then this paragraph shall not apply to such interest on such
 3353 funds, and such interest shall not be held in escrow.

3354 iv) If in any given year the College does not receive the certification from the State Council of
 3355 Higher Education for Virginia that it has met for that year the institutional benchmarks called for by
 3356 subsection C of § 23-9.6:1.01 and approved in the then-current Appropriation Act, the Comptroller shall
 3357 transfer to the general fund the balance in the escrow account as of June 30 of that year.

3358 v) Beginning on the effective date of its initial Management Agreement with the College until the
 3359 beginning of the first fiscal year following the fiscal year for which it has received the required
 3360 certification from SCHEV, the College shall continue to deposit tuition and all other non-general funds
 3361 with the State Treasurer by the same process that it would have been required to use if it had not
 3362 entered into a Management Agreement with the Commonwealth.

3363 vi) On the first business day of the first fiscal year following the fiscal year for which it has
 3364 received the required certification from SCHEV, the College may draw down all cash balances held by
 3365 the State Treasurer on behalf of the College related to tuition, E&G fees, research and sponsored
 3366 programs, auxiliary enterprises, and all other non-general fund revenues.

3367 vii) The Commonwealth shall retain all funds related to general fund appropriations, but shall pay
 3368 these funds to the College as specified in Section IX below.

3369 The College also shall have sum sufficient appropriation authority for all non-general funds as
 3370 approved by the Governor and the General Assembly in the Commonwealth's biennial appropriations
 3371 process, and shall report to the Department of Planning and Budget (i) its estimate of the non-general
 3372 fund revenues for the sum sufficient appropriation to be included in the biennial Budget Bill for each of
 3373 the two years in the next biennium by November 1 of each odd numbered year and the estimate to be
 3374 included in the Budget Bill for the first and second year of the then-current biennium by November 1 of
 3375 each even numbered year, and (ii) report its actual non-general fund revenues for each fiscal year to the
 3376 Department of Planning and Budget by July 31 of the subsequent fiscal year.

3377 The Board of Visitors shall retain the authority to establish tuition, fee, room, board, and other
 3378 charges, with appropriate commitment provided to need-based grant aid for middle- and lower-income
 3379 undergraduate Virginians. Except as provided otherwise in the Appropriation Act then in effect, it is the
 3380 intent of the Commonwealth and the College that the College shall be exempt from the revenue
 3381 restrictions in the general provisions of the Appropriation Act related to non-general funds. In addition,
 3382 unless prohibited by the Appropriation Act then in effect, it is the intent of the Commonwealth and the
 3383 College that the College shall be entitled to retain non-general fund savings generated from changes in
 3384 Commonwealth rates and charges, including but not limited to health, life, and disability insurance rates,
 3385 retirement contribution rates, telecommunications charges, and utility rates, rather than reverting such
 3386 savings back to the Commonwealth. This financial resource policy assists the College by providing the
 3387 framework for retaining and managing non-general funds, for the receipt of general funds, and for the
 3388 use and stewardship of all these funds.

3389 The President, or designee, shall continue to provide oversight of the College's cash management
 3390 system which is the framework for the retention of non-general funds. The Internal Audit Department of
 3391 the College shall periodically audit the College's cash management system in accordance with
 3392 appropriate risk assessment models and make reports to the Audit Committee of the Board of Visitors.
 3393 Additional oversight shall continue to be provided through the annual audit and assessment of internal
 3394 controls performed by the Auditor of Public Accounts.

3395 For the receipt of general and non-general funds, the College shall conform to the Security for Public
 3396 Deposits Act, Chapter 44 (§ 2.2-4400 et seq.) of Title 2.2 of the Code of Virginia, as it currently exists
 3397 and from time to time may be amended.

3398 VIII. ACCOUNTS RECEIVABLE MANAGEMENT AND COLLECTION.

3399 The President, or designee, shall continue to be authorized to create and implement any and all
 3400 Accounts Receivable Management and Collection policies as part of a system for the management of
 3401 College financial resources. The policies shall be guided by the requirements of the Virginia Debt
 3402 Collection Act, Chapter 48 (§ 2.2-4800 et seq.) of the Code of Virginia, such that the College shall take
 3403 all appropriate and cost effective actions to aggressively collect accounts receivable in a timely manner.

3404 These shall include, but not be limited to, establishing the criteria for granting credit to College
 3405 customers; establishing the nature and timing of collection procedures within the above general
 3406 principles; and the independent authority to select and contract with collection agencies and, after
 3407 consultation with the Office of the Attorney General, private attorneys as needed to perform any and all
 3408 collection activities for all College accounts receivable such as reporting delinquent accounts to credit
 3409 bureaus, obtaining judgments, garnishments, and liens against such debtors, and other actions. In
 3410 accordance with sound collection activities, the College shall continue to utilize the Commonwealth's
 3411 Debt Set Off Collection programs and procedures, 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, or designee, shall continue to be authorized to create and implement any and all disbursement policies as part of a system for the management of College 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 College'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 College's mission, including travel-related disbursements. Further, the College'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 College no longer will interface to the CARS system or any replacement for the CARS system for disbursements, the College 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 College 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 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 bi-monthly 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 change in the guidelines shall be submitted to the Treasurer of Virginia for review and comment prior to their adoption by the College.

XI. INVESTMENT POLICY.

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

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

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

XII. INSURANCE AND RISK MANAGEMENT.

By July 1 of each odd-numbered year, the College shall inform the Secretary of Finance of any intent during the next biennium to withdraw from any insurance or risk management program made available to the College through the Commonwealth's Division of Risk Management and in which the College 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 College proceeds to withdraw from the insurance or risk management program, the College 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 College and the Commonwealth.

SECTION 4.3. Term of Agreement. This Management Agreement shall expire at midnight on June 30, 2010 2012, *provided that on or before November 15, 2011, the Governor provides to the Chairmen of the House Committee on Appropriations and the Senate Committee on Finance written notification that this Management Agreement needs to be renegotiated or revised. If such notification is not received, this Management Agreement shall continue in effect until June 30, 2015.*

EXHIBIT M

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 CAPITAL PROJECTS

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

I. PREAMBLE.

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

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

V. CAPITAL PROGRAM.

The President, acting through the Executive Vice President and Chief Operating Officer, shall adopt a system for developing one or more capital project programs that defines or define the capital needs of the University for a given period of time consistent with the University's published Master Plan. This process may or may not mirror the Commonwealth's requirements for capital plans. The Board of Visitors shall approve the program for Major 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 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 pre-appropriation 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:

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;

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;

Making procurement rules clear in advance of any competition;

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;

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

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

3717 directly and exclusively to the Board of Visitors. If the University hires its own University Building
 3718 Official, it shall fulfill the code review requirement by maintaining a review unit *of licensed professional*
 3719 *architects or engineers supported by resources and staff* who are certified by the Department of Housing
 3720 and Community Development in accordance with § 36-137 of the Code of Virginia, for such purpose
 3721 and who shall review plans, specifications and documents for compliance with building codes and
 3722 standards and perform required inspections of work in progress and the completed capital project. No
 3723 individual licensed professional architect or engineer hired *under the University's personnel system as a*
 3724 *member of the review unit* ~~or contracted with to perform these functions~~ shall also perform other
 3725 building code-related design, construction, facilities-related project management or facilities management
 3726 functions for the University ~~on the same capital project~~.

3727 IX. ENVIRONMENTAL IMPACT REPORTS.

3728 It shall be the policy of the University to assess the environmental, historic preservation, and
 3729 conservation impacts of all capital projects and to minimize and otherwise mitigate all adverse impacts
 3730 to the extent practicable. The University shall develop a procedure for the preparation and approval of
 3731 environmental impact reports for capital projects, in accordance with State environmental, historic
 3732 preservation, and conservation requirements generally applicable to capital projects otherwise meeting
 3733 the definition of Major Capital Projects but, pursuant to § 23-38.109 C 1 of the Act, with a cost of
 3734 \$300,000 or more.

3735 X. BUILDING DEMOLITIONS.

3736 It shall be the policy of the University to consider the environmental and historical aspects of any
 3737 proposed demolitions. The Board of Visitors shall be responsible for approving demolition requests.
 3738 The University shall develop a procedure for the preparation and review of demolition requests,
 3739 including any necessary reviews by the Department of Historic Resources and the Art and Architectural
 3740 Review Board in accordance with State historic preservation requirements generally applicable to capital
 3741 projects in the Commonwealth. Further, for any property that was acquired or constructed with funding
 3742 from a general fund appropriation of the General Assembly or from proceeds from State Tax Supported
 3743 Debt, general laws applicable to State owned property shall apply.

3744 XI. BUILDING OR LAND ACQUISITIONS.

3745 It is the policy of the University that capital projects involving building or land acquisition shall be
 3746 subjected to thorough inquiry and due diligence prior to closing on the acquisition of such real property.
 3747 The President, acting through the Executive Vice President and Chief Operating Officer, shall ensure
 3748 that the project management system implemented pursuant to Section XIII below provides for a review
 3749 and analysis of all pertinent matters relating to the acquisition of buildings and land as any prudent
 3750 purchaser would perform to the end that any building or land acquired by the University shall be
 3751 suitable for its intended purpose, that the acquisition can be made without substantial risk of liability to
 3752 the University and that the cost of the real property to be acquired, together with any contemplated
 3753 development thereof, shall be such that compliance with the provisions of Section VI of this Policy is
 3754 achieved. In addition, the President, acting through the Executive Vice President and Chief Operating
 3755 Officer, shall ensure that, where feasible and appropriate to do so, the following specific policies
 3756 pertaining to the acquisition of buildings or land for capital projects are carried out.

3757 A. Environmental and Land Use Considerations.

3758 It is the policy of the University to reasonably cooperate with each locality affected by the
 3759 acquisition. Such cooperation shall include but not be limited to furnishing any information that the
 3760 locality may reasonably request and reviewing any requests by the locality with regard to any such
 3761 acquisition. The University shall consider the zoning and comprehensive plan designation by the locality
 3762 of the building or land and surrounding parcels, as well as any designation by State or federal agencies
 3763 of historically or archeologically significant areas on the land. Nothing herein shall be construed as
 3764 requiring the University to comply with local zoning laws and ordinances.

3765 B. Infrastructure and Site Condition.

3766 The President, acting through the Executive Vice President and Chief Operating Officer, shall ensure
 3767 that, in the case of capital projects involving the acquisition of buildings or land, the project
 3768 management systems implemented under Section XIII below provide for a review of the following
 3769 matters prior to acquisition of the building or land: that any land can be developed for its intended
 3770 purpose without extraordinary cost; that an environmental engineer has been engaged by the University
 3771 to provide an assessment of any environmental conditions on the land; that there is adequate vehicular
 3772 ingress and egress to serve the contemplated use of the building or land; that utilities and other services
 3773 to the land are adequate or can reasonably be provided or have been provided in the case of building
 3774 acquisitions; and that the condition and grade of the soils have been examined to determine if any
 3775 conditions exist that would require extraordinary site work or foundation systems.

3776 C. Title and Survey.

3777 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

3839 Institution, the contractor, or some third party is providing the consideration.

3840 § 2. Scope of Procurement Authority. -

3841 Subject to these Rules, and the Institution's continued substantial compliance with the terms and
 3842 conditions of its Management Agreement with the Commonwealth pursuant to § 23-38.88(D)(4) and the
 3843 requirements of Chapter 4.10 of the Act, the Institution shall have and shall be authorized to have and
 3844 exercise all of the authority relating to procurement of goods, services, insurance, and construction,
 3845 including but not limited to capital outlay-related procurement and information technology-related
 3846 procurement, that Institutions are authorized to exercise pursuant to Subchapter 3 of the Restructuring
 3847 Act.

3848 § 3. Competition is the Priority. -

3849 To the end that the Institution shall obtain high quality goods and services at reasonable cost, that all
 3850 procurement procedures be conducted in an open, fair and impartial manner with avoidance of any
 3851 impropriety or appearance of impropriety, that all qualified vendors have access to the Institution's
 3852 business and that no offeror be arbitrarily or capriciously excluded, it is the intent of the governing body
 3853 of the Institution that competition be sought to the maximum feasible degree, that procurement
 3854 procedures involve openness and administrative efficiency, that individual public bodies enjoy broad
 3855 flexibility in fashioning details of such competition, that the rules governing contract awards be made
 3856 clear in advance of the competition, that specifications reflect the procurement needs of the purchasing
 3857 body rather than being drawn to favor a particular vendor, and that the purchaser and vendor freely
 3858 exchange information concerning what is sought to be procured and what is offered. The Institution
 3859 may consider best value concepts when procuring goods and nonprofessional services, but not
 3860 construction or professional services. Professional services will be procured using a qualification-based
 3861 selection process. The criteria, factors, and basis for consideration of best value and the process for the
 3862 consideration of best value shall be as stated in the procurement solicitation.

3863 § 4. Definitions. -

3864 As used in these Rules:

3865 "Affiliate" means an individual or business that controls, is controlled by, or is under common
 3866 control with another individual or business. A person controls an entity if the person owns, directly or
 3867 indirectly, more than 10% of the voting securities of the entity. For the purposes of this definition
 3868 "voting security" means a security that (i) confers upon the holder the right to vote for the election of
 3869 members of the board of directors or similar governing body of the business or (ii) is convertible into,
 3870 or entitles the holder to receive, upon its exercise, a security that confers such a right to vote. A general
 3871 partnership interest shall be deemed to be a voting security.

3872 "Best value," as predetermined in the solicitation, means the overall combination of quality, price,
 3873 and various elements of required services that in total are optimal relative to the Institution's needs.

3874 "Business" means any type of corporation, partnership, limited liability company, association, or sole
 3875 proprietorship operated for profit.

3876 "Competitive negotiation" is a method of contractor selection that includes the following elements:

3877 1. Issuance of a written Request for Proposal indicating in general terms that which is sought to be
 3878 procured, specifying the factors that will be used in evaluating the proposal and containing or
 3879 incorporating by reference the other applicable contractual terms and conditions, including any unique
 3880 capabilities or qualifications that will be required of the contractor.

3881 2. Public notice of the Request for Proposal at least 10 days prior to the date set for receipt of
 3882 proposals by publication in a newspaper or newspapers of general circulation in the area in which the
 3883 contract is to be performed so as to provide reasonable notice to the maximum number of offerors that
 3884 can be reasonably anticipated to submit proposals in response to the particular request. Public notice
 3885 also shall be published on the Department of General Services' central electronic procurement website
 3886 and may be published on other appropriate websites. In addition, proposals may be solicited directly
 3887 from potential contractors.

3888 3. a. Procurement of professional services. The procurement of professional services for capital
 3889 projects shall be conducted using a qualification-based selection process. The Institution shall engage in
 3890 individual discussions with two or more offerors deemed fully qualified, responsible and suitable on the
 3891 basis of initial responses and with emphasis on professional competence, to provide the required
 3892 services. Repetitive informal interviews shall be permissible. The offerors shall be encouraged to
 3893 elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project,
 3894 as well as alternative concepts. The Request for Proposal shall not, however, request that offerors
 3895 furnish estimates of man-hours or cost for services. At the discussion stage, the Institution may discuss
 3896 nonbinding estimates of total project costs, including, but not limited to, life-cycle costing, and where
 3897 appropriate, nonbinding estimates of price for services. Proprietary information from competing offerors
 3898 shall not be disclosed to the public or to competitors. At the conclusion of discussion, outlined in this
 3899 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 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

3961 coordinate and administer contracts for construction services for the benefit of the owner, and may also
 3962 include, if provided in the contract, the furnishing of construction services to the owner.

3963 "Covered Institution" or "Institution" means, on and after the effective date of the initial management
 3964 agreement with the Commonwealth of Virginia, a public institution of higher education of the
 3965 Commonwealth that has entered into a management agreement with the Commonwealth to be governed
 3966 by the provisions of Subchapter 3 of the Restructuring Act.

3967 "Design-build contract" means a contract between the Institution and another party in which the party
 3968 contracting with the Institution agrees to both design and build the structure, roadway or other item
 3969 specified in the contract.

3970 "Goods" means all material, equipment, supplies, and printing, including information technology and
 3971 telecommunications goods such as automated data processing hardware and software.

3972 "Informality" means a minor defect or variation of a bid or proposal from the exact requirements of
 3973 the Invitation to Bid, or the Request for Proposal, which does not affect the price, quality, quantity or
 3974 delivery schedule for the goods, services or construction being procured.

3975 "Multiphase professional services contract" means a contract for the providing of professional
 3976 services where the total scope of work of the second or subsequent phase of the contract cannot be
 3977 specified without the results of the first or prior phase of the contract.

3978 "Nonprofessional services" means any services not specifically identified as professional services in
 3979 the definition of professional services and includes small construction projects valued not over \$1
 3980 million; provided that subdivision 3a of the definition of "competitive negotiation" in this section shall
 3981 still apply to professional services for such small construction projects.

3982 "Potential bidder or offeror" for the purposes of §§ 50 and 54 of these Rules means a person who, at
 3983 the time the Institution negotiates and awards or proposes to award a contract, is engaged in the sale or
 3984 lease of goods, or the sale of services, insurance or construction, of the type to be procured under the
 3985 contract, and who at such time is eligible and qualified in all respects to perform that contract, and who
 3986 would have been eligible and qualified to submit a bid or proposal had the contract been procured
 3987 through competitive sealed bidding or competitive negotiation.

3988 "Professional services" means work performed by an independent contractor within the scope of the
 3989 practice of accounting, actuarial services, architecture, land surveying, landscape architecture, law,
 3990 dentistry, medicine, optometry, pharmacy or professional engineering.

3991 "Public body" means any legislative, executive or judicial body, agency, office, department, authority,
 3992 post, commission, committee, institution, board or political subdivision created by law to exercise some
 3993 sovereign power or to perform some governmental duty, and empowered by law to undertake the
 3994 activities described in these Rules.

3995 "Public contract" means an agreement between the Institution and a nongovernmental source that is
 3996 enforceable in a court of law.

3997 "Responsible bidder" or "offeror" means a person who has the capability, in all respects, to perform
 3998 fully the contract requirements and the moral and business integrity and reliability that will assure good
 3999 faith performance, and who has been prequalified, if required.

4000 "Responsive bidder" means a person who has submitted a bid that conforms in all material respects
 4001 to the Invitation to Bid.

4002 "Restructuring Act" or "Act" means the Restructured Higher Education Financial and Administrative
 4003 Operations Act, Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia.

4004 "Reverse auctioning" means a procurement method wherein bidders are invited to bid on specified
 4005 goods or nonprofessional services through real-time electronic bidding, with the award being made to
 4006 the lowest responsive and responsible bidder. During the bidding process, bidders' prices are revealed
 4007 and bidders shall have the opportunity to modify their bid prices for the duration of the time period
 4008 established for bid opening.

4009 "Rules" means these Rules Governing Procurement of Goods, Services, Insurance, and Construction
 4010 adopted by the governing body of the Covered Institution.

4011 "Services" means any work performed by an independent contractor wherein the service rendered
 4012 does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials
 4013 and supplies.

4014 "Sheltered workshop" means a work-oriented rehabilitative facility with a controlled working
 4015 environment and individual goals that utilizes work experience and related services for assisting the
 4016 handicapped person to progress toward normal living and a productive vocational status.

4017 § 5. Methods of procurement. -

4018 A. All public contracts with nongovernmental contractors for the purchase or lease of goods, or for
 4019 the purchase of services, insurance, or construction, shall be awarded after competitive sealed bidding, or
 4020 competitive negotiation as provided in this section, unless otherwise authorized by law.

4021 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.

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

4083 procurement was being conducted on behalf of other public bodies. In such instances, deviation from
 4084 the procurement procedures set forth in these Rules and the administrative policies and procedures
 4085 established to implement these Rules shall be permitted. Notwithstanding all of the above, use of
 4086 cooperative contracts shall conform to the business requirements of the Commonwealth's electronic
 4087 procurement system, including the requirement for payment of applicable fees. Nothing herein shall
 4088 prohibit the payment by direct or indirect means of any administrative fee that will allow for
 4089 participation in any such arrangement.

4090 B. In circumstances where statewide contracts for goods and services, including information
 4091 technology and telecommunications goods and services, do not provide goods and services to meet the
 4092 Institution's business goals and objectives, and as authorized by the United States Congress and
 4093 consistent with applicable federal regulations, and provided the terms of the contract permit such
 4094 purchases:

4095 1. The Institution may purchase goods and nonprofessional services, from a United States General
 4096 Services Administration contract or a contract awarded by any other agency of the United States
 4097 government; and

4098 2. The Institution may purchase telecommunications and information technology goods and
 4099 nonprofessional services from a United States General Services Administration contract or a contract
 4100 awarded by any other agency of the United States government.

4101 § 7. Design-build or construction management contracts authorized. -

4102 A. Notwithstanding any other provisions of law, the Institution may enter into contracts on a fixed
 4103 price design-build basis or construction management basis in accordance with the provisions of this
 4104 section.

4105 B. Procurement of construction by the design-build or construction management method shall be a
 4106 two-step competitive negotiation process. In the first step, offerors shall be requested to submit their
 4107 qualifications. Based upon the information submitted and any other relevant information which the
 4108 Commonwealth may obtain, no more than five offerors deemed most suitable for the project shall be
 4109 selected by the Commonwealth and requested to submit proposals.

4110 § 8. Modification of the contract. -

4111 A. A contract awarded by the Institution may include provisions for modification of the contract
 4112 during performance, but no fixed-price contract may be increased by more than 25% of the amount of
 4113 the contract or \$50,000, whichever is greater, without the advance written approval of the Institution's
 4114 president or his designee. In no event may the amount of any contract, without adequate consideration,
 4115 be increased for any purpose, including, but not limited to, relief of an offeror from the consequences of
 4116 an error in its bid or offer.

4117 B. The Institution may extend the term of an existing contract for services to allow completion of
 4118 any work undertaken but not completed during the original term of the contract.

4119 C. Nothing in this section shall prevent the Institution from placing greater restrictions on contract
 4120 modifications.

4121 § 9. Discrimination prohibited; participation of small, women- and minority-owned business. -

4122 A. In the solicitation or awarding of contracts, the Institution shall not discriminate against a bidder
 4123 or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis
 4124 prohibited by state law relating to discrimination in employment. Whenever solicitations are made, the
 4125 Institution shall include businesses selected from a list made available by the Department of Minority
 4126 Business Enterprise.

4127 B. The Institution shall establish programs consistent with this section to facilitate the participation
 4128 of small businesses and businesses owned by women and minorities in procurement transactions. The
 4129 programs established shall be in writing and shall include cooperation with the Department of Minority
 4130 Business Enterprise, the United States Small Business Administration, and other public or private
 4131 agencies. The Institution shall submit annual progress reports on minority business procurement to the
 4132 Department of Minority Business Enterprise.

4133 C. Whenever there exists (i) a rational basis for small business enhancement or (ii) a persuasive
 4134 analysis that documents a statistically significant disparity between the availability and utilization of
 4135 women- and minority-owned businesses, the Governor is by law authorized and encouraged to require
 4136 the Institution to implement appropriate enhancement or remedial measures consistent with prevailing
 4137 law.

4138 D. In the solicitation or awarding of contracts, the Institution shall not discriminate against a bidder
 4139 or offeror because the bidder or offeror employs ex-offenders unless it has made a written determination
 4140 that employing ex-offenders on the specific contract is not in its best interest.

4141 § 10. Employment discrimination by contractor prohibited; required contract provisions. -

4142 The Institution shall include in every contract of more than \$10,000 the following provisions:

4143 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 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;

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

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

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

§ 15. Negotiation with lowest responsible bidder. -

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

4327 withdrawing bidder is more than 5%.

4328 D. If a bid is withdrawn in accordance with this section, the lowest remaining bid shall be deemed
4329 to be the low bid.

4330 E. No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or
4331 labor to or perform any subcontract or other work agreement for the person or firm to whom the
4332 contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for
4333 which the withdrawn bid was submitted.

4334 F. If the Institution denies the withdrawal of a bid under the provisions of this section, it shall notify
4335 the bidder in writing stating the reasons for its decision and award the contract to such bidder at the bid
4336 price, provided such bidder is a responsible and responsive bidder.

4337 § 24. Contract Pricing Arrangements. -

4338 A. Public contracts may be awarded on a fixed price or cost reimbursement basis, or on any other
4339 basis that is not prohibited by these Rules.

4340 B. Except in case of emergency affecting the public health, safety or welfare, no public contract
4341 shall be awarded on the basis of cost plus a percentage of cost.

4342 C. A policy or contract of insurance or prepaid coverage having a premium computed on the basis
4343 of claims paid or incurred, plus the insurance carrier's administrative costs and retention stated in whole
4344 or part as a percentage of such claims, shall not be prohibited by this section.

4345 § 25. Workers' compensation requirements for construction contractors and subcontractors. -

4346 A. No contractor shall perform any work on a construction project of the Institution unless he (i) has
4347 obtained, and continues to maintain for the duration of the work, workers' compensation coverage
4348 required pursuant to the provisions of Chapter 8 (§ 65.2-800 et seq.) of Title 65.2 of the Code of
4349 Virginia, and (ii) provides prior to the award of contract, on a form furnished by the Institution,
4350 evidence of such coverage.

4351 B. The Department of General Services shall provide the form to the Institution. Failure of the
4352 Institution to provide the form prior to the award of contract shall waive the requirements of clause (ii)
4353 of subsection A.

4354 C. No subcontractor shall perform any work on a construction project of the Institution unless he
4355 has obtained, and continues to maintain for the duration of such work, workers' compensation coverage
4356 required pursuant to the provisions of Chapter 8 (§ 65.2-800 et seq.) of Title 65.2 of the Code of
4357 Virginia.

4358 § 26. Retainage on construction contracts. -

4359 A. In any contract issued by the Institution for construction that provides for progress payments in
4360 installments based upon an estimated percentage of completion, the contractor shall be paid at least 95%
4361 of the earned sum when payment is due, with no more than 5% being retained to ensure faithful
4362 performance of the contract. All amounts withheld may be included in the final payment.

4363 B. Any subcontract for a public project that provides for similar progress payments shall be subject
4364 to the provisions of this section.

4365 § 27. Public construction contract provisions barring damages for unreasonable delays declared
4366 void. -

4367 A. Any provision contained in any public construction contract of the Institution that purports to
4368 waive, release, or extinguish the rights of a contractor to recover costs or damages for unreasonable
4369 delay in performing such contract, either on his behalf or on behalf of his subcontractor if and to the
4370 extent the delay is caused by acts or omissions of the Institution, its agents or employees and due to
4371 causes within their control shall be void and unenforceable as against public policy.

4372 B. Subsection A shall not be construed to render void any provision of a public construction
4373 contract awarded by the Institution that:

4374 1. Allows the recovery of that portion of delay costs caused by the acts or omissions of the
4375 contractor, or its subcontractors, agents or employees;

4376 2. Requires notice of any delay by the party claiming the delay;

4377 3. Provides for liquidated damages for delay; or

4378 4. Provides for arbitration or any other procedure designed to settle contract disputes.

4379 C. A contractor making a claim against the Institution for costs or damages due to the alleged
4380 delaying of the contractor in the performance of its work under any public construction contract of the
4381 Institution shall be liable to the Institution and shall pay it for a percentage of all costs incurred by the
4382 Institution in investigating, analyzing, negotiating, litigating and arbitrating the claim, which percentage
4383 shall be equal to the percentage of the contractor's total delay claim that is determined through litigation
4384 or arbitration to be false or to have no basis in law or in fact.

4385 D. If the Institution denies a contractor's claim for costs or damages due to the alleged delaying of
4386 the contractor in the performance of work under any public construction contract for the Institution, it
4387 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 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

4449 materials for which he claims payment, may bring an action on the payment bond to recover any
 4450 amount due him for the labor or material. The obligee named in the bond need not be named a party to
 4451 the action.

4452 B. Any claimant who has a direct contractual relationship with any subcontractor but who has no
 4453 contractual relationship, express or implied, with the contractor, may bring an action on the contractor's
 4454 payment bond only if he has given written notice to the contractor within 180 days from the day on
 4455 which the claimant performed the last of the labor or furnished the last of the materials for which he
 4456 claims payment, stating with substantial accuracy the amount claimed and the name of the person for
 4457 whom the work was performed or to whom the material was furnished. Notice to the contractor shall be
 4458 served by registered or certified mail, postage prepaid, in an envelope addressed to such contractor at
 4459 any place where his office is regularly maintained for the transaction of business. Claims for sums
 4460 withheld as retainages with respect to labor performed or materials furnished, shall not be subject to the
 4461 time limitations stated in this subsection.

4462 C. Any action on a payment bond shall be brought within one year after the day on which the
 4463 person bringing such action last performed labor or last furnished or supplied materials.

4464 D. Any waiver of the right to sue on the payment bond required by this section shall be void unless
 4465 it is in writing, signed by the person whose right is waived, and executed after such person has
 4466 performed labor or furnished material in accordance with the contract documents.

4467 § 34. Public inspection of certain records. -

4468 A. Except as provided in this section, all proceedings, records, contracts and other public records
 4469 relating to procurement transactions shall be open to the inspection of any citizen, or any interested
 4470 person, firm or corporation, in accordance with the Virginia Freedom of Information Act (§ 2.2-3700 et
 4471 seq.).

4472 B. Cost estimates relating to a proposed procurement transaction prepared by or for the Institution
 4473 shall not be open to public inspection.

4474 C. Any competitive sealed bidding bidder, upon request, shall be afforded the opportunity to inspect
 4475 bid records within a reasonable time after the opening of all bids but prior to award, except in the event
 4476 that the Institution decides not to accept any of the bids and to reopen the contract. Otherwise, bid
 4477 records shall be open to public inspection only after award of the contract.

4478 D. Any competitive negotiation offeror, upon request, shall be afforded the opportunity to inspect
 4479 proposal records within a reasonable time after the evaluation and negotiations of proposals are
 4480 completed but prior to award, except in the event that the Institution decides not to accept any of the
 4481 proposals and to reopen the contract. Otherwise, proposal records shall be open to public inspection
 4482 only after award of the contract.

4483 E. Any inspection of procurement transaction records under this section shall be subject to
 4484 reasonable restrictions to ensure the security and integrity of the records.

4485 F. Trade secrets or proprietary information submitted by a bidder, offeror or contractor in connection
 4486 with a procurement transaction or prequalification application submitted pursuant to subsection B of § 14
 4487 shall not be subject to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.); however, the
 4488 bidder, offeror or contractor shall (i) invoke the protections of this section prior to or upon submission
 4489 of the data or other materials, (ii) identify the data or other materials to be protected, and (iii) state the
 4490 reasons why protection is necessary.

4491 § 35. Exemption for certain transactions. -

4492 A. The provisions of these Rules shall not apply to:

4493 1. The selection of services related to the management and investment of the Institution's endowment
 4494 funds, endowment income, or gifts pursuant to § 23-76.1. However, selection of these services shall be
 4495 governed by the Uniform Management of Institutional Funds Act (§ 55-268.1 et seq.) as required by
 4496 § 23-76.1.

4497 2. The purchase of items for resale at retail bookstores and similar retail outlets operated by the
 4498 Institution. However, such purchase procedures shall provide for competition where practicable.

4499 3. Procurement of any construction or planning and design services for construction by the
 4500 Institution when (i) the planning, design or construction is \$50,000 or less or (ii) the Institution is
 4501 obligated to conform to procurement procedures that are established by federal statutes or regulations,
 4502 whether or not those federal procedures are in conformance with the provisions of these Rules.

4503 4. The University of Virginia Medical Center.

4504 5. The purchase of goods and services by the Institution when such purchases are made under a
 4505 remedial plan established by the Governor pursuant to subsection C of § 9 of these Rules.

4506 B. Where a procurement transaction involves the expenditure of federal assistance or contract funds,
 4507 the receipt of which is conditioned upon compliance with mandatory requirements in federal laws or
 4508 regulations not in conformance with the provisions of these Rules, the Institution may comply with such
 4509 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;

- 4571 3. Memberships and Association dues;
- 4572 4. Sponsored research grant sub-awards and contract sub-awards, not to include the purchase of
- 4573 goods or services by the Institution;
- 4574 5. Group travel in foreign countries;
- 4575 6. Conference facilities and services;
- 4576 7. Participation in intercollegiate athletic tournaments and events including team travel and lodging,
- 4577 registration and tournament fees;
- 4578 8. Royalties; or
- 4579 9. The purchase of legal services, provided that the Office of the Attorney General has been
- 4580 consulted, or expert witnesses or other services associated with litigation or regulatory proceedings; or
- 4581 10. *Maintenance contract renewals for scientific research equipment and software, provided that the*
- 4582 *institution has posted the renewal to eVA and documented that there was only one response or less and*
- 4583 *such documentation includes a statement signed by the buyer indicating that no firm other than the*
- 4584 *original manufacturer/developer offers the service.*
- 4585 § 38. Exemptions from competitive sealed bidding and competitive negotiation for certain
- 4586 transactions; limitations. -
- 4587 The Institution may enter into contracts for insurance or electric utility service without competitive
- 4588 sealed bidding or competitive negotiation if purchased through an association of which the Institution is
- 4589 a member if the association was formed and is maintained for the purpose of promoting the interest and
- 4590 welfare of and developing close relationships with similar public bodies, provided such association has
- 4591 procured the insurance or electric utility services by use of competitive principles and provided that the
- 4592 Institution has made a determination in advance after reasonable notice to the public and set forth in
- 4593 writing that competitive sealed bidding and competitive negotiation are not fiscally advantageous to the
- 4594 public. The writing shall document the basis for this determination.
- 4595 § 39. Definitions. -
- 4596 As used in §§ 39 through 46, unless the context requires a different meaning:
- 4597 "Contractor" means the entity that has a direct contract with the Institution.
- 4598 "Debtor" means any individual, business, or group having a delinquent debt or account with any state
- 4599 agency that obligation has not been satisfied or set aside by court order or discharged in bankruptcy.
- 4600 "Payment date" means either (i) the date on which payment is due under the terms of a contract for
- 4601 provision of goods or services; or (ii) if such date has not been established by contract, (a) 30 days after
- 4602 receipt of a proper invoice by the Institution or its agent or (b) 30 days after receipt of the goods or
- 4603 services by the Institution.
- 4604 "Subcontractor" means any entity that has a contract to supply labor or materials to the contractor to
- 4605 whom the contract was awarded or to any subcontractor in the performance of the work provided for in
- 4606 such contract.
- 4607 § 40. Exemptions. -
- 4608 The provisions of §§ 39 through 46 shall not apply to the late payment provisions contained in any
- 4609 public utility tariffs prescribed by the State Corporation Commission.
- 4610 § 41. Retainage to remain valid. -
- 4611 Notwithstanding the provisions of §§ 39 through 46, the provisions of § 26 relating to retainage shall
- 4612 remain valid.
- 4613 § 42. Prompt payment of bills by the Institution. -
- 4614 A. The Institution shall promptly pay for the completely delivered goods or services by the required
- 4615 payment date.
- 4616 Payment shall be deemed to have been made when offset proceedings have been instituted, as
- 4617 authorized under the Virginia Debt Collection Act (§ 2.2-4800 et seq.).
- 4618 B. Separate payment dates may be specified for contracts under which goods or services are
- 4619 provided in a series of partial deliveries or executions to the extent that such contract provides for
- 4620 separate payment for such partial delivery or execution.
- 4621 § 43. Defect or impropriety in the invoice or goods and/or services received. -
- 4622 In instances where there is a defect or impropriety in an invoice or in the goods or services received,
- 4623 the Institution shall notify the supplier of the defect or impropriety, if the defect or impropriety would
- 4624 prevent payment by the payment date. The notice shall be sent within 15 days after receipt of the
- 4625 invoice or the goods or services.
- 4626 § 44. Date of postmark deemed to be date payment is made. -
- 4627 In those cases where payment is made by mail, the date of postmark shall be deemed to be the date
- 4628 payment is made for purposes of these Rules.
- 4629 § 45. Payment clauses to be included in contracts. -
- 4630 Any contract awarded by the Institution shall include:
- 4631 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 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

4815 (ADR) as an administrative procedure.

4816 C. A contractor may not invoke administrative procedures meeting the standards of § 55 of these
4817 Rules, if available, or institute legal action as provided in § 54, prior to receipt of the Institution's
4818 decision on the claim, unless the Institution fails to render such decision within the time specified in the
4819 contract.

4820 D. The decision of the Institution shall be final and conclusive unless the contractor appeals within
4821 six months of the date of the final decision on the claim by the Institution by invoking administrative
4822 procedures meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting
4823 legal action as provided in § 54.

4824 § 54. Legal actions. -

4825 A. A bidder or offeror, actual or prospective, who is refused permission or disqualified from
4826 participation in bidding or competitive negotiation, or who is determined not to be a responsible bidder
4827 or offeror for a particular contract, may bring an action in the appropriate circuit court challenging that
4828 decision, which shall be reversed only if the petitioner establishes that the decision was not (i) an honest
4829 exercise of discretion, but rather was arbitrary or capricious; (ii) in accordance with the Constitution of
4830 Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid; or (iii) in
4831 the case of denial of prequalification, based upon the criteria for denial of prequalification set forth in
4832 subsection B of § 14 of these Rules. In the event the apparent low bidder, having been previously
4833 determined by the Institution to be not responsible in accordance with § 4, is found by the court to be a
4834 responsible bidder, the court may direct the Institution to award the contract to such bidder in
4835 accordance with the requirements of this section and the Invitation to Bid.

4836 B. A bidder denied withdrawal of a bid under § 23 of these Rules may bring an action in the
4837 appropriate circuit court challenging that decision, which shall be reversed only if the bidder establishes
4838 that the decision of the Institution was not (i) an honest exercise of discretion, but rather was arbitrary
4839 or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation,
4840 or the terms or conditions of the Invitation to Bid.

4841 C. A bidder, offeror or contractor, or a potential bidder or offeror on a contract negotiated on a sole
4842 source or emergency basis in the manner provided in § 5 of these Rules, whose protest of an award or
4843 decision to award under § 50 of these Rules is denied, may bring an action in the appropriate circuit
4844 court challenging a proposed award or the award of a contract, which shall be reversed only if the
4845 petitioner establishes that the proposed award or the award is not (i) an honest exercise of discretion, but
4846 rather is arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state
4847 law or regulation, or the terms and conditions of the Invitation to Bid or Request for Proposal.

4848 D. If injunctive relief is granted, the court, upon request of the Institution, shall require the posting
4849 of reasonable security to protect the Institution.

4850 E. A contractor may bring an action involving a contract dispute with the Institution in the
4851 appropriate circuit court. Notwithstanding any other provision of law, the Comptroller shall not be
4852 named as a defendant in any action brought pursuant to these Rules or § 33.1-387 of the Code of
4853 Virginia, except for disputes involving contracts of the Office of the Comptroller or the Department of
4854 Accounts.

4855 F. A bidder, offeror or contractor need not utilize administrative procedures meeting the standards of
4856 § 55 of these Rules, if available, but if those procedures are invoked by the bidder, offeror or contractor,
4857 the procedures shall be exhausted prior to instituting legal action concerning the same procurement
4858 transaction unless the Institution agrees otherwise.

4859 G. Nothing herein shall be construed to prevent the Institution from instituting legal action against a
4860 contractor.

4861 § 55. Administrative appeals procedure. -

4862 A. The Institution may establish an administrative procedure for hearing (i) protests of a decision to
4863 award or an award, (ii) appeals from refusals to allow withdrawal of bids, (iii) appeals from
4864 disqualifications and determinations of nonresponsibility, and (iv) appeals from decisions on disputes
4865 arising during the performance of a contract, or (v) any of these. Such administrative procedure may
4866 include the use of Alternative Dispute Resolution (ADR) or shall provide for a hearing before a
4867 disinterested person or panel, the opportunity to present pertinent information and the issuance of a
4868 written decision containing findings of fact. The disinterested person or panel shall not be an employee
4869 of the governmental entity against whom the claim has been filed. The findings of fact shall be final
4870 and conclusive and shall not be set aside unless the same are (a) fraudulent, arbitrary or capricious; (b)
4871 so grossly erroneous as to imply bad faith; or (c) in the case of denial of prequalification, the findings
4872 were not based upon the criteria for denial of prequalification set forth in subsection B of § 14 of these
4873 Rules. No determination on an issue of law shall be final if appropriate legal action is instituted in a
4874 timely manner. The Institution may seek advice and input from the Alternative Dispute Resolution
4875 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.

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

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

Schedule

The University shall implement this agreement no later than December 2006.

Metrics

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

Objective

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

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

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

2. Conduct business with eVA registered vendors whenever possible;

3. Place nonexempt orders, including change orders and cancellations, to eVA suppliers electronically using eVA;

4. To the greatest extent possible, transmit real-time electronic purchase orders, regardless of dollar value, that include commodity codes, complete item descriptions, quantities, and unit prices;

5. To the greatest extent feasible, the University will transmit confirming orders to eVA within five (5) business days after placing the order. Commodity codes, complete item descriptions, quantities, and unit prices will be provided for all confirming orders. DGS/DPS will provide periodic reports on the number and timeliness of confirming orders enabling the University and DGS/DPS to work together to monitor the usage of confirming orders with the objective of reducing their numbers to the extent possible.

The University agrees that, for confirming orders, it will resolve any vendor dispute, including disputes 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.

- 4998 The University further agrees that:
- 4999 a. It will provide the DGS/DPS eVA Business Manager (or designee) email notification of the
- 5000 resolution agreed to by the university and the vendor within 10 business days, unless otherwise agreed
- 5001 on a case-by-case basis by the DGS/DPS eVA Business Manager (or designee);
- 5002 b. It will pay the eVA transaction fee unless it notifies the eVA Business Manager (or designee)
- 5003 within the specified time that the dispute has been resolved and the vendor agreed to pay the fee; and
- 5004 c. In the event the University does not provide resolution notification to the eVA Business Manager
- 5005 (or designee) within the specified timeframe, DGS/DPS will automatically execute a manual adjustment
- 5006 reversing disputed transaction fees from the vendor to the University and the University will pay the fee.
- 5007 6. Timely process electronic change orders and cancellations;
- 5008 7. Post all solicitations and business opportunities greater than \$50,000 on the eVA website except as
- 5009 specifically exempted by DPS;
- 5010 8. To the extent technically feasible, make eVA catalogs, especially contract catalogs, available to
- 5011 end users using the ERP/SciQuest Integration system. The University will be responsible for the
- 5012 accuracy of contract catalog pricing loaded into the ERP/SciQuest;
- 5013 9. Use eVA electronic vendor notification for procurement opportunities (per plans to post
- 5014 solicitations specified in item 7 above and the use of Quick Quote/Reverse Auctions specified in item 10
- 5015 below);
- 5016 10. Use eVA on-line bidding functions of Quick Quote and Reverse Auction for appropriate
- 5017 commodities, when such are identified;
- 5018 11. Complete and certify the monthly eVA Dashboard Report; and
- 5019 12. Timely remit any eVA transaction and non-use fees incurred by the institution.
- 5020 C. The University shall be subject to eVA fees assessed per the eVA Business Plan.
- 5021 The University shall assure that payments to CGI-AMS are current.

5022 EXHIBIT R

5023 MANAGEMENT AGREEMENT

5024 BETWEEN

5025 THE COMMONWEALTH OF VIRGINIA

5026 AND

5027 THE UNIVERSITY OF VIRGINIA

5028 PURSUANT TO

5029 THE RESTRUCTURED HIGHER EDUCATION

5030 FINANCIAL AND ADMINISTRATIVE OPERATIONS

5031 ACT OF 2005

5032 POLICY GOVERNING

5033 FINANCIAL OPERATIONS AND MANAGEMENT

5034 THE RECTOR AND VISITORS OF THE UNIVERSITY OF VIRGINIA

5035 POLICY GOVERNING FINANCIAL OPERATIONS AND MANAGEMENT

5036 I. PREAMBLE.

5037 The Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter

5038 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia, establishes by law a process for granting

5039 additional authority to institutions of higher education for financial operations and management, subject

5040 to the adoption of policies by their governing boards and the approval of management agreements to be

5041 negotiated with the Commonwealth.

5042 The following provisions of this Policy constitute the adopted Board of Visitors policies regarding

5043 the University of Virginia's financial operations and management.

5044 This Policy is intended to cover the authority that may be granted to the University pursuant to

5045 Subchapter 3 of the Act. Any other powers and authorities granted to the University pursuant to the

5046 Appropriation Act, or any other sections of the Code of Virginia, including other provisions of the Act

5047 and the University's Enabling Legislation, are not affected by this Policy. In particular, other powers

5048 and authorities granted to the Medical Center by law, to the extent they exceed those granted to the

5049 University pursuant to Subchapter 3 of the Act, are not affected by this Policy Statement.

5050 II. DEFINITIONS.

5051 As used in this policy, the following terms shall have the following meanings, unless the context

5052 requires otherwise:

5053 "Academic Division" means that part of the University known as (State Agency 207).

5054 "Act" means the Restructured Higher Education Financial and Administrative Operations Act,

5055 Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia.

5056 "Board of Visitors" or "Board" means the Rector and Board of Visitors of the University of Virginia.

5057 "College" means that part of the University operated as the University of Virginia's College at Wise,

5058 also known as (State Agency 246).

5059 "Covered Institution" means, on or after the Effective Date of its initial Management Agreement with
 5060 the Commonwealth of Virginia, a public institution of higher education of the Commonwealth that has
 5061 entered into a Management Agreement with the Commonwealth to be governed by the provisions of
 5062 Subchapter 3 of the Act.

5063 "Enabling Legislation" means those chapters, other than Chapter 4.10, of title 23 of the Code of
 5064 Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and missions
 5065 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
 5066 the University of Virginia Medical Center.

5067 "Effective Date" means the effective date of the initial Management Agreement between the
 5068 University and the Commonwealth.

5069 "Management Agreement" means the agreement required by subsection D of § 23-38.88 of the Act
 5070 between the University and the Commonwealth of Virginia.

5071 "Medical Center" means that part of the University consisting of the University of Virginia Medical
 5072 Center, known as (State Agency 209), and related health care and health maintenance facilities.

5073 "State Tax Supported Debt" means bonds, notes or other obligations issued under Article X, Section
 5074 9(a), 9(b), or 9(c), or 9(d), if the debt service payments are made or ultimately are to be made from
 5075 general government funds, as defined in the December 20, 2004 Report to the Governor and General
 5076 Assembly of the Debt Capacity Advisory Committee or as that definition is amended from time to time.

5077 "University" means the University of Virginia, consisting of the Academic Division, the College, and
 5078 the Medical Center.

5079 III. SCOPE OF POLICY.

5080 This Policy applies to the University's responsibility for management, investment and stewardship of
 5081 all its financial resources, including but not limited to, general, non-general and private funds. This
 5082 responsibility includes maintaining an independent uniform system of accounting, financial reporting,
 5083 and internal controls adequate to protect and account for the University's financial resources.

5084 The University of Virginia's College at Wise shall receive the benefits of this Policy as it is
 5085 implemented by the University on behalf of the College at Wise, but the College at Wise shall not
 5086 receive any additional independent financial operations and management authority as a result of this
 5087 Management Agreement beyond the independent financial operations and management authority that it
 5088 had prior to the Effective Date of the University's initial Management Agreement with the
 5089 Commonwealth or that it may be granted by law in the future.

5090 IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.

5091 The Board of Visitors of the University shall at all times be fully and ultimately accountable for the
 5092 proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation
 5093 of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant
 5094 to its legally permissible procedures, specifically delegate either herein or by separate Board resolution
 5095 the duties and responsibilities set forth in this Policy to a person or persons within the University, who,
 5096 while continuing to be fully accountable for such duties and responsibilities, may further delegate the
 5097 implementation of those duties and responsibilities pursuant to the University's usual delegation policies
 5098 and procedures.

5099 V. FINANCIAL MANAGEMENT AND REPORTING SYSTEM.

5100 The President, acting through the Executive Vice President and Chief Operating Officer, shall
 5101 continue to be authorized by the Board to maintain existing and implement new policies governing the
 5102 management of University financial resources. These policies shall continue to (i) ensure compliance
 5103 with Generally Accepted Accounting Principles, (ii) ensure consistency with the current accounting
 5104 principles employed by the Commonwealth, including the use of fund accounting principles, with regard
 5105 to the establishment of the underlying accounting records of the University and the allocation and
 5106 utilization of resources within the accounting system, including the relevant guidance provided by the
 5107 State Council of Higher Education for Virginia chart of accounts with regard to the allocation and
 5108 proper use of funds from specific types of fund sources, (iii) provide adequate risk management and
 5109 internal controls to protect and safeguard all financial resources, including moneys transferred to the
 5110 University pursuant to a general fund appropriation, and ensure compliance with the requirements of the
 5111 Appropriation Act.

5112 The financial management system shall continue to include a financial reporting system to satisfy
 5113 both the requirements for inclusion into the Commonwealth's Comprehensive Annual Financial Report,
 5114 as specified in the related State Comptroller's Directives, and the University's separately audited financial
 5115 statements. To ensure observance of limitations and restrictions placed on the use of the resources
 5116 available to the University, the accounting and bookkeeping system of the University shall continue to
 5117 be maintained in accordance with the principles prescribed for governmental organizations by the
 5118 Governmental Accounting Standards Board.

5119 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 Department of Medical Assistance Services, 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 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

5181 IX below.

5182 iii) The University shall remit to the State Comptroller quarterly and the State Comptroller shall
 5183 hold in escrow all interest earned on the University's tuition and fees and other non-general fund
 5184 Educational and General Revenues. *Interest earned on the escrow account shall be deposited to the*
 5185 *account.* Upon receipt of the required State Council of Higher Education for Virginia certification that
 5186 the University has met such institutional performance benchmarks and the conditions prescribed in
 5187 subsection B of § 23-38.88, the Governor shall include in the next budget bill a non-general fund
 5188 appropriation, payable no later than July 1 of the immediately following fiscal year, equivalent to the
 5189 amount deposited in the escrow account as the financial incentive provided in subdivision 1 of
 5190 § 2.2-5005, after which time the University may expend the funds for purposes related to its mission. If
 5191 public institutions of higher education of the Commonwealth are permitted, or the University in
 5192 particular is permitted, by the Appropriation Act or other law to retain or be paid the interest the
 5193 Commonwealth would have earned on sponsored programs and research funds, then this paragraph shall
 5194 not apply to such interest on such funds, and such interest shall not be held in escrow.

5195 iv) If in any given year the University does not receive the certification from the State Council of
 5196 Higher Education for Virginia that it has met for that year the institutional benchmarks called for by
 5197 subsection C of § 23-9.6:1.01 and approved in the then-current Appropriation Act, the Comptroller shall
 5198 transfer to the general fund the balance in the escrow account as of June 30 of that year.

5199 v) Beginning on the effective date of its initial Management Agreement with the University until the
 5200 beginning of the first fiscal year following the fiscal year for which it has received the required
 5201 certification from SCHEV, the University shall continue to deposit tuition and all other non-general
 5202 funds with the State Treasurer by the same process that it would have been required to use if it had not
 5203 entered into a Management Agreement with the Commonwealth.

5204 vi) On the first business day of the first fiscal year following the fiscal year for which it has
 5205 received the required certification from SCHEV, the University may draw down all cash balances held
 5206 by the State Treasurer on behalf of the University related to tuition, E&G fees, research and sponsored
 5207 programs, auxiliary enterprises, and all other non-general fund revenues.

5208 vii) The Commonwealth shall retain all funds related to general fund appropriations, but shall pay
 5209 these funds to the University as specified in Section IX below.

5210 The University also shall have sum sufficient appropriation authority for all non-general funds as
 5211 approved by the Governor and the General Assembly in the Commonwealth's biennial appropriations
 5212 process, and shall report to the Department of Planning and Budget (i) its estimate of the non-general
 5213 fund revenues for the sum sufficient appropriation to be included in the biennial Budget Bill for each of
 5214 the two years in the next biennium by November 1 of each odd numbered year and the estimate to be
 5215 included in the Budget Bill for the first and second year of the then-current biennium by November 1 of
 5216 each even numbered year, and (ii) report its actual non-general fund revenues for each fiscal year to the
 5217 Department of Planning and Budget by July 31 of the subsequent fiscal year.

5218 The Board of Visitors shall retain the authority to establish tuition, fee, room, board, and other
 5219 charges, with appropriate commitment provided to need-based grant aid for middle- and lower-income
 5220 undergraduate Virginians. Except as provided otherwise in the Appropriation Act then in effect, it is the
 5221 intent of the Commonwealth and the University that the University shall be exempt from the revenue
 5222 restrictions in the general provisions of the Appropriation Act related to non-general funds. In addition,
 5223 unless prohibited by the Appropriation Act then in effect, it is the intent of the Commonwealth and the
 5224 University that the University shall be entitled to retain non-general fund savings generated from
 5225 changes in Commonwealth rates and charges, including but not limited to health, life, and disability
 5226 insurance rates, retirement contribution rates, telecommunications charges, and utility rates, rather than
 5227 reverting such savings back to the Commonwealth. This financial resource policy assists the University
 5228 by providing the framework for retaining and managing non-general funds, for the receipt of general
 5229 funds, and for the use and stewardship of all these funds.

5230 The President, acting through the Executive Vice President and Chief Operating Officer, shall
 5231 continue to provide oversight of the University's cash management system which is the framework for
 5232 the retention of non-general funds. The Internal Audit Department of the University shall periodically
 5233 audit the University's cash management system in accordance with appropriate risk assessment models
 5234 and make reports to the Audit and Compliance Committee of the Board of Visitors. Additional
 5235 oversight shall continue to be provided through the annual audit and assessment of internal controls
 5236 performed by the Auditor of Public Accounts.

5237 For the receipt of general and non-general funds, the University shall conform to the Security for
 5238 Public Deposits Act, Chapter 44 (§ 2.2-4400 et seq.) of Title 2.2 of the Code of Virginia as it currently
 5239 exists and from time to time may be amended.

5240 VIII. ACCOUNTS RECEIVABLE MANAGEMENT AND COLLECTION.

5241 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 as needed to meet short-term cash requirements associated with the Commonwealth's bi-monthly 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

5303 reports to the Department of Accounts in accordance with the reporting procedures established pursuant
5304 to the Prompt Payment Act.

5305 The University's disbursement policies shall be guided by the principles of the Commonwealth's
5306 policies as included in the Commonwealth's Accounting Policy and Procedures Manual. Upon the
5307 Effective Date of its initial Management Agreement with the Commonwealth, the University shall
5308 continue to follow the Commonwealth's disbursement policies until such time as specific alternative
5309 policies can be developed, approved and implemented. Such alternate policies shall be submitted to the
5310 State Comptroller for review and comment prior to their implementation by the University.

5311 X. DEBT MANAGEMENT.

5312 The President, acting through the Executive Vice President and Chief Operating Officer, shall
5313 continue to be authorized to create and implement any and all debt management policies as part of a
5314 system for the management of University financial resources.

5315 Pursuant to § 23-38.108(B) of the Act, the University shall have the authority to issue bonds, notes,
5316 or other obligations that do not constitute State Tax Supported Debt, as determined by the Treasury
5317 Board, and that are consistent with debt capacity and management policies and guidelines established by
5318 its Board of Visitors, without obtaining the consent of any legislative body, elected official, commission,
5319 board, bureau, or agency of the Commonwealth or of any political subdivision, and without any
5320 proceedings or conditions other than those specifically required by Subchapter 3 of the Act; provided
5321 that, the University shall notify the Treasurer of Virginia of its intention to issue bonds pursuant to this
5322 Policy at the time it adopts the bond issuance planning schedule for those bonds. Any new or revised
5323 debt capacity and management policy shall be submitted to the Treasurer of Virginia for review and
5324 comment prior to its adoption by the University.

5325 The University recognizes that there are numerous types of financing structures and funding sources
5326 available each with specific benefits, risks, and costs. All potential funding sources shall be reviewed by
5327 the President, acting through the Executive Vice President and Chief Operating Officer, within the
5328 context of the overall portfolio to ensure that any financial product or structure is consistent with the
5329 University's objectives. Regardless of the financing structure(s) utilized, the President, acting through the
5330 Executive Vice President and Chief Operating Officer, shall obtain sufficient documentation to gain a
5331 full understanding of the transaction, including (i) the identification of potential risks and benefits, and
5332 (ii) an analysis of the impact on University creditworthiness and debt capacity. All such debt or
5333 financial products issued pursuant to the provisions of §§ 23.38-107 and 23.38-108 of the Act shall be
5334 authorized by resolution of the Board, providing that they do not constitute State Tax Supported Debt.

5335 The University currently has established guidelines relating to the total permissible amount of
5336 outstanding debt by monitoring University-wide ratios that measure debt compared to University
5337 balance-sheet resources and annual debt service burden. These measures are monitored and reviewed
5338 regularly in light of the University's current strategic initiatives and expected debt requirements. The
5339 Board of Visitors shall periodically review and approve the University's debt capacity and debt
5340 management guidelines. Any change in the current guidelines shall be submitted to the Treasurer of
5341 Virginia for review and comment prior to their adoption by the University.

5342 XI. INVESTMENT POLICY.

5343 It is the policy of the University to invest its operating and reserve funds solely in the interest of the
5344 University and in a manner that will provide the highest investment return with the maximum security
5345 while meeting daily cash flow demands and conforming to the Investment of Public Funds Act
5346 (§ 2.2-4500 et seq.) of the Code of Virginia). Investments shall be made with the care, skill, prudence
5347 and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and
5348 familiar with such matters would use in the conduct of an enterprise of a like character and with like
5349 aims.

5350 Endowment investments shall be invested and managed in accordance with the Uniform Management
5351 of Institutional Funds Act, §§ 55-268.1 through 55-268.10, and § 23-76.1 of the Code of Virginia.

5352 The Board of Visitors shall periodically review and approve the investment guidelines governing the
5353 University's operating and reserve funds.

5354 XII. INSURANCE AND RISK MANAGEMENT.

5355 By July 1 of each odd-numbered year, the University shall inform the Secretary of Finance of any
5356 intent during the next biennium to withdraw from any insurance or risk management program made
5357 available to the University through the Commonwealth's Division of Risk Management and in which the
5358 University is then participating, to enable the Commonwealth to complete an adverse selection analysis
5359 of any such decision and to determine the additional costs to the Commonwealth that would result from
5360 any such withdrawal. If upon notice of such additional costs to the Commonwealth, the University
5361 proceeds to withdraw from the insurance or risk management program, the University shall reimburse
5362 the Commonwealth for all such additional costs attributable to such withdrawal, as determined by the
5363 Commonwealth's actuaries. Such payment shall be made in a manner agreeable to both the University

and the Commonwealth.

5. That the provisions of the first, second, and third enactments of this Act shall expire at midnight on June 30, 2010 2012, *provided that on or before November 15, 2011, the Governor provides to the Chairmen of the House Committee on Appropriations and the Senate Committee on Finance written notification that this Management Agreement needs to be renegotiated or revised. If such notification is not received, this Management Agreement shall continue in effect until June 30, 2015.* The expiration of such enactments shall automatically result in the expiration of the provisions of any management agreement between the Commonwealth and Virginia Polytechnic Institute and State University, The College of William and Mary in Virginia, and The University of Virginia, respectively, which was entered into prior to January 1, 2006, and incorporated into this Act.

2. That § 4.3 and Exhibit A, Attachment 1 and Attachment 2 of Exhibit D, and Exhibit F of the first enactment of Chapter 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 Chapter 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 Chapter 943 of the Acts of Assembly of 2006; and the fifth enactment of Chapter 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, 2010 2012, *provided that on or before November 15, 2011, the Governor provides to the Chairmen of the House Committee on Appropriations and the Senate Committee on Finance written notification that this Management Agreement needs to be renegotiated or revised. If such notification is not received, this Management Agreement shall continue in effect until June 30, 2015.*

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 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.

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.

5425 "Board of Visitors" or "Board" means the Board of Visitors of Virginia Polytechnic Institute and
 5426 State University.

5427 "Capital Lease" means a lease that is defined as such within Generally Accepted Accounting
 5428 Principles pursuant to the pronouncement of the Financial Accounting Standards Board.

5429 "Capital Professional Services" means professional engineering, architecture, land surveying and
 5430 landscape architecture services related to capital projects.

5431 "Capital project(s)" means the acquisition of any interest in land, including improvements on the
 5432 acquired land at the time of acquisition, new construction, improvements or renovations, and Capital
 5433 Leases.

5434 "Covered Institution" means, on and after the Effective Date of its initial Management Agreement, a
 5435 public institution of higher education of the Commonwealth of Virginia that has entered into a
 5436 management agreement with the Commonwealth to be governed by the provisions of Subchapter 3 of
 5437 the Act.

5438 "Enabling Legislation" means those chapters, other than Chapter 4.10, of Title 23 of the Code of
 5439 Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and missions
 5440 of the individual public institutions of higher education of the Commonwealth.

5441 "Major Capital Project(s)" means the acquisition of any interest in land, including improvements on
 5442 the acquired land at the time of acquisition, new construction of 5,000 square feet or greater or costing
 5443 \$1 million or more, improvements or renovations of \$1 million or more, and Capital Leases.

5444 "State Tax Supported Debt" means bonds, notes, or other obligations issued under Article X, Section
 5445 9(a), 9(b), or 9(c), or 9(d), if the debt service payments are made or ultimately are to be made from
 5446 general government funds, as defined in the December 20, 2004 Report to the Governor and General
 5447 Assembly of the Debt Capacity Advisory Committee or as that definition is amended from time to time.

5448 "University" means Virginia Polytechnic Institute and State University, consisting of the University
 5449 Division (State Agency 208) and Virginia Cooperative Extension and the Agricultural Experiment
 5450 Station Division (State Agency 229).

5451 III. SCOPE OF POLICY.

5452 This Policy applies to the planning and budget development for capital projects, capital project
 5453 authorization, and the implementation of capital projects, whether funded by a general fund
 5454 appropriation of the General Assembly, proceeds from State Tax Supported Debt, or funding from other
 5455 sources.

5456 This Policy provides guidance for 1) the process for developing one or more capital project programs
 5457 for the University, 2) authorization of new capital projects, 3) procurement of Capital Professional
 5458 Services and construction services, 4) design reviews and code approvals for capital projects, 5)
 5459 environmental impact requirements, 6) building demolitions, 7) building and land acquisitions, 8)
 5460 building and land dispositions, 9) project management systems, and 10) reporting requirements.

5461 IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.

5462 The Board of Visitors of the University shall at all times be fully and ultimately accountable for the
 5463 proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation
 5464 of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant
 5465 to its legally permissible procedures, specifically delegate either herein or by separate Board resolution
 5466 the duties and responsibilities set forth in this Policy to a person or persons within the University, who,
 5467 while continuing to be fully accountable for such duties and responsibilities, may further delegate the
 5468 implementation of those duties and responsibilities pursuant to the University's usual delegation policies
 5469 and procedures.

5470 V. CAPITAL PROGRAM.

5471 The President, acting through the Executive Vice President and Chief Operating Officer, shall adopt a
 5472 system for developing one or more capital project programs that defines or define the capital needs of
 5473 the University for a given period of time consistent with the University's published Master Plan. This
 5474 process may or may not mirror the Commonwealth's requirements for capital plans. The Board of
 5475 Visitors shall approve the program for Major Capital Projects. Major Capital Projects that are to be
 5476 funded entirely or in part by a general fund appropriation of the General Assembly or proceeds from
 5477 State Tax Supported Debt shall follow the Commonwealth's requirements for capital plans. The Board
 5478 may approve amendments to the program for Major Capital Projects annually or more often if
 5479 circumstances warrant. It shall be University policy that each capital project program shall meet the
 5480 University's mission and institutional objectives, and be appropriately authorized by the University.
 5481 Moreover, it shall be University policy that each capital project shall be of a size and scope to provide
 5482 for the defined program needs, designed in accordance with all applicable building codes and
 5483 handicapped accessibility standards as well as the University's design guidelines and standards, and
 5484 costed to reflect current costs and escalated to the mid-point of anticipated construction.

5485 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

D. 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

5547 Executive Vice President and Chief Operating Officer, shall adopt procedures for design review and
 5548 project authorization based on the size, scope and cost estimate provided with the design. It shall be the
 5549 University's policy that all capital projects shall be designed and constructed in accordance with
 5550 applicable Virginia Uniform Statewide Building Code (VUSBC) standards and the applicable
 5551 accessibility code.

5552 The President, acting through the Executive Vice President and Chief Operating Officer, shall
 5553 designate a Building Official responsible for building code compliance by either (i) hiring an individual
 5554 to be the University Building Official, or (ii) continuing to use the services of the Department of
 5555 General Services, Division of Engineering and Buildings, to perform the Building Official function. If
 5556 option (i) is selected, the individual hired as the University Building Official shall be a full-time
 5557 employee, a registered professional architect or engineer, and certified by the Department of Housing
 5558 and Community Development to perform this Building Official function. The University Building
 5559 Official shall issue building permits for each capital project required by the VUSBC to have a building
 5560 permit, and shall determine the suitability for occupancy of, and shall issue certifications for building
 5561 occupancy for, all capital projects requiring such certification. Prior to issuing any such certification, this
 5562 individual shall ensure that the VUSBC and accessibility requirements are met for that capital project
 5563 and that such capital project has been inspected by the State Fire Marshal or his designee *as required*.
 5564 When serving as the University Building Official, such individual shall organizationally report directly
 5565 and exclusively to the Board of Visitors. If the University hires its own University Building Official, it
 5566 shall fulfill the code review requirement by maintaining a review unit *of licensed professional architects*
 5567 *or engineers supported by resources and staff* who are certified by the Department of Housing and
 5568 Community Development in accordance with § 36-137 of the Code of Virginia, for such purpose and
 5569 who shall review plans, specifications and documents for compliance with building codes and standards
 5570 and perform required inspections of work in progress and the completed capital project. No individual
 5571 licensed professional architect or engineer hired *under the University's personnel system as a member of*
 5572 *the review unit or contracted with to perform these functions* shall also perform other building
 5573 code-related design, construction, facilities-related project management or facilities management
 5574 functions for the University ~~on the same capital project~~.

5575 IX. ENVIRONMENTAL IMPACT REPORTS.

5576 It shall be the policy of the University to assess the environmental, historic preservation, and
 5577 conservation impacts of all capital projects and to minimize and otherwise mitigate all adverse impacts
 5578 to the extent practicable. The University shall develop a procedure for the preparation and approval of
 5579 environmental impact reports for capital projects, in accordance with State environmental, historic
 5580 preservation, and conservation requirements generally applicable to capital projects otherwise meeting
 5581 the definition of Major Capital Projects but, pursuant to § 23-38.109 C 1 of the Act, with a cost of
 5582 \$300,000 or more.

5583 X. BUILDING DEMOLITIONS.

5584 It shall be the policy of the University to consider the environmental and historical aspects of any
 5585 proposed demolitions. The Board of Visitors shall be responsible for approving demolition requests. The
 5586 University shall develop a procedure for the preparation and review of demolition requests, including
 5587 any necessary reviews by the Department of Historic Resources and the Art and Architectural Review
 5588 Board in accordance with State historic preservation requirements generally applicable to capital projects
 5589 in the Commonwealth. Further, for any property that was acquired or constructed with funding from a
 5590 general fund appropriation of the General Assembly or from proceeds from State Tax Supported Debt,
 5591 general laws applicable to State owned property shall apply.

5592 XI. BUILDING OR LAND ACQUISITIONS.

5593 It is the policy of the University that capital projects involving building or land acquisition shall be
 5594 subjected to thorough inquiry and due diligence prior to closing on the acquisition of such real property.
 5595 The President, acting through the Executive Vice President and Chief Operating Officer, shall ensure
 5596 that the project management system implemented pursuant to Section XIII below provides for a review
 5597 and analysis of all pertinent matters relating to the acquisition of buildings and land as any prudent
 5598 purchaser would perform to the end that any building or land acquired by the University shall be
 5599 suitable for its intended purpose, that the acquisition can be made without substantial risk of liability to
 5600 the University and that the cost of the real property to be acquired, together with any contemplated
 5601 development thereof, shall be such that compliance with the provisions of Section VI of this Policy is
 5602 achieved. In addition, the President, acting through the Executive Vice President and Chief Operating
 5603 Officer, shall ensure that, where feasible and appropriate to do so, the following specific policies
 5604 pertaining to the acquisition of buildings or land for capital projects are carried out.

5605 A. Environmental and Land Use Considerations.

5606 It is the policy of the University to reasonably cooperate with each locality affected by the
 5607 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 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 lease of goods, or the sale of services, insurance or construction, of the type to be procured under the contract, and who at such time is eligible and qualified in all respects to perform that contract, and who would have been eligible and qualified to submit a bid or proposal had the contract been procured through competitive sealed bidding or competitive negotiation.

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

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

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

"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.

"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.

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

"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.

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

5913 basis for this determination.

5914 J. The purchase of goods or nonprofessional services, but not construction or professional services,
5915 may be made by reverse auctioning.

5916 § 6. Cooperative procurement. -

5917 A. In circumstances where the Institution determines and documents that statewide contracts for
5918 goods and services, including information technology and telecommunications goods and services, do not
5919 provide goods and services to the Institution that meet its business goals and objectives, the Institution is
5920 authorized to participate in, sponsor, conduct, or administer a cooperative procurement arrangement on
5921 behalf of or in conjunction with public bodies, public or private health or educational institutions, other
5922 public or private organizations or entities, including public-private partnerships, charitable organizations,
5923 health care provider alliances or purchasing organizations or entities, or with public agencies or
5924 institutions or group purchasing organizations of the several states, territories of the United States, or the
5925 District of Columbia, for the purpose of combining requirements to effect cost savings or reduce
5926 administrative expense in any acquisition of goods and services, other than professional services. The
5927 Institution may purchase from any authority, department, agency, institution, city, county, town, or other
5928 political subdivision of the Commonwealth's contract even if it did not participate in the request for
5929 proposal or invitation to bid, if the request for proposal or invitation to bid specified that the
5930 procurement was being conducted on behalf of other public bodies. In such instances, deviation from the
5931 procurement procedures set forth in these Rules and the administrative policies and procedures
5932 established to implement these Rules shall be permitted. Notwithstanding all of the above, use of
5933 cooperative contracts shall conform to the business requirements of the Commonwealth's electronic
5934 procurement system, including the requirement for payment of applicable fees. Nothing herein shall
5935 prohibit the payment by direct or indirect means of any administrative fee that will allow for
5936 participation in any such arrangement.

5937 B. In circumstances where statewide contracts for goods and services, including information
5938 technology and telecommunications goods and services, do not provide goods and services to meet the
5939 Institution's business goals and objectives, and as authorized by the United States Congress and
5940 consistent with applicable federal regulations, and provided the terms of the contract permit such
5941 purchases:

5942 1. The Institution may purchase goods and nonprofessional services, from a United States General
5943 Services Administration contract or a contract awarded by any other agency of the United States
5944 government; and

5945 2. The Institution may purchase telecommunications and information technology goods and
5946 nonprofessional services from a United States General Services Administration contract or a contract
5947 awarded by any other agency of the United States government.

5948 § 7. Design-build or construction management contracts authorized. -

5949 A. Notwithstanding any other provisions of law, the Institution may enter into contracts on a fixed
5950 price design-build basis or construction management basis in accordance with the provisions of this
5951 section.

5952 B. Procurement of construction by the design-build or construction management method shall be a
5953 two-step competitive negotiation process. In the first step, offerors shall be requested to submit their
5954 qualifications. Based upon the information submitted and any other relevant information which the
5955 Commonwealth may obtain, no more than five offerors deemed most suitable for the project shall be
5956 selected by the Commonwealth and requested to submit proposals.

5957 § 8. Modification of the contract. -

5958 A. A contract awarded by the Institution may include provisions for modification of the contract
5959 during performance, but no fixed-price contract may be increased by more than 25% of the amount of
5960 the contract or \$50,000, whichever is greater, without the advance written approval of the Institution's
5961 president or his designee. In no event may the amount of any contract, without adequate consideration,
5962 be increased for any purpose, including, but not limited to, relief of an offeror from the consequences of
5963 an error in its bid or offer.

5964 B. The Institution may extend the term of an existing contract for services to allow completion of
5965 any work undertaken but not completed during the original term of the contract.

5966 C. Nothing in this section shall prevent the Institution from placing greater restrictions on contract
5967 modifications.

5968 § 9. Discrimination prohibited; participation of small, women- and minority-owned business. -

5969 A. In the solicitation or awarding of contracts, the Institution shall not discriminate against a bidder
5970 or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis
5971 prohibited by state law relating to discrimination in employment. Whenever solicitations are made, the
5972 Institution shall include businesses selected from a list made available by the Department of Minority
5973 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 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;

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

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

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

§ 15. Negotiation with lowest responsible bidder. -

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

6157 stated in the advertisement for bids: (i) the bidder shall give notice in writing of his claim of right to
 6158 withdraw his bid within two business days after the conclusion of the bid opening procedure and shall
 6159 submit original work papers with such notice; or (ii) the bidder shall submit to the Institution or
 6160 designated official his original work papers, documents and materials used in the preparation of the bid
 6161 within one day after the date fixed for submission of bids. The work papers shall be delivered by the
 6162 bidder in person or by registered mail at or prior to the time fixed for the opening of bids. In either
 6163 instance, the work papers, documents and materials may be considered as trade secrets or proprietary
 6164 information subject to the conditions of subsection F of § 34 of these Rules. The bids shall be opened
 6165 one day following the time fixed by the Institution for the submission of bids. Thereafter, the bidder
 6166 shall have two hours after the opening of bids within which to claim in writing any mistake as defined
 6167 herein and withdraw his bid. The contract shall not be awarded by the Institution until the two-hour
 6168 period has elapsed. The mistake shall be proved only from the original work papers, documents and
 6169 materials delivered as required herein.

6170 B. The Institution may establish procedures for the withdrawal of bids for other than construction
 6171 contracts.

6172 C. No bid shall be withdrawn under this section when the result would be the awarding of the
 6173 contract on another bid of the same bidder or of another bidder in which the ownership of the
 6174 withdrawing bidder is more than 5%.

6175 D. If a bid is withdrawn in accordance with this section, the lowest remaining bid shall be deemed to
 6176 be the low bid.

6177 E. No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or
 6178 labor to or perform any subcontract or other work agreement for the person or firm to whom the
 6179 contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for
 6180 which the withdrawn bid was submitted.

6181 F. If the Institution denies the withdrawal of a bid under the provisions of this section, it shall notify
 6182 the bidder in writing stating the reasons for its decision and award the contract to such bidder at the bid
 6183 price, provided such bidder is a responsible and responsive bidder.

6184 § 24. Contract Pricing Arrangements. -

6185 A. Public contracts may be awarded on a fixed price or cost reimbursement basis, or on any other
 6186 basis that is not prohibited by these Rules.

6187 B. Except in case of emergency affecting the public health, safety or welfare, no public contract shall
 6188 be awarded on the basis of cost plus a percentage of cost.

6189 C. A policy or contract of insurance or prepaid coverage having a premium computed on the basis of
 6190 claims paid or incurred, plus the insurance carrier's administrative costs and retention stated in whole or
 6191 part as a percentage of such claims, shall not be prohibited by this section.

6192 § 25. Workers' compensation requirements for construction contractors and subcontractors. -

6193 A. No contractor shall perform any work on a construction project of the Institution unless he (i) has
 6194 obtained, and continues to maintain for the duration of the work, workers' compensation coverage
 6195 required pursuant to the provisions of Chapter 8 (§ 65.2-800 et seq.) of Title 65.2 of the code of
 6196 Virginia, and (ii) provides prior to the award of contract, on a form furnished by the Institution,
 6197 evidence of such coverage.

6198 B. The Department of General Services shall provide the form to the Institution. Failure of the
 6199 Institution to provide the form prior to the award of contract shall waive the requirements of clause (ii)
 6200 of subsection A.

6201 C. No subcontractor shall perform any work on a construction project of the Institution unless he has
 6202 obtained, and continues to maintain for the duration of such work, workers' compensation coverage
 6203 required pursuant to the provisions of Chapter 8 (§ 65.2-800 et seq.) of Title 65.2 of the Code of
 6204 Virginia.

6205 § 26. Retainage on construction contracts. -

6206 A. In any contract issued by the Institution for construction that provides for progress payments in
 6207 installments based upon an estimated percentage of completion, the contractor shall be paid at least 95%
 6208 of the earned sum when payment is due, with no more than 5% being retained to ensure faithful
 6209 performance of the contract. All amounts withheld may be included in the final payment.

6210 B. Any subcontract for a public project that provides for similar progress payments shall be subject
 6211 to the provisions of this section.

6212 § 27. Public construction contract provisions barring damages for unreasonable delays declared void. -

6213 A. Any provision contained in any public construction contract of the Institution that purports to
 6214 waive, release, or extinguish the rights of a contractor to recover costs or damages for unreasonable
 6215 delay in performing such contract, either on his behalf or on behalf of his subcontractor if and to the
 6216 extent the delay is caused by acts or omissions of the Institution, its agents or employees and due to
 6217 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 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

6279 Institution a personal bond, property bond, or bank or savings institution's letter of credit on certain
 6280 designated funds in the face amount required for the bid, payment or performance bond. Approval shall
 6281 be granted only upon a determination that the alternative form of security proffered affords protection to
 6282 the Institution equivalent to a corporate surety's bond.

6283 § 31. Bonds on other than construction contracts. -

6284 The Institution may require bid, payment, or performance bonds for contracts for goods or services if
 6285 provided in the Invitation to Bid or Request for Proposal.

6286 § 32. Action on performance bond. -

6287 No action against the surety on a performance bond shall be brought by the Institution unless
 6288 brought within one year after (i) completion of the contract, including the expiration of all warranties
 6289 and guarantees, or (ii) discovery of the defect or breach of warranty that gave rise to the action.

6290 § 33. Actions on payment bonds; waiver of right to sue. -

6291 A. Subject to the provisions of subsection B, any claimant who has performed labor or furnished
 6292 material in accordance with the contract documents in furtherance of the work provided in any contract
 6293 for which a payment bond has been given, and who has not been paid in full before the expiration of 90
 6294 days after the day on which the claimant performed the last of the labor or furnished the last of the
 6295 materials for which he claims payment, may bring an action on the payment bond to recover any
 6296 amount due him for the labor or material. The obligee named in the bond need not be named a party to
 6297 the action.

6298 B. Any claimant who has a direct contractual relationship with any subcontractor but who has no
 6299 contractual relationship, express or implied, with the contractor, may bring an action on the contractor's
 6300 payment bond only if he has given written notice to the contractor within 180 days from the day on
 6301 which the claimant performed the last of the labor or furnished the last of the materials for which he
 6302 claims payment, stating with substantial accuracy the amount claimed and the name of the person for
 6303 whom the work was performed or to whom the material was furnished. Notice to the contractor shall be
 6304 served by registered or certified mail, postage prepaid, in an envelope addressed to such contractor at
 6305 any place where his office is regularly maintained for the transaction of business. Claims for sums
 6306 withheld as retainages with respect to labor performed or materials furnished, shall not be subject to the
 6307 time limitations stated in this subsection.

6308 C. Any action on a payment bond shall be brought within one year after the day on which the
 6309 person bringing such action last performed labor or last furnished or supplied materials.

6310 D. Any waiver of the right to sue on the payment bond required by this section shall be void unless
 6311 it is in writing, signed by the person whose right is waived, and executed after such person has
 6312 performed labor or furnished material in accordance with the contract documents.

6313 § 34. Public inspection of certain records. -

6314 A. Except as provided in this section, all proceedings, records, contracts and other public records
 6315 relating to procurement transactions shall be open to the inspection of any citizen, or any interested
 6316 person, firm or corporation, in accordance with the Virginia Freedom of Information Act (§ 2.2-3700 et
 6317 seq.).

6318 B. Cost estimates relating to a proposed procurement transaction prepared by or for the Institution
 6319 shall not be open to public inspection.

6320 C. Any competitive sealed bidding bidder, upon request, shall be afforded the opportunity to inspect
 6321 bid records within a reasonable time after the opening of all bids but prior to award, except in the event
 6322 that the Institution decides not to accept any of the bids and to reopen the contract. Otherwise, bid
 6323 records shall be open to public inspection only after award of the contract.

6324 D. Any competitive negotiation offeror, upon request, shall be afforded the opportunity to inspect
 6325 proposal records within a reasonable time after the evaluation and negotiations of proposals are
 6326 completed but prior to award, except in the event that the Institution decides not to accept any of the
 6327 proposals and to reopen the contract. Otherwise, proposal records shall be open to public inspection only
 6328 after award of the contract.

6329 E. Any inspection of procurement transaction records under this section shall be subject to reasonable
 6330 restrictions to ensure the security and integrity of the records.

6331 F. Trade secrets or proprietary information submitted by a bidder, offeror or contractor in connection
 6332 with a procurement transaction or prequalification application submitted pursuant to subsection B of § 14
 6333 shall not be subject to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.); however, the
 6334 bidder, offeror or contractor shall (i) invoke the protections of this section prior to or upon submission
 6335 of the data or other materials, (ii) identify the data or other materials to be protected, and (iii) state the
 6336 reasons why protection is necessary.

6337 § 35. Exemption for certain transactions. -

6338 A. The provisions of these Rules shall not apply to:

6339 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 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

6645 proceeding without delay is necessary to protect the public interest or unless the bid or offer would
6646 expire.

6647 § 53. Contractual disputes. -

6648 A. Contractual claims, whether for money or other relief, shall be submitted in writing no later than
6649 60 days after final payment. However, written notice of the contractor's intention to file a claim shall be
6650 given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing
6651 herein shall preclude a contract from requiring submission of an invoice for final payment within a
6652 certain time after completion and acceptance of the work or acceptance of the goods. Pendency of
6653 claims shall not delay payment of amounts agreed due in the final payment.

6654 B. The Institution shall include in its contracts a procedure for consideration of contractual claims.
6655 Such procedure, which may be contained in the contract or may be specifically incorporated into the
6656 contract by reference and made available to the contractor, shall establish a time limit for a final
6657 decision in writing by the Institution. If the Institution has established administrative procedures meeting
6658 the standards of § 55 of these Rules, such procedures shall be contained in the contract or specifically
6659 incorporated in the contract by reference and made available to the contractor. The Institution may
6660 require the submission of contractual claims pursuant to any contract to Alternative Dispute Resolution
6661 (ADR) as an administrative procedure.

6662 C. A contractor may not invoke administrative procedures meeting the standards of § 55 of these
6663 Rules, if available, or institute legal action as provided in § 54, prior to receipt of the Institution's
6664 decision on the claim, unless the Institution fails to render such decision within the time specified in the
6665 contract.

6666 D. The decision of the Institution shall be final and conclusive unless the contractor appeals within
6667 six months of the date of the final decision on the claim by the Institution by invoking administrative
6668 procedures meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting
6669 legal action as provided in § 54.

6670 § 54. Legal actions. -

6671 A. A bidder or offeror, actual or prospective, who is refused permission or disqualified from
6672 participation in bidding or competitive negotiation, or who is determined not to be a responsible bidder
6673 or offeror for a particular contract, may bring an action in the appropriate circuit court challenging that
6674 decision, which shall be reversed only if the petitioner establishes that the decision was not (i) an honest
6675 exercise of discretion, but rather was arbitrary or capricious; (ii) in accordance with the Constitution of
6676 Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid; or (iii) in
6677 the case of denial of prequalification, based upon the criteria for denial of prequalification set forth in
6678 subsection B of § 14 of these Rules. In the event the apparent low bidder, having been previously
6679 determined by the Institution to be not responsible in accordance with § 4, is found by the court to be a
6680 responsible bidder, the court may direct the Institution to award the contract to such bidder in
6681 accordance with the requirements of this section and the Invitation to Bid.

6682 B. A bidder denied withdrawal of a bid under § 23 of these Rules may bring an action in the
6683 appropriate circuit court challenging that decision, which shall be reversed only if the bidder establishes
6684 that the decision of the Institution was not (i) an honest exercise of discretion, but rather was arbitrary
6685 or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation,
6686 or the terms or conditions of the Invitation to Bid.

6687 C. A bidder, offeror or contractor, or a potential bidder or offeror on a contract negotiated on a sole
6688 source or emergency basis in the manner provided in § 5 of these Rules, whose protest of an award or
6689 decision to award under § 50 of these Rules is denied, may bring an action in the appropriate circuit
6690 court challenging a proposed award or the award of a contract, which shall be reversed only if the
6691 petitioner establishes that the proposed award or the award is not (i) an honest exercise of discretion, but
6692 rather is arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state
6693 law or regulation, or the terms and conditions of the Invitation to Bid or Request for Proposal.

6694 D. If injunctive relief is granted, the court, upon request of the Institution, shall require the posting
6695 of reasonable security to protect the Institution.

6696 E. A contractor may bring an action involving a contract dispute with the Institution in the
6697 appropriate circuit court. Notwithstanding any other provision of law, the Comptroller shall not be
6698 named as a defendant in any action brought pursuant to these Rules or § 33.1-387 of the Code of
6699 Virginia, except for disputes involving contracts of the Office of the Comptroller or the Department of
6700 Accounts.

6701 F. A bidder, offeror or contractor need not utilize administrative procedures meeting the standards of
6702 § 55 of these Rules, if available, but if those procedures are invoked by the bidder, offeror or contractor,
6703 the procedures shall be exhausted prior to instituting legal action concerning the same procurement
6704 transaction unless the Institution agrees otherwise.

6705 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 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.

B. 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.

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

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

Schedule

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

Metrics

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

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

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

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

- 6828 2. Conduct business with eVA registered vendors whenever possible;
 6829 3. Place nonexempt orders, including change orders and cancellations, to eVA suppliers electronically
 6830 using eVA;
 6831 4. To the greatest extent possible, transmit real-time electronic purchase orders, regardless of dollar
 6832 value, that include commodity codes, complete item descriptions, quantities, and unit prices;
 6833 5. To the greatest extent feasible, the University will transmit confirming orders to eVA within five
 6834 (5) business days after placing the order. Commodity codes, complete item descriptions, quantities, and
 6835 unit prices will be provided for all confirming orders. DGS/DPS will provide periodic reports on the
 6836 number and timeliness of confirming orders enabling the University and DGS/DPS to work together to
 6837 monitor the usage of confirming orders with the objective of reducing their numbers to the extent
 6838 possible.
 6839 The University agrees that, for confirming orders, it will resolve any vendor dispute, including
 6840 disputes related to payment of eVA transaction fees, by working directly with the vendor whether such
 6841 vendor contacts the University directly or the dispute is referred to the University by DGS/DPS or
 6842 CGI-AMS.
 6843 The University further agrees that:
 6844 a. It will provide the DGS/DPS eVA Business Manager (or designee) email notification of the
 6845 resolution agreed to by the university and the vendor within 10 business days, unless otherwise agreed
 6846 on a case-by-case basis by the DGS/DPS eVA Business Manager (or designee);
 6847 b. It will pay the eVA transaction fee unless it notifies the eVA Business Manager (or designee)
 6848 within the specified time that the dispute has been resolved and the vendor agreed to pay the fee; and
 6849 c. In the event the University does not provide resolution notification to the eVA Business Manager
 6850 (or designee) within the specified timeframe, DGS/DPS will automatically execute a manual adjustment
 6851 reversing disputed transaction fees from the vendor to the University and the University will pay the fee.
 6852 6. Timely process electronic change orders and cancellations;
 6853 7. Post all solicitations and business opportunities greater than \$50,000 on the eVA website except as
 6854 specifically exempted by DPS;
 6855 8. To the extent technically feasible, make eVA catalogs, especially contract catalogs, available to
 6856 end users using the ERP/SciQuest Integration system. The University will be responsible for the
 6857 accuracy of contract catalog pricing loaded into the ERP/SciQuest;
 6858 9. Use eVA electronic vendor notification for procurement opportunities (per plans to post
 6859 solicitations specified in item 7 above and the use of Quick Quote/Reverse Auctions specified in item 10
 6860 below);
 6861 10. Use eVA on-line bidding functions of Quick Quote and Reverse Auction for appropriate
 6862 commodities, when such are identified;
 6863 11. Complete and certify the monthly eVA Dashboard Report; and
 6864 12. Timely remit any eVA transaction and non-use fees incurred by the institution.
 6865 C. The University shall be subject to eVA fees assessed per the eVA Business Plan.
 6866 D. The University shall assure that payments to CGI-AMS are current.

6867 EXHIBIT F
 6868 MANAGEMENT AGREEMENT
 6869 BETWEEN
 6870 THE COMMONWEALTH OF VIRGINIA
 6871 AND
 6872 VIRGINIA POLYTECHNIC INSTITUTE
 6873 AND STATE UNIVERSITY
 6874 PURSUANT TO
 6875 THE RESTRUCTURED HIGHER EDUCATION
 6876 FINANCIAL AND ADMINISTRATIVE OPERATIONS
 6877 ACT OF 2005
 6878 POLICY GOVERNING
 6879 FINANCIAL OPERATIONS AND MANAGEMENT
 6880 THE BOARD OF VISITORS OF VIRGINIA POLYTECHNIC INSTITUTE
 6881 AND STATE UNIVERSITY
 6882 POLICY GOVERNING FINANCIAL OPERATIONS AND MANAGEMENT

6883 I. PREAMBLE.

6884 The Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter
 6885 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia, establishes by law a process for granting
 6886 additional authority to institutions of higher education for financial operations and management, subject
 6887 to the adoption of policies by their governing boards and the approval of management agreements to be
 6888 negotiated with the Commonwealth. The following provisions of this Policy constitute the adopted Board

6889 of Visitors policies regarding Virginia Polytechnic Institute and State University's financial operations
6890 and management.

6891 This Policy is intended to cover the authority that may be granted to the University pursuant to
6892 Subchapter 3 of the Act. Any other powers and authorities granted to the University pursuant to the
6893 Appropriation Act, or any other sections of the Code of Virginia, including other provisions of the Act
6894 and the University's Enabling Legislation, are not affected by this Policy.

6895 II. DEFINITIONS.

6896 As used in this policy, the following terms shall have the following meanings, unless the context
6897 requires otherwise:

6898 "Act" means the Restructured Higher Education Financial and Administrative Operations Act,
6899 Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia.

6900 "Board of Visitors" or "Board" means the Board of Visitors of Virginia Polytechnic Institute and
6901 State University.

6902 "Covered Institution" means, on or after the Effective Date of its initial Management Agreement with
6903 the Commonwealth of Virginia, a public institution of higher education of the Commonwealth that has
6904 entered into a Management Agreement with the Commonwealth to be governed by the provisions of
6905 Subchapter 3 of the Act.

6906 "Enabling Legislation" means those chapters, other than Chapter 4.10, of title 23 of the Code of
6907 Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and missions
6908 of the University.

6909 "Effective Date" means the effective date of the initial Management Agreement between the
6910 University and the Commonwealth.

6911 "Management Agreement" means the agreement required by subsection D of § 23-38.88 of the Act
6912 between the University and the Commonwealth of Virginia.

6913 "State Tax Supported Debt" means bonds, notes or other obligations issued under Article X, Section
6914 9(a), 9(b), or 9(c), or 9(d), if the debt service payments are made or ultimately are to be made from
6915 general government funds, as defined in the December 20, 2004 Report to the Governor and General
6916 Assembly of the Debt Capacity Advisory Committee or as that definition is amended from time to time.

6917 "University" means Virginia Polytechnic Institute and State University, consisting of the University
6918 Division (State Agency 208) and Virginia Cooperative Extension and the Agriculture Experiment Station
6919 Division (State Agency 229).

6920 III. SCOPE OF POLICY.

6921 This Policy applies to the University's responsibility for management, investment and stewardship of
6922 all its financial resources, including but not limited to, general, non-general and private funds. This
6923 responsibility includes maintaining an independent uniform system of accounting, financial reporting,
6924 and internal controls adequate to protect and account for the University's financial resources.

6925 Virginia Cooperative Extension and the Agriculture Experiment Station Division shall receive the
6926 benefits of this Policy as it is implemented by the University on behalf of Virginia Cooperative
6927 Extension and the Agriculture Experiment Station Division, but Virginia Cooperative Extension and the
6928 Agriculture Experiment Station Division shall not receive any additional independent financial operations
6929 and management authority as a result of this Management Agreement beyond the independent financial
6930 operations and management authority that it had prior to the Effective Date of the University's initial
6931 Management Agreement with the Commonwealth or that it may be granted by law in the future.

6932 IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.

6933 The Board of Visitors of the University shall at all times be fully and ultimately accountable for the
6934 proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation
6935 of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant
6936 to its legally permissible procedures, specifically delegate either herein or by separate Board resolution
6937 the duties and responsibilities set forth in this Policy to a person or persons within the University, who,
6938 while continuing to be fully accountable for such duties and responsibilities, may further delegate the
6939 implementation of those duties and responsibilities pursuant to the University's usual delegation policies
6940 and procedures.

6941 V. FINANCIAL MANAGEMENT AND REPORTING SYSTEM.

6942 The President, acting through the Executive Vice President and Chief Operating Officer, shall
6943 continue to be authorized by the Board to maintain existing and implement new policies governing the
6944 management of University financial resources. These policies shall continue to (i) ensure compliance
6945 with Generally Accepted Accounting Principles, (ii) ensure consistency with the current accounting
6946 principles employed by the Commonwealth, including the use of fund accounting principles, with regard
6947 to the establishment of the underlying accounting records of the University and the allocation and
6948 utilization of resources within the accounting system, including the relevant guidance provided by the
6949 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 for which the financial and administrative management and educational-related performance benchmarks described in § 23-9.6:1.01 of the Code of Virginia, are effective, as provided in a general Appropriation Act, and for all fiscal years thereafter, each public institution of higher education of the Commonwealth

7011 that (i) has been certified during the fiscal year by SCHEV as having met such institutional performance
 7012 benchmarks and (ii) meets the conditions prescribed in subsection B of § 23-38.88 of the Act, shall
 7013 receive certain financial incentives, including the interest on the tuition and fees and other non-general
 7014 fund Educational and General Revenues deposited into the State Treasury by the public institution of
 7015 higher education.

7016 Consistent with the prior paragraph, beginning with the fiscal year following the first fiscal year for
 7017 which it has received such certification from SCHEV, the University is authorized to hold and invest
 7018 tuition, Educational and General (E&G) fees, research and sponsored program funds, auxiliary enterprise
 7019 funds, and all other non-general fund revenues subject to the following requirements:

7020 i) The University shall deposit such funds in the State Treasury pursuant to the State process in place
 7021 at the time of such deposit;

7022 ii) Such non-general funds deposited in the State Treasury shall be disbursed as provided in Section
 7023 IX below;

7024 iii) The University shall remit to the State Comptroller quarterly and the State Comptroller shall hold
 7025 in escrow all interest earned on the University's tuition and fees and other non-general fund Educational
 7026 and General Revenues. *Interest earned on the escrow account shall be deposited to the account.* Upon
 7027 receipt of the required State Council of Higher Education for Virginia certification that the University
 7028 has met such institutional performance benchmarks and the conditions prescribed in subsection B of
 7029 § 23-38.88 of the Act, the Governor shall include in the next budget bill a non-general fund
 7030 appropriation, payable no later than July 1 of the immediately following fiscal year, equivalent to the
 7031 amount deposited in the escrow account as the financial incentive provided in subdivision 1 of
 7032 § 2.2-5005, after which time the University may expend the funds for purposes related to its mission. If
 7033 public institutions of higher education of the Commonwealth are permitted, or the University in
 7034 particular is permitted, by the Appropriation Act or other law to retain or be paid the interest the
 7035 Commonwealth would have earned on sponsored programs and research funds, then this paragraph shall
 7036 not apply to such interest on such funds, and such interest shall not be held in escrow.

7037 iv) If in any given year the University does not receive the certification from the State Council of
 7038 Higher Education for Virginia that it has met for that year the institutional benchmarks called for by
 7039 subsection C of § 23-9.6:1.01 and approved in the then-current Appropriation Act, the Comptroller shall
 7040 transfer to the general fund the balance in the escrow account as of June 30 of that year.

7041 v) Beginning on the effective date of its initial Management Agreement with the University until the
 7042 beginning of the first fiscal year following the fiscal year for which it has received the required
 7043 certification from SCHEV, the University shall continue to deposit tuition and all other non-general
 7044 funds with the State Treasurer by the same process that it would have been required to use if it had not
 7045 entered into a Management Agreement with the Commonwealth.

7046 vi) On the first business day of the first fiscal year following the fiscal year for which it has received
 7047 the required certification from SCHEV, the University may draw down all cash balances held by the
 7048 State Treasurer on behalf of the University related to tuition, E&G fees, research and sponsored
 7049 programs, auxiliary enterprises, and all other non-general fund revenues.

7050 vii) The Commonwealth shall retain all funds related to general fund appropriations, but shall pay
 7051 these funds to the University as specified in Section IX below.

7052 The University also shall have sum sufficient appropriation authority for all non-general funds as
 7053 approved by the Governor and the General Assembly in the Commonwealth's biennial appropriations
 7054 process, and shall report to the Department of Planning and Budget (i) its estimate of the non-general
 7055 fund revenues for the sum sufficient appropriation to be included in the biennial Budget Bill for each of
 7056 the two years in the next biennium by November 1 of each odd numbered year and the estimate to be
 7057 included in the Budget Bill for the first and second year of the then-current biennium by November 1 of
 7058 each even numbered year, and (ii) report its actual non-general fund revenues for each fiscal year to the
 7059 Department of Planning and Budget by July 31 of the subsequent fiscal year.

7060 The Board of Visitors shall retain the authority to establish tuition, fee, room, board, and other
 7061 charges, with appropriate commitment provided to need-based grant aid for middle- and lower-income
 7062 undergraduate Virginians. Except as provided otherwise in the Appropriation Act then in effect, it is the
 7063 intent of the Commonwealth and the University that the University shall be exempt from the revenue
 7064 restrictions in the general provisions of the Appropriation Act related to non-general funds. In addition,
 7065 unless prohibited by the Appropriation Act then in effect, it is the intent of the Commonwealth and the
 7066 University that the University shall be entitled to retain non-general fund savings generated from
 7067 changes in Commonwealth rates and charges, including but not limited to health, life, and disability
 7068 insurance rates, retirement contribution rates, telecommunications charges, and utility rates, rather than
 7069 reverting such savings back to the Commonwealth. This financial resource policy assists the University
 7070 by providing the framework for retaining and managing non-general funds, for the receipt of general
 7071 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 bi-monthly 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 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

7133 President and Chief Operating Officer, to independently select, engage, and contract for such consultants,
 7134 accountants, and financial experts, and other such providers of expert advice and consultation, and, after
 7135 consultation with the Office of the Attorney General, private attorneys, as may be necessary or desirable
 7136 in his or her discretion. The policies also shall continue to include the ability to locally manage and
 7137 administer the Commonwealth's credit card and cost recovery programs related to disbursements, subject
 7138 to any restrictions contained in the Commonwealth's contracts governing those programs, provided that
 7139 the University shall submit the credit card and cost recovery aspects of its financial and operations
 7140 policies to the State Comptroller for review and comment prior to implementing those aspects of those
 7141 policies. The disbursement policies shall ensure that adequate risk management and internal control
 7142 procedures shall be maintained over previously decentralized processes for public records, payroll, and
 7143 non-payroll disbursements. The University shall continue to provide summary quarterly prompt payment
 7144 reports to the Department of Accounts in accordance with the reporting procedures established pursuant
 7145 to the Prompt Payment Act.

7146 The University's disbursement policies shall be guided by the principles of the Commonwealth's
 7147 policies as included in the Commonwealth's Accounting Policy and Procedures Manual. Upon the
 7148 Effective Date of its initial Management Agreement with the Commonwealth, the University shall
 7149 continue to follow the Commonwealth's disbursement policies until such time as specific alternative
 7150 policies can be developed, approved and implemented. Such alternate policies shall be submitted to the
 7151 State Comptroller for review and comment prior to their implementation by the University.

7152 X. DEBT MANAGEMENT.

7153 The President, acting through the Executive Vice President and Chief Operating Officer, shall
 7154 continue to be authorized to create and implement any and all debt management policies as part of a
 7155 system for the management of University financial resources.

7156 Pursuant to § 23-38.108(B) of the Act, the University shall have the authority to issue bonds, notes,
 7157 or other obligations that do not constitute State Tax Supported Debt, as determined by the Treasury
 7158 Board, and that are consistent with debt capacity and management policies and guidelines established by
 7159 its Board of Visitors, without obtaining the consent of any legislative body, elected official, commission,
 7160 board, bureau, or agency of the Commonwealth or of any political subdivision, and without any
 7161 proceedings or conditions other than those specifically required by Subchapter 3 of the Act; provided
 7162 that, the University shall notify the Treasurer of Virginia of its intention to issue bonds pursuant to this
 7163 Policy at the time it adopts the bond issuance planning schedule for those bonds. Any new or revised
 7164 debt capacity and management policy shall be submitted to the Treasurer of Virginia for review and
 7165 comment prior to its adoption by the University.

7166 The University recognizes that there are numerous types of financing structures and funding sources
 7167 available each with specific benefits, risks, and costs. All potential funding sources shall be reviewed by
 7168 the President, acting through the Executive Vice President and Chief Operating Officer, within the
 7169 context of the overall portfolio to ensure that any financial product or structure is consistent with the
 7170 University's objectives. Regardless of the financing structure(s) utilized, the President, acting through the
 7171 Executive Vice President and Chief Operating Officer, shall obtain sufficient documentation to gain a
 7172 full understanding of the transaction, including (i) the identification of potential risks and benefits, and
 7173 (ii) an analysis of the impact on University creditworthiness and debt capacity. All such debt or financial
 7174 products issued pursuant to the provisions of §§ 23.38-107 and 23.38-108 of the Act shall be authorized
 7175 by resolution of the Board, providing that they do not constitute State Tax Supported Debt.

7176 XI. INVESTMENT POLICY.

7177 It is the policy of the University to invest its operating and reserve funds solely in the interest of the
 7178 University and in a manner that will provide the highest investment return with the maximum security
 7179 while meeting daily cash flow demands and conforming to the Investment of Public Funds Act
 7180 (§ 2.2-4500 et seq.) of the Code of Virginia. Investments shall be made with the care, skill, prudence
 7181 and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and
 7182 familiar with such matters would use in the conduct of an enterprise of a like character and with like
 7183 aims.

7184 Endowment investments shall be invested and managed in accordance with the Uniform Management
 7185 of Institutional Funds Act, §§ 55-268.1 through 55-268.10, and § 23-76.1 of the Code of Virginia.

7186 The Board of Visitors shall periodically review and approve the investment guidelines governing the
 7187 University's operating and reserve funds.

7188 XII. INSURANCE AND RISK MANAGEMENT.

7189 By July 1 of each odd-numbered year, the University shall inform the Secretary of Finance of any
 7190 intent during the next biennium to withdraw from any insurance or risk management program made
 7191 available to the University through the Commonwealth's Division of Risk Management and in which the
 7192 University is then participating, to enable the Commonwealth to complete an adverse selection analysis
 7193 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, ~~2010~~ 2012, *provided that on or before November 15, 2011, the Governor provides to the Chairmen of the House Committee on Appropriations and the Senate Committee on Finance written notification that this Management Agreement needs to be renegotiated or revised. If such notification is not received, this Management Agreement shall continue in effect until June 30, 2015.*

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 public institution of higher education of the Commonwealth of Virginia that has entered into a

7255 management agreement with the Commonwealth to be governed by the provisions of Subchapter 3 of
7256 the Act.

7257 "Enabling Legislation" means those chapters, other than Chapter 4.10, of Title 23 of the Code of
7258 Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and missions
7259 of the individual public institutions of higher education of the Commonwealth, and as provided in
7260 §§ 2.2-2817.2, 2.2-2905, and 51.1-126.3.

7261 "Major Capital Project(s)" means the acquisition of any interest in land, including improvements on
7262 the acquired land at the time of acquisition, new construction of 5,000 square feet or greater or costing
7263 \$1 million or more, improvements or renovations of \$1 million or more, and Capital Leases.

7264 "State Tax Supported Debt" means bonds, notes or other obligations issued under Article X, Section
7265 9(a), 9(b), or 9(c), or 9(d), if the debt service payments are made or ultimately are to be made from
7266 general government funds, as defined in the December 20, 2004 Report to the Governor and General
7267 Assembly of the Debt Capacity Advisory Committee or as that definition is amended from time to time.

7268 III. SCOPE OF POLICY.

7269 This Policy applies to the planning and budget development for capital projects, capital project
7270 authorization, and the implementation of capital projects, whether funded by a general fund
7271 appropriation of the General Assembly, proceeds from State Tax Supported Debt, or funding from other
7272 sources.

7273 This Policy provides guidance for 1) the process for developing one or more capital project programs
7274 for the College, 2) authorization of new capital projects, 3) procurement of Capital Professional Services
7275 and construction services, 4) design reviews and code approvals for capital projects, 5) environmental
7276 impact requirements, 6) building demolitions, 7) building and land acquisitions, 8) building and land
7277 dispositions, 9) project management systems, and 10) reporting requirements.

7278 IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.

7279 The Board of Visitors of the College shall at all times be fully and ultimately accountable for the
7280 proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation
7281 of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant
7282 to its legally permissible procedures, specifically delegate either herein or by separate Board resolution
7283 the duties and responsibilities set forth in this Policy to a person or persons within the College, who,
7284 while continuing to be fully accountable for such duties and responsibilities, may further delegate the
7285 implementation of those duties and responsibilities pursuant to the College's usual delegation policies
7286 and procedures.

7287 V. CAPITAL PROGRAM.

7288 The President shall adopt a system for developing one or more capital project programs that defines
7289 or define the capital needs of the College for a given period of time consistent with the College's
7290 published Master Plan. This process may or may not mirror the Commonwealth's requirements for
7291 capital plans. The Board of Visitors shall approve the program for Major Capital Projects. Major
7292 Capital Projects that are to be funded entirely or in part by a general fund appropriation of the General
7293 Assembly or proceeds from State Tax Supported Debt shall follow the Commonwealth's requirements
7294 for capital plans. The Board may approve amendments to the program for Major Capital Projects
7295 annually or more often if circumstances warrant.

7296 It shall be College policy that each capital project program shall meet the College's mission and
7297 institutional objectives, and be appropriately authorized by the College. Moreover, it shall be College
7298 policy that each capital project shall be of a size and scope to provide for the defined program needs,
7299 designed in accordance with all applicable building codes and handicapped accessibility standards as
7300 well as the College's design guidelines and standards, and costed to reflect current costs and escalated to
7301 the mid-point of anticipated construction.

7302 VI. AUTHORIZATION OF CAPITAL PROJECTS.

7303 The Board of Visitors shall authorize the initiation of each Major Capital Project by approving its
7304 size, scope, budget, and funding. The President, acting through his designee, shall adopt procedures for
7305 approving the size, scope, budget and funding of all other capital projects. Major Capital Projects that
7306 are to be funded entirely or in part by a general fund appropriation of the General Assembly or proceeds
7307 from State Tax Supported Debt, shall require both Board of Visitors approval and those
7308 pre-appropriation approvals of the State's governmental agencies then applicable, and shall follow the
7309 State's process for capital budget requests.

7310 It shall be the policy of the College that the implementation of capital projects shall be carried out so
7311 that the capital project as completed is the capital project approved by the Board for Major Capital
7312 Projects and according to the procedures adopted by the President, acting through his designee, for all
7313 other capital projects. The President shall ensure strict adherence to this requirement.

7314 Accordingly, the budget, size and scope of a capital project shall not be materially changed beyond
7315 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 his designee, 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 College 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 College is committed to:

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;

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

Making procurement rules clear in advance of any competition;

Providing access to the College'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 College;

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;

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 his designee, is authorized to develop implementing procedures for the procurement of Capital Professional Services and construction services at the College. 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 College 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 College, 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 his designee, 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 College'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 shall designate a Building Official responsible for building code compliance *at the College, including the Virginia Institute of Marine Science and Richard Bland College*, by either (i) hiring an individual to be the College 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 College Building Official shall be a ~~full-time~~ *an employee of the College who has no other assigned duties or responsibilities at the institution and who is not employed by any firm or business provided facility services to the College*, a registered professional architect or engineer, and certified by the Department of Housing and Community Development to perform this Building Official function. The College 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 College Building Official, such individual shall organizationally report directly and exclusively to the Board of Visitors. If the College hires its own College 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 College'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 College ~~on the same capital project~~.

IX. ENVIRONMENTAL IMPACT REPORTS.

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

XI. BUILDING OR LAND ACQUISITIONS.

It is the policy of the College that capital projects involving building or land acquisition shall be subjected to thorough inquiry and due diligence prior to closing on the acquisition of such real property. The President, acting through his designee, shall ensure that the project management system implemented pursuant to Section XIII below provides for a review and analysis of all pertinent matters relating to the acquisition of buildings and land as any prudent purchaser would perform to the end that any building or land acquired by the College shall be suitable for its intended purpose, that the acquisition can be made without substantial risk of liability to the College 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 his designee, 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 College 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 College 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 College to comply with local zoning laws and ordinances.

B. Infrastructure and Site Condition.

The President, acting through his designee, 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 College 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 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

7499 Rules shall apply whether the consideration is monetary or nonmonetary and regardless of whether the
 7500 Institution, the contractor, or some third party is providing the consideration.

7501 § 2. Scope of Procurement Authority. -

7502 Subject to these Rules, and the Institution's continued substantial compliance with the terms and
 7503 conditions of its Management Agreement with the Commonwealth pursuant to § 23-38.88(D)(4) and the
 7504 requirements of Chapter 4.10 of the Act, the Institution shall have and shall be authorized to have and
 7505 exercise all of the authority relating to procurement of goods, services, insurance, and construction,
 7506 including but not limited to capital outlay-related procurement and information technology-related
 7507 procurement, that Institutions are authorized to exercise pursuant to Subchapter 3 of the Restructuring
 7508 Act.

7509 § 3. Competition is the Priority. -

7510 To the end that the Institution shall obtain high quality goods and services at reasonable cost, that all
 7511 procurement procedures be conducted in an open, fair and impartial manner with avoidance of any
 7512 impropriety or appearance of impropriety, that all qualified vendors have access to the Institution's
 7513 business and that no offeror be arbitrarily or capriciously excluded, it is the intent of the governing body
 7514 of the Institution that competition be sought to the maximum feasible degree, that procurement
 7515 procedures involve openness and administrative efficiency, that individual public bodies enjoy broad
 7516 flexibility in fashioning details of such competition, that the rules governing contract awards be made
 7517 clear in advance of the competition, that specifications reflect the procurement needs of the purchasing
 7518 body rather than being drawn to favor a particular vendor, and that the purchaser and vendor freely
 7519 exchange information concerning what is sought to be procured and what is offered. The Institution
 7520 may consider best value concepts when procuring goods and nonprofessional services, but not
 7521 construction or professional services. Professional services will be procured using a qualification-based
 7522 selection process. The criteria, factors, and basis for consideration of best value and the process for the
 7523 consideration of best value shall be as stated in the procurement solicitation.

7524 § 4. Definitions. -

7525 As used in these Rules:

7526 "Affiliate" means an individual or business that controls, is controlled by, or is under common
 7527 control with another individual or business. A person controls an entity if the person owns, directly or
 7528 indirectly, more than 10% of the voting securities of the entity. For the purposes of this definition
 7529 "voting security" means a security that (i) confers upon the holder the right to vote for the election of
 7530 members of the board of directors or similar governing body of the business or (ii) is convertible into,
 7531 or entitles the holder to receive, upon its exercise, a security that confers such a right to vote. A general
 7532 partnership interest shall be deemed to be a voting security.

7533 "Best value," as predetermined in the solicitation, means the overall combination of quality, price,
 7534 and various elements of required services that in total are optimal relative to the Institution's needs.

7535 "Business" means any type of corporation, partnership, limited liability company, association, or sole
 7536 proprietorship operated for profit.

7537 "Competitive negotiation" is a method of contractor selection that includes the following elements:

7538 1. Issuance of a written Request for Proposal indicating in general terms that which is sought to be
 7539 procured, specifying the factors that will be used in evaluating the proposal and containing or
 7540 incorporating by reference the other applicable contractual terms and conditions, including any unique
 7541 capabilities or qualifications that will be required of the contractor.

7542 2. Public notice of the Request for Proposal at least 10 days prior to the date set for receipt of
 7543 proposals by publication in a newspaper or newspapers of general circulation in the area in which the
 7544 contract is to be performed so as to provide reasonable notice to the maximum number of offerors that
 7545 can be reasonably anticipated to submit proposals in response to the particular request. Public notice
 7546 also shall be published on the Department of General Services' central electronic procurement website
 7547 and may be published on other appropriate websites. In addition, proposals may be solicited directly
 7548 from potential contractors.

7549 3. a. Procurement of professional services. The procurement of professional services for capital
 7550 projects shall be conducted using a qualification-based selection process. The Institution shall engage in
 7551 individual discussions with two or more offerors deemed fully qualified, responsible and suitable on the
 7552 basis of initial responses and with emphasis on professional competence, to provide the required
 7553 services. Repetitive informal interviews shall be permissible. The offerors shall be encouraged to
 7554 elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project,
 7555 as well as alternative concepts. The Request for Proposal shall not, however, request that offerors
 7556 furnish estimates of man-hours or cost for services. At the discussion stage, the Institution may discuss
 7557 nonbinding estimates of total project costs, including, but not limited to, life-cycle costing, and where
 7558 appropriate, nonbinding estimates of price for services. Proprietary information from competing offerors
 7559 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 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.

7621 "Construction management contract" means a contract in which a party is retained by the owner to
 7622 coordinate and administer contracts for construction services for the benefit of the owner, and may also
 7623 include, if provided in the contract, the furnishing of construction services to the owner.

7624 "Covered Institution" or "Institution" means, on and after the effective date of the initial management
 7625 agreement with the Commonwealth of Virginia, a public institution of higher education of the
 7626 Commonwealth that has entered into a management agreement with the Commonwealth to be governed
 7627 by the provisions of Subchapter 3 of the Restructuring Act.

7628 "Design-build contract" means a contract between the Institution and another party in which the party
 7629 contracting with the Institution agrees to both design and build the structure, roadway or other item
 7630 specified in the contract.

7631 "Goods" means all material, equipment, supplies, and printing, including information technology and
 7632 telecommunications goods such as automated data processing hardware and software.

7633 "Informality" means a minor defect or variation of a bid or proposal from the exact requirements of
 7634 the Invitation to Bid, or the Request for Proposal, which does not affect the price, quality, quantity or
 7635 delivery schedule for the goods, services or construction being procured.

7636 "Multiphase professional services contract" means a contract for the providing of professional
 7637 services where the total scope of work of the second or subsequent phase of the contract cannot be
 7638 specified without the results of the first or prior phase of the contract.

7639 "Nonprofessional services" means any services not specifically identified as professional services in
 7640 the definition of professional services and includes small construction projects valued not over \$1
 7641 million; provided that subdivision 3a of the definition of "competitive negotiation" in this section shall
 7642 still apply to professional services for such small construction projects.

7643 "Potential bidder or offeror" for the purposes of §§ 50 and 54 of these Rules means a person who, at
 7644 the time the Institution negotiates and awards or proposes to award a contract, is engaged in the sale or
 7645 lease of goods, or the sale of services, insurance or construction, of the type to be procured under the
 7646 contract, and who at such time is eligible and qualified in all respects to perform that contract, and who
 7647 would have been eligible and qualified to submit a bid or proposal had the contract been procured
 7648 through competitive sealed bidding or competitive negotiation.

7649 "Professional services" means work performed by an independent contractor within the scope of the
 7650 practice of accounting, actuarial services, architecture, land surveying, landscape architecture, law,
 7651 dentistry, medicine, optometry, pharmacy or professional engineering.

7652 "Public body" means any legislative, executive or judicial body, agency, office, department, authority,
 7653 post, commission, committee, institution, board or political subdivision created by law to exercise some
 7654 sovereign power or to perform some governmental duty, and empowered by law to undertake the
 7655 activities described in these Rules.

7656 "Public contract" means an agreement between the Institution and a nongovernmental source that is
 7657 enforceable in a court of law.

7658 "Responsible bidder" or "offeror" means a person who has the capability, in all respects, to perform
 7659 fully the contract requirements and the moral and business integrity and reliability that will assure good
 7660 faith performance, and who has been prequalified, if required.

7661 "Responsive bidder" means a person who has submitted a bid that conforms in all material respects
 7662 to the Invitation to Bid.

7663 "Restructuring Act" or "Act" means the Restructured Higher Education Financial and Administrative
 7664 Operations Act, Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia.

7665 "Reverse auctioning" means a procurement method wherein bidders are invited to bid on specified
 7666 goods or nonprofessional services through real-time electronic bidding, with the award being made to
 7667 the lowest responsive and responsible bidder. During the bidding process, bidders' prices are revealed
 7668 and bidders shall have the opportunity to modify their bid prices for the duration of the time period
 7669 established for bid opening.

7670 "Rules" means these Rules Governing Procurement of Goods, Services, Insurance, and Construction
 7671 adopted by the governing body of the Covered Institution.

7672 "Services" means any work performed by an independent contractor wherein the service rendered
 7673 does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials
 7674 and supplies.

7675 "Sheltered workshop" means a work-oriented rehabilitative facility with a controlled working
 7676 environment and individual goals that utilizes work experience and related services for assisting the
 7677 handicapped person to progress toward normal living and a productive vocational status.

7678 § 5. Methods of procurement. -

7679 A. All public contracts with nongovernmental contractors for the purchase or lease of goods, or for
 7680 the purchase of services, insurance, or construction, shall be awarded after competitive sealed bidding, or
 7681 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.

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

7743 proposal or invitation to bid, if the request for proposal or invitation to bid specified that the
 7744 procurement was being conducted on behalf of other public bodies. In such instances, deviation from
 7745 the procurement procedures set forth in these Rules and the administrative policies and procedures
 7746 established to implement these Rules shall be permitted. Notwithstanding all of the above, use of
 7747 cooperative contracts shall conform to the business requirements of the Commonwealth's electronic
 7748 procurement system, including the requirement for payment of applicable fees. Nothing herein shall
 7749 prohibit the payment by direct or indirect means of any administrative fee that will allow for
 7750 participation in any such arrangement.

7751 B. In circumstances where statewide contracts for goods and services, including information
 7752 technology and telecommunications goods and services, do not provide goods and services to meet the
 7753 Institution's business goals and objectives, and as authorized by the United States Congress and
 7754 consistent with applicable federal regulations, and provided the terms of the contract permit such
 7755 purchases:

7756 1. The Institution may purchase goods and nonprofessional services, from a United States General
 7757 Services Administration contract or a contract awarded by any other agency of the United States
 7758 government; and

7759 2. The Institution may purchase telecommunications and information technology goods and
 7760 nonprofessional services from a United States General Services Administration contract or a contract
 7761 awarded by any other agency of the United States government.

7762 § 7. Design-build or construction management contracts authorized. -

7763 A. Notwithstanding any other provisions of law, the Institution may enter into contracts on a fixed
 7764 price design-build basis or construction management basis in accordance with the provisions of this
 7765 section.

7766 B. Procurement of construction by the design-build or construction management method shall be a
 7767 two-step competitive negotiation process. In the first step, offerors shall be requested to submit their
 7768 qualifications. Based upon the information submitted and any other relevant information which the
 7769 Commonwealth may obtain, no more than five offerors deemed most suitable for the project shall be
 7770 selected by the Commonwealth and requested to submit proposals.

7771 § 8. Modification of the contract. -

7772 A. A contract awarded by the Institution may include provisions for modification of the contract
 7773 during performance, but no fixed-price contract may be increased by more than 25% of the amount of
 7774 the contract or \$50,000, whichever is greater, without the advance written approval of the Institution's
 7775 president or his designee. In no event may the amount of any contract, without adequate consideration,
 7776 be increased for any purpose, including, but not limited to, relief of an offeror from the consequences of
 7777 an error in its bid or offer.

7778 B. The Institution may extend the term of an existing contract for services to allow completion of
 7779 any work undertaken but not completed during the original term of the contract.

7780 C. Nothing in this section shall prevent the Institution from placing greater restrictions on contract
 7781 modifications.

7782 § 9. Discrimination prohibited; participation of small, women- and minority-owned business. -

7783 A. In the solicitation or awarding of contracts, the Institution shall not discriminate against a bidder
 7784 or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis
 7785 prohibited by state law relating to discrimination in employment. Whenever solicitations are made, the
 7786 Institution shall include businesses selected from a list made available by the Department of Minority
 7787 Business Enterprise.

7788 B. The Institution shall establish programs consistent with this section to facilitate the participation
 7789 of small businesses and businesses owned by women and minorities in procurement transactions. The
 7790 programs established shall be in writing and shall include cooperation with the Department of Minority
 7791 Business Enterprise, the United States Small Business Administration, and other public or private
 7792 agencies. The Institution shall submit annual progress reports on minority business procurement to the
 7793 Department of Minority Business Enterprise.

7794 C. Whenever there exists (i) a rational basis for small business enhancement or (ii) a persuasive
 7795 analysis that documents a statistically significant disparity between the availability and utilization of
 7796 women- and minority-owned businesses, the Governor is by law authorized and encouraged to require
 7797 the Institution to implement appropriate enhancement or remedial measures consistent with prevailing
 7798 law.

7799 D. In the solicitation or awarding of contracts, the Institution shall not discriminate against a bidder
 7800 or offeror because the bidder or offeror employs ex-offenders unless it has made a written determination
 7801 that employing ex-offenders on the specific contract is not in its best interest.

7802 § 10. Employment discrimination by contractor prohibited; required contract provisions. -

7803 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 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;

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

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

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

§ 15. Negotiation with lowest responsible bidder. -

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

7987 contract on another bid of the same bidder or of another bidder in which the ownership of the
 7988 withdrawing bidder is more than 5%.

7989 D. If a bid is withdrawn in accordance with this section, the lowest remaining bid shall be deemed
 7990 to be the low bid.

7991 E. No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or
 7992 labor to or perform any subcontract or other work agreement for the person or firm to whom the
 7993 contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for
 7994 which the withdrawn bid was submitted.

7995 F. If the Institution denies the withdrawal of a bid under the provisions of this section, it shall notify
 7996 the bidder in writing stating the reasons for its decision and award the contract to such bidder at the bid
 7997 price, provided such bidder is a responsible and responsive bidder.

7998 § 24. Contract Pricing Arrangements. -

7999 A. Public contracts may be awarded on a fixed price or cost reimbursement basis, or on any other
 8000 basis that is not prohibited by these Rules.

8001 B. Except in case of emergency affecting the public health, safety or welfare, no public contract
 8002 shall be awarded on the basis of cost plus a percentage of cost.

8003 C. A policy or contract of insurance or prepaid coverage having a premium computed on the basis
 8004 of claims paid or incurred, plus the insurance carrier's administrative costs and retention stated in whole
 8005 or part as a percentage of such claims, shall not be prohibited by this section.

8006 § 25. Workers' compensation requirements for construction contractors and subcontractors. -

8007 A. No contractor shall perform any work on a construction project of the Institution unless he (i) has
 8008 obtained, and continues to maintain for the duration of the work, workers' compensation coverage
 8009 required pursuant to the provisions of Chapter 8 (§ 65.2-800 et seq.) of Title 65.2 of the Code of
 8010 Virginia, and (ii) provides prior to the award of contract, on a form furnished by the Institution,
 8011 evidence of such coverage.

8012 B. The Department of General Services shall provide the form to the Institution. Failure of the
 8013 Institution to provide the form prior to the award of contract shall waive the requirements of clause (ii)
 8014 of subsection A.

8015 C. No subcontractor shall perform any work on a construction project of the Institution unless he
 8016 has obtained, and continues to maintain for the duration of such work, workers' compensation coverage
 8017 required pursuant to the provisions of Chapter 8 (§ 65.2-800 et seq.) of Title 65.2 of the Code of
 8018 Virginia.

8019 § 26. Retainage on construction contracts. -

8020 A. In any contract issued by the Institution for construction that provides for progress payments in
 8021 installments based upon an estimated percentage of completion, the contractor shall be paid at least 95%
 8022 of the earned sum when payment is due, with no more than 5% being retained to ensure faithful
 8023 performance of the contract. All amounts withheld may be included in the final payment.

8024 B. Any subcontract for a public project that provides for similar progress payments shall be subject
 8025 to the provisions of this section.

8026 § 27. Public construction contract provisions barring damages for unreasonable delays declared
 8027 void. -

8028 A. Any provision contained in any public construction contract of the Institution that purports to
 8029 waive, release, or extinguish the rights of a contractor to recover costs or damages for unreasonable
 8030 delay in performing such contract, either on his behalf or on behalf of his subcontractor if and to the
 8031 extent the delay is caused by acts or omissions of the Institution, its agents or employees and due to
 8032 causes within their control shall be void and unenforceable as against public policy.

8033 B. Subsection A shall not be construed to render void any provision of a public construction
 8034 contract awarded by the Institution that:

8035 1. Allows the recovery of that portion of delay costs caused by the acts or omissions of the
 8036 contractor, or its subcontractors, agents or employees;

8037 2. Requires notice of any delay by the party claiming the delay;

8038 3. Provides for liquidated damages for delay; or

8039 4. Provides for arbitration or any other procedure designed to settle contract disputes.

8040 C. A contractor making a claim against the Institution for costs or damages due to the alleged
 8041 delaying of the contractor in the performance of its work under any public construction contract of the
 8042 Institution shall be liable to the Institution and shall pay it for a percentage of all costs incurred by the
 8043 Institution in investigating, analyzing, negotiating, litigating and arbitrating the claim, which percentage
 8044 shall be equal to the percentage of the contractor's total delay claim that is determined through litigation
 8045 or arbitration to be false or to have no basis in law or in fact.

8046 D. If the Institution denies a contractor's claim for costs or damages due to the alleged delaying of
 8047 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 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

8109 days after the day on which the claimant performed the last of the labor or furnished the last of the
 8110 materials for which he claims payment, may bring an action on the payment bond to recover any
 8111 amount due him for the labor or material. The obligee named in the bond need not be named a party to
 8112 the action.

8113 B. Any claimant who has a direct contractual relationship with any subcontractor but who has no
 8114 contractual relationship, express or implied, with the contractor, may bring an action on the contractor's
 8115 payment bond only if he has given written notice to the contractor within 180 days from the day on
 8116 which the claimant performed the last of the labor or furnished the last of the materials for which he
 8117 claims payment, stating with substantial accuracy the amount claimed and the name of the person for
 8118 whom the work was performed or to whom the material was furnished. Notice to the contractor shall be
 8119 served by registered or certified mail, postage prepaid, in an envelope addressed to such contractor at
 8120 any place where his office is regularly maintained for the transaction of business. Claims for sums
 8121 withheld as retainages with respect to labor performed or materials furnished, shall not be subject to the
 8122 time limitations stated in this subsection.

8123 C. Any action on a payment bond shall be brought within one year after the day on which the
 8124 person bringing such action last performed labor or last furnished or supplied materials.

8125 D. Any waiver of the right to sue on the payment bond required by this section shall be void unless
 8126 it is in writing, signed by the person whose right is waived, and executed after such person has
 8127 performed labor or furnished material in accordance with the contract documents.

8128 § 34. Public inspection of certain records. -

8129 A. Except as provided in this section, all proceedings, records, contracts and other public records
 8130 relating to procurement transactions shall be open to the inspection of any citizen, or any interested
 8131 person, firm or corporation, in accordance with the Virginia Freedom of Information Act (§ 2.2-3700 et
 8132 seq.).

8133 B. Cost estimates relating to a proposed procurement transaction prepared by or for the Institution
 8134 shall not be open to public inspection.

8135 C. Any competitive sealed bidding bidder, upon request, shall be afforded the opportunity to inspect
 8136 bid records within a reasonable time after the opening of all bids but prior to award, except in the event
 8137 that the Institution decides not to accept any of the bids and to reopen the contract. Otherwise, bid
 8138 records shall be open to public inspection only after award of the contract.

8139 D. Any competitive negotiation offeror, upon request, shall be afforded the opportunity to inspect
 8140 proposal records within a reasonable time after the evaluation and negotiations of proposals are
 8141 completed but prior to award, except in the event that the Institution decides not to accept any of the
 8142 proposals and to reopen the contract. Otherwise, proposal records shall be open to public inspection
 8143 only after award of the contract.

8144 E. Any inspection of procurement transaction records under this section shall be subject to
 8145 reasonable restrictions to ensure the security and integrity of the records.

8146 F. Trade secrets or proprietary information submitted by a bidder, offeror or contractor in connection
 8147 with a procurement transaction or prequalification application submitted pursuant to subsection B of § 14
 8148 shall not be subject to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.); however, the
 8149 bidder, offeror or contractor shall (i) invoke the protections of this section prior to or upon submission
 8150 of the data or other materials, (ii) identify the data or other materials to be protected, and (iii) state the
 8151 reasons why protection is necessary.

8152 § 35. Exemption for certain transactions. -

8153 A. The provisions of these Rules shall not apply to:

8154 1. The selection of services related to the management and investment of the Institution's endowment
 8155 funds, endowment income, or gifts pursuant to § 23-76.1. However, selection of these services shall be
 8156 governed by the Uniform Management of Institutional Funds Act (§ 55-268.1 et seq.) as required by
 8157 § 23-76.1.

8158 2. The purchase of items for resale at retail bookstores and similar retail outlets operated by the
 8159 Institution. However, such purchase procedures shall provide for competition where practicable.

8160 3. Procurement of any construction or planning and design services for construction by the
 8161 Institution when (i) the planning, design or construction is \$50,000 or less or (ii) the Institution is
 8162 obligated to conform to procurement procedures that are established by federal statutes or regulations,
 8163 whether or not those federal procedures are in conformance with the provisions of these Rules.

8164 4. The University of Virginia Medical Center.

8165 5. The purchase of goods and services by the Institution when such purchases are made under a
 8166 remedial plan established by the Governor pursuant to subsection C of § 9 of these Rules.

8167 B. Where a procurement transaction involves the expenditure of federal assistance or contract funds,
 8168 the receipt of which is conditioned upon compliance with mandatory requirements in federal laws or
 8169 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~~ *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.

- 8231 2. Speakers and performing artists;
8232 3. Memberships and Association dues;
8233 4. Sponsored research grant sub-awards and contract sub-awards, not to include the purchase of
8234 goods or services by the Institution;
8235 5. Group travel in foreign countries;
8236 6. Conference facilities and services;
8237 7. Participation in intercollegiate athletic tournaments and events including team travel and lodging,
8238 registration and tournament fees;
8239 8. Royalties; ~~or~~
8240 9. The purchase of legal services, provided that the Office of the Attorney General has been
8241 consulted, or expert witnesses or other services associated with litigation or regulatory proceedings; *or*
8242 10. *Maintenance contract renewals for scientific research equipment and software, provided that the*
8243 *institution has posted the renewal to eVA and documented that there was only one response or less and*
8244 *such documentation includes a statement signed by the buyer indicating that no firm other than the*
8245 *original manufacturer/developer offers the service.*
8246 § 38. Exemptions from competitive sealed bidding and competitive negotiation for certain
8247 transactions; limitations. -
8248 The Institution may enter into contracts for insurance or electric utility service without competitive
8249 sealed bidding or competitive negotiation if purchased through an association of which the Institution is
8250 a member if the association was formed and is maintained for the purpose of promoting the interest and
8251 welfare of and developing close relationships with similar public bodies, provided such association has
8252 procured the insurance or electric utility services by use of competitive principles and provided that the
8253 Institution has made a determination in advance after reasonable notice to the public and set forth in
8254 writing that competitive sealed bidding and competitive negotiation are not fiscally advantageous to the
8255 public. The writing shall document the basis for this determination.
8256 § 39. Definitions. -
8257 As used in §§ 39 through 46, unless the context requires a different meaning:
8258 "Contractor" means the entity that has a direct contract with the Institution.
8259 "Debtor" means any individual, business, or group having a delinquent debt or account with any state
8260 agency that obligation has not been satisfied or set aside by court order or discharged in bankruptcy.
8261 "Payment date" means either (i) the date on which payment is due under the terms of a contract for
8262 provision of goods or services; or (ii) if such date has not been established by contract, (a) 30 days after
8263 receipt of a proper invoice by the Institution or its agent or (b) 30 days after receipt of the goods or
8264 services by the Institution.
8265 "Subcontractor" means any entity that has a contract to supply labor or materials to the contractor to
8266 whom the contract was awarded or to any subcontractor in the performance of the work provided for in
8267 such contract.
8268 § 40. Exemptions. -
8269 The provisions of §§ 39 through 46 shall not apply to the late payment provisions contained in any
8270 public utility tariffs prescribed by the State Corporation Commission.
8271 § 41. Retainage to remain valid. -
8272 Notwithstanding the provisions of §§ 39 through 46, the provisions of § 26 relating to retainage shall
8273 remain valid.
8274 § 42. Prompt payment of bills by the Institution. -
8275 A. The Institution shall promptly pay for the completely delivered goods or services by the required
8276 payment date.
8277 Payment shall be deemed to have been made when offset proceedings have been instituted, as
8278 authorized under the Virginia Debt Collection Act (§ 2.2-4800 et seq.) of the Code of Virginia.
8279 B. Separate payment dates may be specified for contracts under which goods or services are
8280 provided in a series of partial deliveries or executions to the extent that such contract provides for
8281 separate payment for such partial delivery or execution.
8282 § 43. Defect or impropriety in the invoice or goods and/or services received. -
8283 In instances where there is a defect or impropriety in an invoice or in the goods or services received,
8284 the Institution shall notify the supplier of the defect or impropriety, if the defect or impropriety would
8285 prevent payment by the payment date. The notice shall be sent within 15 days after receipt of the
8286 invoice or the goods or services.
8287 § 44. Date of postmark deemed to be date payment is made. -
8288 In those cases where payment is made by mail, the date of postmark shall be deemed to be the date
8289 payment is made for purposes of these Rules.
8290 § 45. Payment clauses to be included in contracts. -
8291 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 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

8353 participate in the public contract, the Institution shall cancel the proposed disqualification action. If the
 8354 evaluation reveals that the bidder should be refused permission to participate, or disqualified from
 8355 participation, in the public contract, the Institution shall so notify the bidder, offeror or contractor. The
 8356 notice shall state the basis for the determination, which shall be final unless the bidder appeals the
 8357 decision within 10 days after receipt of the notice by invoking administrative procedures meeting the
 8358 standards of § 55 of these Rules, if available, or in the alternative by instituting legal action as provided
 8359 in § 54.

8360 B. If, upon appeal, it is determined that the action taken was arbitrary or capricious, or not in
 8361 accordance with the Constitution of Virginia, applicable state law or regulations, the sole relief shall be
 8362 restoration of eligibility.

8363 § 48. Appeal of denial of withdrawal of bid. -

8364 A. A decision denying withdrawal of bid under the provisions of § 23 of these Rules shall be final
 8365 and conclusive unless the bidder appeals the decision within 10 days after receipt of the decision by
 8366 invoking administrative procedures meeting the standards of § 55, if available, or in the alternative by
 8367 instituting legal action as provided in § 54.

8368 B. If no bid bond was posted, a bidder refused withdrawal of a bid under the provisions of § 23,
 8369 prior to appealing, shall deliver to the Institution a certified check or cash bond in the amount of the
 8370 difference between the bid sought to be withdrawn and the next low bid. Such security shall be released
 8371 only upon a final determination that the bidder was entitled to withdraw the bid.

8372 C. If, upon appeal, it is determined that the decision refusing withdrawal of the bid was not (i) an
 8373 honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the
 8374 Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to
 8375 Bid, the sole relief shall be withdrawal of the bid.

8376 § 49. Determination of nonresponsibility. -

8377 A. Following public opening and announcement of bids received on an Invitation to Bid, the
 8378 Institution shall evaluate the bids in accordance with element 4 of the definition of "Competitive sealed
 8379 bidding" in § 4 of these Rules. At the same time, the Institution shall determine whether the apparent
 8380 low bidder is responsible. If the Institution so determines, then it may proceed with an award in
 8381 accordance with element 5 of the definition of "Competitive sealed bidding" in § 4. If the Institution
 8382 determines that the apparent low bidder is not responsible, it shall proceed as follows:

8383 1. Prior to the issuance of a written determination of nonresponsibility, the Institution shall (i) notify
 8384 the apparent low bidder in writing of the results of the evaluation, (ii) disclose the factual support for
 8385 the determination, and (iii) allow the apparent low bidder an opportunity to inspect any documents that
 8386 relate to the determination, if so requested by the bidder within five business days after receipt of the
 8387 notice.

8388 2. Within 10 business days after receipt of the notice, the bidder may submit rebuttal information
 8389 challenging the evaluation. The Institution shall issue its written determination of responsibility based
 8390 on all information in the possession of the Institution, including any rebuttal information, within five
 8391 business days of the date the Institution received the rebuttal information. At the same time, the
 8392 Institution shall notify, with return receipt requested, the bidder in writing of its determination.

8393 3. Such notice shall state the basis for the determination, which shall be final unless the bidder
 8394 appeals the decision within 10 days after receipt of the notice by invoking administrative procedures
 8395 meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting legal action
 8396 as provided in § 54.

8397 The provisions of this subsection shall not apply to procurements involving the prequalification of
 8398 bidders and the rights of any potential bidders under such prequalification to appeal a decision that such
 8399 bidders are not responsible.

8400 B. If, upon appeal pursuant to § 54 or 55 of these Rules, it is determined that the decision of the
 8401 Institution was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in
 8402 accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or
 8403 conditions of the Invitation to Bid, and the award of the contract in question has not been made, the
 8404 sole relief shall be a finding that the bidder is a responsible bidder for the contract in question or
 8405 directed award as provided in subsection A of § 54, or both.

8406 If it is determined that the decision of the Institution was not an honest exercise of discretion, but
 8407 rather was arbitrary or capricious or not in accordance with the Constitution of Virginia, applicable state
 8408 law or regulation, or the terms or conditions of the Invitation to Bid, and an award of the contract has
 8409 been made, the relief shall be as set forth in subsection B of § 54 of these Rules.

8410 C. A bidder contesting a determination that he is not a responsible bidder for a particular contract
 8411 shall proceed under this section, and may not protest the award or proposed award under the provisions
 8412 of § 50 of these Rules.

8413 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

8475 require the submission of contractual claims pursuant to any contract to Alternative Dispute Resolution
8476 (ADR) as an administrative procedure.

8477 C. A contractor may not invoke administrative procedures meeting the standards of § 55 of these
8478 Rules, if available, or institute legal action as provided in § 54, prior to receipt of the Institution's
8479 decision on the claim, unless the Institution fails to render such decision within the time specified in the
8480 contract.

8481 D. The decision of the Institution shall be final and conclusive unless the contractor appeals within
8482 six months of the date of the final decision on the claim by the Institution by invoking administrative
8483 procedures meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting
8484 legal action as provided in § 54.

8485 § 54. Legal actions. -

8486 A. A bidder or offeror, actual or prospective, who is refused permission or disqualified from
8487 participation in bidding or competitive negotiation, or who is determined not to be a responsible bidder
8488 or offeror for a particular contract, may bring an action in the appropriate circuit court challenging that
8489 decision, which shall be reversed only if the petitioner establishes that the decision was not (i) an honest
8490 exercise of discretion, but rather was arbitrary or capricious; (ii) in accordance with the Constitution of
8491 Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid; or (iii) in
8492 the case of denial of prequalification, based upon the criteria for denial of prequalification set forth in
8493 subsection B of § 14 of these Rules. In the event the apparent low bidder, having been previously
8494 determined by the Institution to be not responsible in accordance with § 4, is found by the court to be a
8495 responsible bidder, the court may direct the Institution to award the contract to such bidder in
8496 accordance with the requirements of this section and the Invitation to Bid.

8497 B. A bidder denied withdrawal of a bid under § 23 of these Rules may bring an action in the
8498 appropriate circuit court challenging that decision, which shall be reversed only if the bidder establishes
8499 that the decision of the Institution was not (i) an honest exercise of discretion, but rather was arbitrary
8500 or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation,
8501 or the terms or conditions of the Invitation to Bid.

8502 C. A bidder, offeror or contractor, or a potential bidder or offeror on a contract negotiated on a sole
8503 source or emergency basis in the manner provided in § 5 of these Rules, whose protest of an award or
8504 decision to award under § 50 of these Rules is denied, may bring an action in the appropriate circuit
8505 court challenging a proposed award or the award of a contract, which shall be reversed only if the
8506 petitioner establishes that the proposed award or the award is not (i) an honest exercise of discretion, but
8507 rather is arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state
8508 law or regulation, or the terms and conditions of the Invitation to Bid or Request for Proposal.

8509 D. If injunctive relief is granted, the court, upon request of the Institution, shall require the posting
8510 of reasonable security to protect the Institution.

8511 E. A contractor may bring an action involving a contract dispute with the Institution in the
8512 appropriate circuit court. Notwithstanding any other provision of law, the Comptroller shall not be
8513 named as a defendant in any action brought pursuant to these Rules or § 33.1-387 of the Code of
8514 Virginia, except for disputes involving contracts of the Office of the Comptroller or the Department of
8515 Accounts.

8516 F. A bidder, offeror or contractor need not utilize administrative procedures meeting the standards of
8517 § 55 of these Rules, if available, but if those procedures are invoked by the bidder, offeror or contractor,
8518 the procedures shall be exhausted prior to instituting legal action concerning the same procurement
8519 transaction unless the Institution agrees otherwise.

8520 G. Nothing herein shall be construed to prevent the Institution from instituting legal action against a
8521 contractor.

8522 § 55. Administrative appeals procedure. -

8523 A. The Institution may establish an administrative procedure for hearing (i) protests of a decision to
8524 award or an award, (ii) appeals from refusals to allow withdrawal of bids, (iii) appeals from
8525 disqualifications and determinations of nonresponsibility, and (iv) appeals from decisions on disputes
8526 arising during the performance of a contract, or (v) any of these. Such administrative procedure may
8527 include the use of Alternative Dispute Resolution (ADR) or shall provide for a hearing before a
8528 disinterested person or panel, the opportunity to present pertinent information and the issuance of a
8529 written decision containing findings of fact. The disinterested person or panel shall not be an employee
8530 of the governmental entity against whom the claim has been filed. The findings of fact shall be final
8531 and conclusive and shall not be set aside unless the same are (a) fraudulent, arbitrary or capricious; (b)
8532 so grossly erroneous as to imply bad faith; or (c) in the case of denial of prequalification, the findings
8533 were not based upon the criteria for denial of prequalification set forth in subsection B of § 14 of these
8534 Rules. No determination on an issue of law shall be final if appropriate legal action is instituted in a
8535 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.

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

8597 general government funds, as defined in the December 20, 2004 Report to the Governor and General
8598 Assembly of the Debt Capacity Advisory Committee or as that definition is amended from time to time.

8599 III. SCOPE OF POLICY.

8600 This Policy applies to the College's responsibility for management, investment and stewardship of all
8601 its financial resources, including but not limited to, general, non-general and private funds. This
8602 responsibility includes maintaining an independent uniform system of accounting, financial reporting,
8603 and internal controls adequate to protect and account for the College's financial resources.

8604 The Virginia Institute of Marine Science (the Institute) shall receive the benefits of this Policy as it
8605 is implemented by the College on behalf of the Institute, but the Institute shall not receive any
8606 additional independent financial operations and management authority as a result of this Management
8607 Agreement beyond the independent financial operations and management authority that it had prior to
8608 the Effective Date of the College's initial Management Agreement with the Commonwealth or that it
8609 may be granted by law in the future.

8610 IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.

8611 The Board of Visitors of the College shall at all times be fully and ultimately accountable for the
8612 proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation
8613 of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant
8614 to its legally permissible procedures, specifically delegate either herein or by separate Board resolution
8615 the duties and responsibilities set forth in this Policy to a person or persons within the College, who,
8616 while continuing to be fully accountable for such duties and responsibilities, may further delegate the
8617 implementation of those duties and responsibilities pursuant to the College's usual delegation policies
8618 and procedures.

8619 V. FINANCIAL MANAGEMENT AND REPORTING SYSTEM.

8620 The President, or designee, shall continue to be authorized by the Board to maintain existing and
8621 implement new policies governing the management of College financial resources. These policies shall
8622 continue to (i) ensure compliance with Generally Accepted Accounting Principles, (ii) ensure consistency
8623 with the current accounting principles employed by the Commonwealth, including the use of fund
8624 accounting principles, with regard to the establishment of the underlying accounting records of the
8625 College and the allocation and utilization of resources within the accounting system, including the
8626 relevant guidance provided by the State Council of Higher Education for Virginia chart of accounts with
8627 regard to the allocation and proper use of funds from specific types of fund sources, (iii) provide
8628 adequate risk management and internal controls to protect and safeguard all financial resources,
8629 including moneys transferred to the College pursuant to a general fund appropriation, and ensure
8630 compliance with the requirements of the Appropriation Act.

8631 The financial management system shall continue to include a financial reporting system to satisfy
8632 both the requirements for inclusion into the Commonwealth's Comprehensive Annual Financial Report,
8633 as specified in the related State Comptroller's Directives, and the College's separately audited financial
8634 statements. To ensure observance of limitations and restrictions placed on the use of the resources
8635 available to the College, the accounting and bookkeeping system of the College shall continue to be
8636 maintained in accordance with the principles prescribed for governmental organizations by the
8637 Governmental Accounting Standards Board.

8638 In addition, the financial management system shall continue to provide financial reporting for the
8639 President, or designee, and the Board of Visitors to enable them to provide adequate oversight of the
8640 financial operations of the College. Upon the Effective Date of the initial Management Agreement
8641 between the College and the Commonwealth, except for the recordation of daily revenue deposits of
8642 State funds as specified in Section VII below, the College shall not be required to record its financial
8643 transactions in of the Commonwealth's Accounting and Reporting System ("CARS"), including the
8644 current monthly interfacing with CARS , or be a part of any subsequent Commonwealth financial
8645 systems that replace CARS or are in addition to CARS, but shall have its own financial reporting
8646 system. The College's financial reporting system shall provide (i) summary monthly reports for State
8647 agencies including, but not limited to, the Department of Accounts, the Department of Planning and
8648 Budget, the Joint Legislative Audit and Review Commission, the Auditor of Public Accounts, and the
8649 State Council of Higher Education for Virginia, and for the Chairmen of the Senate Committee on
8650 Finance and the House Committee on Appropriations at a sufficient level of detail, on such schedule,
8651 and using such format that is compatible with the Commonwealth's accounting system, as may be
8652 requested by the requesting State agency, and (ii) such other special reports as may be requested from
8653 time to time.

8654 VI. FINANCIAL MANAGEMENT POLICIES.

8655 The President, or designee, shall create and implement any and all financial management policies
8656 necessary to establish a financial management system with adequate risk management and internal
8657 control processes and procedures for the effective protection and management of all College financial

resources. Such policies will not address the underlying accounting principles and policies employed by the Commonwealth and the College, but rather will focus on the internal operations of the College'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 College'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 College 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 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

8719 certification from SCHEV, the College shall continue to deposit tuition and all other non-general funds
 8720 with the State Treasurer by the same process that it would have been required to use if it had not
 8721 entered into a Management Agreement with the Commonwealth.

8722 vi) On the first business day of the first fiscal year following the fiscal year for which it has
 8723 received the required certification from SCHEV, the College may draw down all cash balances held by
 8724 the State Treasurer on behalf of the College related to tuition, E&G fees, research and sponsored
 8725 programs, auxiliary enterprises, and all other non-general fund revenues.

8726 vii) The Commonwealth shall retain all funds related to general fund appropriations, but shall pay
 8727 these funds to the College as specified in Section IX below.

8728 The College also shall have sum sufficient appropriation authority for all non-general funds as
 8729 approved by the Governor and the General Assembly in the Commonwealth's biennial appropriations
 8730 process, and shall report to the Department of Planning and Budget (i) its estimate of the non-general
 8731 fund revenues for the sum sufficient appropriation to be included in the biennial Budget Bill for each of
 8732 the two years in the next biennium by November 1 of each odd numbered year and the estimate to be
 8733 included in the Budget Bill for the first and second year of the then-current biennium by November 1 of
 8734 each even numbered year, and (ii) report its actual non-general fund revenues for each fiscal year to the
 8735 Department of Planning and Budget by July 31 of the subsequent fiscal year.

8736 The Board of Visitors shall retain the authority to establish tuition, fee, room, board, and other
 8737 charges, with appropriate commitment provided to need-based grant aid for middle- and lower-income
 8738 undergraduate Virginians. Except as provided otherwise in the Appropriation Act then in effect, it is the
 8739 intent of the Commonwealth and the College that the College shall be exempt from the revenue
 8740 restrictions in the general provisions of the Appropriation Act related to non-general funds. In addition,
 8741 unless prohibited by the Appropriation Act then in effect, it is the intent of the Commonwealth and the
 8742 College that the College shall be entitled to retain non-general fund savings generated from changes in
 8743 Commonwealth rates and charges, including but not limited to health, life, and disability insurance rates,
 8744 retirement contribution rates, telecommunications charges, and utility rates, rather than reverting such
 8745 savings back to the Commonwealth. This financial resource policy assists the College by providing the
 8746 framework for retaining and managing non-general funds, for the receipt of general funds, and for the
 8747 use and stewardship of all these funds.

8748 The President, or designee, shall continue to provide oversight of the College's cash management
 8749 system which is the framework for the retention of non-general funds. The Internal Audit Department of
 8750 the College shall periodically audit the College's cash management system in accordance with
 8751 appropriate risk assessment models and make reports to the Audit Committee of the Board of Visitors.
 8752 Additional oversight shall continue to be provided through the annual audit and assessment of internal
 8753 controls performed by the Auditor of Public Accounts.

8754 For the receipt of general and non-general funds, the College shall conform to the Security for Public
 8755 Deposits Act, Chapter 44 (§ 2.2-4400 et seq.) of Title 2.2 of the Code of Virginia, as it currently exists
 8756 and from time to time may be amended.

8757 VIII. ACCOUNTS RECEIVABLE MANAGEMENT AND COLLECTION.

8758 The President, or designee, shall continue to be authorized to create and implement any and all
 8759 Accounts Receivable Management and Collection policies as part of a system for the management of
 8760 College financial resources. The policies shall be guided by the requirements of the Virginia Debt
 8761 Collection Act, Chapter 48 (§ 2.2-4800 et seq.) of the Code of Virginia, such that the College shall take
 8762 all appropriate and cost effective actions to aggressively collect accounts receivable in a timely manner.

8763 These shall include, but not be limited to, establishing the criteria for granting credit to College
 8764 customers; establishing the nature and timing of collection procedures within the above general
 8765 principles; and the independent authority to select and contract with collection agencies and, after
 8766 consultation with the Office of the Attorney General, private attorneys as needed to perform any and all
 8767 collection activities for all College accounts receivable such as reporting delinquent accounts to credit
 8768 bureaus, obtaining judgments, garnishments, and liens against such debtors, and other actions. In
 8769 accordance with sound collection activities, the College shall continue to utilize the Commonwealth's
 8770 Debt Set Off Collection programs and procedures, shall develop procedures acceptable to the Tax
 8771 Commissioner and the State Comptroller to implement such programs, and shall provide a quarterly
 8772 summary report of receivables to the Department of Accounts in accordance with the reporting
 8773 procedures established pursuant to the Virginia Debt Collection Act.

8774 IX. DISBURSEMENT MANAGEMENT.

8775 The President, or designee, shall continue to be authorized to create and implement any and all
 8776 disbursement policies as part of a system for the management of College financial resources. The
 8777 disbursement management policies shall continue to define the appropriate and reasonable uses of all
 8778 funds, from whatever source derived, in the execution of the College's operations. These policies also
 8779 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 College's mission, including travel-related disbursements. Further, the College'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 College no longer will interface to the CARS system or any replacement for the CARS system for disbursements, the College 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 College 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 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 bi-monthly 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 change in the guidelines shall be submitted to the Treasurer of Virginia for review and comment prior to their adoption by the College.

XI. INVESTMENT POLICY.

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

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

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

XII. INSURANCE AND RISK MANAGEMENT.

By July 1 of each odd-numbered year, the College shall inform the Secretary of Finance of any intent during the next biennium to withdraw from any insurance or risk management program made available to the College through the Commonwealth's Division of Risk Management and in which the College 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 College proceeds to withdraw from the insurance or risk management program, the College 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 College and the Commonwealth.

SECTION 4.3. Term of Agreement. This Management Agreement shall expire at midnight on June 30, 2012, provided that on or before November 15, 2011, the Governor provides to the Chairmen of the House Committee on Appropriations and the Senate Committee on Finance written notification that this Management Agreement needs to be renegotiated or revised. If such notification is not received, this Management Agreement shall continue in effect until June 30, 2015.

EXHIBIT M

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 CAPITAL PROJECTS

THE RECTOR AND VISITORS OF THE UNIVERSITY OF VIRGINIA

POLICY GOVERNING CAPITAL PROJECTS

I. PREAMBLE.

Chapters 995 and 933 of the 1996 Acts of Assembly (House Bill No. 884 and Senate Bill No. 389, respectively) delegated limited but significant autonomy to the University of Virginia to establish its own post-appropriation system for undertaking the implementation of non-general fund capital projects for the University of Virginia Medical Center. Similarly, § 4-5.08 of the 1996 Appropriation Act, delegated nearly identical limited autonomy to the University as a whole for non-general fund capital projects. Pursuant thereto, in 1996 the Board of Visitors adopted a Policy Statement Governing Exercise

of Post-Appropriation Autonomy for Certain Non-General Fund Capital Projects (the Existing Policy Statement).

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 pre-authorization 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 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

8963 authorization, and the implementation of capital projects, whether funded by a general fund
 8964 appropriation of the General Assembly, proceeds from State Tax Supported Debt, or funding from other
 8965 sources.

8966 This Policy provides guidance for 1) the process for developing one or more capital project programs
 8967 for the University, 2) authorization of new capital projects, 3) procurement of Capital Professional
 8968 Services and construction services, 4) design reviews and code approvals for capital projects, 5)
 8969 environmental impact requirements, 6) building demolitions, 7) building and land acquisitions, 8)
 8970 building and land dispositions, 9) project management systems, and 10) reporting requirements.

8971 IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.

8972 The Board of Visitors of the University shall at all times be fully and ultimately accountable for the
 8973 proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation
 8974 of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant
 8975 to its legally permissible procedures, specifically delegate either herein or by separate Board resolution
 8976 the duties and responsibilities set forth in this Policy to a person or persons within the University, who,
 8977 while continuing to be fully accountable for such duties and responsibilities, may further delegate the
 8978 implementation of those duties and responsibilities pursuant to the University's usual delegation policies
 8979 and procedures.

8980 V. CAPITAL PROGRAM.

8981 The President, acting through the Executive Vice President and Chief Operating Officer, shall adopt a
 8982 system for developing one or more capital project programs that defines or define the capital needs of
 8983 the University for a given period of time consistent with the University's published Master Plan. This
 8984 process may or may not mirror the Commonwealth's requirements for capital plans. The Board of
 8985 Visitors shall approve the program for Major Capital Projects. Major Capital Projects that are to be
 8986 funded entirely or in part by a general fund appropriation of the General Assembly or proceeds from
 8987 State Tax Supported Debt shall follow the Commonwealth's requirements for capital plans. The Board
 8988 may approve amendments to the program for Major Capital Projects annually or more often if
 8989 circumstances warrant.

8990 It shall be University policy that each capital project program shall meet the University's mission and
 8991 institutional objectives, and be appropriately authorized by the University. Moreover, it shall be
 8992 University policy that each capital project shall be of a size and scope to provide for the defined
 8993 program needs, designed in accordance with all applicable building codes and handicapped accessibility
 8994 standards as well as the University's design guidelines and standards, and costed to reflect current costs
 8995 and escalated to the mid-point of anticipated construction.

8996 VI. AUTHORIZATION OF CAPITAL PROJECTS.

8997 The Board of Visitors shall authorize the initiation of each Major Capital Project by approving its
 8998 size, scope, budget, and funding. The President, acting through the Executive Vice President and Chief
 8999 Operating Officer, shall adopt procedures for approving the size, scope, budget and funding of all other
 9000 capital projects. Major Capital Projects that are to be funded entirely or in part by a general fund
 9001 appropriation of the General Assembly or proceeds from State Tax Supported Debt, shall require both
 9002 Board of Visitors approval and those pre-appropriation approvals of the State's governmental agencies
 9003 then applicable, and shall follow the State's process for capital budget requests.

9004 It shall be the policy of the University that the implementation of capital projects shall be carried out
 9005 so that the capital project as completed is the capital project approved by the Board for Major Capital
 9006 Projects and according to the procedures adopted by the President, acting through the Executive Vice
 9007 President and Chief Operating Officer, for all other capital projects. The President, acting through the
 9008 Executive Vice President and Chief Operating Officer, shall ensure strict adherence to this requirement.

9009 Accordingly, the budget, size and scope of a capital project shall not be materially changed beyond
 9010 the plans and justifications that were the basis for the capital project's approval, either before or during
 9011 construction, unless approved in advance as described above. Minor changes shall be permissible if they
 9012 are determined by the President, acting through the Executive Vice President and Chief Operating
 9013 Officer, to be justified.

9014 Major Capital Projects may be submitted for Board of Visitors authorization at any time but must
 9015 include a statement of urgency if not part of the approved Major Capital Project program.

9016 VII. PROCUREMENT OF CAPITAL PROFESSIONAL SERVICES AND CONSTRUCTION 9017 SERVICES.

9018 It shall be the policy of the University that procurements shall result in the purchase of high quality
 9019 services and construction at reasonable prices and shall be consistent with the Policy Governing the
 9020 Procurement of Goods, Services, Insurance, and Construction, and the Disposition of Surplus Materials
 9021 adopted by the Board, and with the Rules Governing Procurement of Goods, Services, Insurance, and
 9022 Construction, which is attached as Attachment 1 to that Policy. Specifically, the University is committed
 9023 to:

9024 Seeking competition to the maximum practical degree, taking into account the size of the anticipated
9025 procurement, the term of the resulting contract and the likely extent of competition;

9026 Conducting all procurements in a fair and impartial manner and avoiding any impropriety or the
9027 appearance of any impropriety prohibited by State law or University policy;

9028 Making procurement rules clear in advance of any competition;

9029 Providing access to the University's business to all qualified vendors, firms and contractors, with no
9030 potential bidder or offeror excluded arbitrarily or capriciously, while allowing the flexibility to engage in
9031 cooperative procurements and to meet special needs of the University;

9032 Including in contracts of more than \$10,000 the contractor's agreement not to discriminate against
9033 employees or applicants because of race, religion, color, sex, national origin, age, disability or other
9034 basis prohibited by State law except where there is a bona fide occupational qualification reasonably
9035 necessary to the contractor's normal operations; and

9036 Providing for a non-discriminatory procurement process, and including appropriate and lawful
9037 provisions to effectuate fair and reasonable consideration of women-owned, minority-owned and small
9038 businesses and to promote and encourage a diversity of suppliers.

9039 The President, acting through the Executive Vice President and Chief Operating Officer, is authorized
9040 to develop implementing procedures for the procurement of Capital Professional Services and
9041 construction services at the University. The procedures shall implement this Policy and provide for:

9042 A system of competitive negotiation for Capital Professional Services, including a procedure for
9043 expedited procurement of Capital Professional Services under \$50,000, pursuant to (i) subdivisions 1, 2,
9044 and 3 a of the defined term "competitive negotiation" in Rule 4 of the Rules Governing Procurement of
9045 Goods, Services, Insurance, and Construction, and (ii) § 4-5.06 of the 2004-2006 Appropriation Act;

9046 A prequalification procedure for contractors or products;

9047 A procedure for special construction contracting methods, including but not limited to design-build
9048 and construction management contracts; and

9049 A prompt payment procedure.

9050 The University also may enter into cooperative arrangements with other private or public health or
9051 educational institutions, healthcare provider alliances, purchasing organizations or state agencies where,
9052 in the judgment of the University, the purposes of this Policy will be furthered.

9053 VIII. DESIGN REVIEWS AND CODE APPROVALS.

9054 The Board of Visitors shall review the design of all Major Capital Projects and shall provide final
9055 Major Capital Project authorization based on the size, scope and cost estimate provided with the design.
9056 Unless stipulated by the Board of Visitors at the design review, no further design reviews shall be
9057 required. For all capital projects other than Major Capital Projects, the President, acting through the
9058 Executive Vice President and Chief Operating Officer, shall adopt procedures for design review and
9059 project authorization based on the size, scope and cost estimate provided with the design. It shall be the
9060 University's policy that all capital projects shall be designed and constructed in accordance with
9061 applicable Virginia Uniform Statewide Building Code (VUSBC) standards and the applicable
9062 accessibility code.

9063 The President, acting through the Executive Vice President and Chief Operating Officer, shall
9064 designate a Building Official responsible for building code compliance by either (i) hiring an individual
9065 to be the University Building Official, or (ii) continuing to use the services of the Department of
9066 General Services, Division of Engineering and Buildings, to perform the Building Official function. If
9067 option (i) is selected, the individual hired as the University Building Official shall be a full-time
9068 employee, a registered professional architect or engineer, and certified by the Department of Housing
9069 and Community Development to perform this Building Official function. The University Building
9070 Official shall issue building permits for each capital project required by the VUSBC to have a building
9071 permit, and shall determine the suitability for occupancy of, and shall issue certifications for building
9072 occupancy for, all capital projects requiring such certification. Prior to issuing any such certification,
9073 this individual shall ensure that the VUSBC and accessibility requirements are met for that capital
9074 project and that such capital project has been inspected by the State Fire Marshal or his designee *as*
9075 *required*. When serving as the University Building Official, such individual shall organizationally report
9076 directly and exclusively to the Board of Visitors. If the University hires its own University Building
9077 Official, it shall fulfill the code review requirement by maintaining a review unit *of licensed professional*
9078 *architects or engineers supported by resources and staff* who are certified by the Department of Housing
9079 and Community Development in accordance with § 36-137 of the Code of Virginia, for such purpose
9080 and who shall review plans, specifications and documents for compliance with building codes and
9081 standards and perform required inspections of work in progress and the completed capital project. No
9082 individual licensed professional architect or engineer hired *under the University's personnel system as a*
9083 *member of the review unit or contracted with to perform these functions* shall also perform other
9084 building code-related design, construction, facilities-related project management or facilities management

9085 functions for the University ~~on the same capital project.~~

9086 IX. ENVIRONMENTAL IMPACT REPORTS.

9087 It shall be the policy of the University to assess the environmental, historic preservation, and
 9088 conservation impacts of all capital projects and to minimize and otherwise mitigate all adverse impacts
 9089 to the extent practicable. The University shall develop a procedure for the preparation and approval of
 9090 environmental impact reports for capital projects, in accordance with State environmental, historic
 9091 preservation, and conservation requirements generally applicable to capital projects otherwise meeting
 9092 the definition of Major Capital Projects but, pursuant to § 23-38.109 C 1 of the Act, with a cost of
 9093 \$300,000 or more.

9094 X. BUILDING DEMOLITIONS.

9095 It shall be the policy of the University to consider the environmental and historical aspects of any
 9096 proposed demolitions. The Board of Visitors shall be responsible for approving demolition requests.
 9097 The University shall develop a procedure for the preparation and review of demolition requests,
 9098 including any necessary reviews by the Department of Historic Resources and the Art and Architectural
 9099 Review Board in accordance with State historic preservation requirements generally applicable to capital
 9100 projects in the Commonwealth. Further, for any property that was acquired or constructed with funding
 9101 from a general fund appropriation of the General Assembly or from proceeds from State Tax Supported
 9102 Debt, general laws applicable to State owned property shall apply.

9103 XI. BUILDING OR LAND ACQUISITIONS.

9104 It is the policy of the University that capital projects involving building or land acquisition shall be
 9105 subjected to thorough inquiry and due diligence prior to closing on the acquisition of such real property.
 9106 The President, acting through the Executive Vice President and Chief Operating Officer, shall ensure
 9107 that the project management system implemented pursuant to Section XIII below provides for a review
 9108 and analysis of all pertinent matters relating to the acquisition of buildings and land as any prudent
 9109 purchaser would perform to the end that any building or land acquired by the University shall be
 9110 suitable for its intended purpose, that the acquisition can be made without substantial risk of liability to
 9111 the University and that the cost of the real property to be acquired, together with any contemplated
 9112 development thereof, shall be such that compliance with the provisions of Section VI of this Policy is
 9113 achieved. In addition, the President, acting through the Executive Vice President and Chief Operating
 9114 Officer, shall ensure that, where feasible and appropriate to do so, the following specific policies
 9115 pertaining to the acquisition of buildings or land for capital projects are carried out.

9116 A. Environmental and Land Use Considerations.

9117 It is the policy of the University to reasonably cooperate with each locality affected by the
 9118 acquisition. Such cooperation shall include but not be limited to furnishing any information that the
 9119 locality may reasonably request and reviewing any requests by the locality with regard to any such
 9120 acquisition. The University shall consider the zoning and comprehensive plan designation by the locality
 9121 of the building or land and surrounding parcels, as well as any designation by State or federal agencies
 9122 of historically or archeologically significant areas on the land. Nothing herein shall be construed as
 9123 requiring the University to comply with local zoning laws and ordinances.

9124 B. Infrastructure and Site Condition.

9125 The President, acting through the Executive Vice President and Chief Operating Officer, shall ensure
 9126 that, in the case of capital projects involving the acquisition of buildings or land, the project
 9127 management systems implemented under Section XIII below provide for a review of the following
 9128 matters prior to acquisition of the building or land: that any land can be developed for its intended
 9129 purpose without extraordinary cost; that an environmental engineer has been engaged by the University
 9130 to provide an assessment of any environmental conditions on the land; that there is adequate vehicular
 9131 ingress and egress to serve the contemplated use of the building or land; that utilities and other services
 9132 to the land are adequate or can reasonably be provided or have been provided in the case of building
 9133 acquisitions; and that the condition and grade of the soils have been examined to determine if any
 9134 conditions exist that would require extraordinary site work or foundation systems.

9135 C. Title and Survey.

9136 A survey shall be prepared for any real property acquired, and an examination of title to the real
 9137 property shall be conducted by a licensed attorney or, in the alternative, a commitment for title
 9138 insurance shall be procured from a title insurance company authorized to do business in the
 9139 Commonwealth. Based upon the survey and title examination or report, the President, acting through the
 9140 Executive Vice President and Chief Operating Officer, shall conclude, prior to acquisition of the real
 9141 property, that title thereto will be conveyed to the University in fee simple, free and clear of all liens,
 9142 encumbrances, covenants, restrictions, easements or other matters that may have a significant adverse
 9143 effect upon the University's ability to own, occupy, convey or develop the real property.

9144 D. Appraisal.

9145 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.

9207 § 3. Competition is the Priority. -

9208 To the end that the Institution shall obtain high quality goods and services at reasonable cost, that all
 9209 procurement procedures be conducted in an open, fair and impartial manner with avoidance of any
 9210 impropriety or appearance of impropriety, that all qualified vendors have access to the Institution's
 9211 business and that no offeror be arbitrarily or capriciously excluded, it is the intent of the governing body
 9212 of the Institution that competition be sought to the maximum feasible degree, that procurement
 9213 procedures involve openness and administrative efficiency, that individual public bodies enjoy broad
 9214 flexibility in fashioning details of such competition, that the rules governing contract awards be made
 9215 clear in advance of the competition, that specifications reflect the procurement needs of the purchasing
 9216 body rather than being drawn to favor a particular vendor, and that the purchaser and vendor freely
 9217 exchange information concerning what is sought to be procured and what is offered. The Institution
 9218 may consider best value concepts when procuring goods and nonprofessional services, but not
 9219 construction or professional services. Professional services will be procured using a qualification-based
 9220 selection process. The criteria, factors, and basis for consideration of best value and the process for the
 9221 consideration of best value shall be as stated in the procurement solicitation.

9222 § 4. Definitions. -

9223 As used in these Rules:

9224 "Affiliate" means an individual or business that controls, is controlled by, or is under common
 9225 control with another individual or business. A person controls an entity if the person owns, directly or
 9226 indirectly, more than 10% of the voting securities of the entity. For the purposes of this definition
 9227 "voting security" means a security that (i) confers upon the holder the right to vote for the election of
 9228 members of the board of directors or similar governing body of the business or (ii) is convertible into,
 9229 or entitles the holder to receive, upon its exercise, a security that confers such a right to vote. A general
 9230 partnership interest shall be deemed to be a voting security.

9231 "Best value," as predetermined in the solicitation, means the overall combination of quality, price,
 9232 and various elements of required services that in total are optimal relative to the Institution's needs.

9233 "Business" means any type of corporation, partnership, limited liability company, association, or sole
 9234 proprietorship operated for profit.

9235 "Competitive negotiation" is a method of contractor selection that includes the following elements:

9236 1. Issuance of a written Request for Proposal indicating in general terms that which is sought to be
 9237 procured, specifying the factors that will be used in evaluating the proposal and containing or
 9238 incorporating by reference the other applicable contractual terms and conditions, including any unique
 9239 capabilities or qualifications that will be required of the contractor.

9240 2. Public notice of the Request for Proposal at least 10 days prior to the date set for receipt of
 9241 proposals by publication in a newspaper or newspapers of general circulation in the area in which the
 9242 contract is to be performed so as to provide reasonable notice to the maximum number of offerors that
 9243 can be reasonably anticipated to submit proposals in response to the particular request. Public notice
 9244 also shall be published on the Department of General Services' central electronic procurement website
 9245 and may be published on other appropriate websites. In addition, proposals may be solicited directly
 9246 from potential contractors.

9247 3. a. Procurement of professional services. The procurement of professional services for capital
 9248 projects shall be conducted using a qualification-based selection process. The Institution shall engage in
 9249 individual discussions with two or more offerors deemed fully qualified, responsible and suitable on the
 9250 basis of initial responses and with emphasis on professional competence, to provide the required
 9251 services. Repetitive informal interviews shall be permissible. The offerors shall be encouraged to
 9252 elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project,
 9253 as well as alternative concepts. The Request for Proposal shall not, however, request that offerors
 9254 furnish estimates of man-hours or cost for services. At the discussion stage, the Institution may discuss
 9255 nonbinding estimates of total project costs, including, but not limited to, life-cycle costing, and where
 9256 appropriate, nonbinding estimates of price for services. Proprietary information from competing offerors
 9257 shall not be disclosed to the public or to competitors. At the conclusion of discussion, outlined in this
 9258 subdivision, on the basis of evaluation factors published in the Request for Proposal and all information
 9259 developed in the selection process to this point, the Institution shall select in the order of preference two
 9260 or more offerors whose professional qualifications and proposed services are deemed most meritorious.
 9261 Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract satisfactory
 9262 and advantageous to the Institution can be negotiated at a price considered fair and reasonable, the
 9263 award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first shall be
 9264 formally terminated and negotiations conducted with the offeror ranked second, and so on until such a
 9265 contract can be negotiated at a fair and reasonable price. Should the Institution determine in writing and
 9266 in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly
 9267 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 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.

9329 "Goods" means all material, equipment, supplies, and printing, including information technology and
 9330 telecommunications goods such as automated data processing hardware and software.

9331 "Informality" means a minor defect or variation of a bid or proposal from the exact requirements of
 9332 the Invitation to Bid, or the Request for Proposal, which does not affect the price, quality, quantity or
 9333 delivery schedule for the goods, services or construction being procured.

9334 "Multiphase professional services contract" means a contract for the providing of professional
 9335 services where the total scope of work of the second or subsequent phase of the contract cannot be
 9336 specified without the results of the first or prior phase of the contract.

9337 "Nonprofessional services" means any services not specifically identified as professional services in
 9338 the definition of professional services and includes small construction projects valued not over \$1
 9339 million; provided that subdivision 3a of the definition of "competitive negotiation" in this section shall
 9340 still apply to professional services for such small construction projects.

9341 "Potential bidder or offeror" for the purposes of §§ 50 and 54 of these Rules means a person who, at
 9342 the time the Institution negotiates and awards or proposes to award a contract, is engaged in the sale or
 9343 lease of goods, or the sale of services, insurance or construction, of the type to be procured under the
 9344 contract, and who at such time is eligible and qualified in all respects to perform that contract, and who
 9345 would have been eligible and qualified to submit a bid or proposal had the contract been procured
 9346 through competitive sealed bidding or competitive negotiation.

9347 "Professional services" means work performed by an independent contractor within the scope of the
 9348 practice of accounting, actuarial services, architecture, land surveying, landscape architecture, law,
 9349 dentistry, medicine, optometry, pharmacy or professional engineering.

9350 "Public body" means any legislative, executive or judicial body, agency, office, department, authority,
 9351 post, commission, committee, institution, board or political subdivision created by law to exercise some
 9352 sovereign power or to perform some governmental duty, and empowered by law to undertake the
 9353 activities described in these Rules.

9354 "Public contract" means an agreement between the Institution and a nongovernmental source that is
 9355 enforceable in a court of law.

9356 "Responsible bidder" or "offeror" means a person who has the capability, in all respects, to perform
 9357 fully the contract requirements and the moral and business integrity and reliability that will assure good
 9358 faith performance, and who has been prequalified, if required.

9359 "Responsive bidder" means a person who has submitted a bid that conforms in all material respects
 9360 to the Invitation to Bid.

9361 "Restructuring Act" or "Act" means the Restructured Higher Education Financial and Administrative
 9362 Operations Act, Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia.

9363 "Reverse auctioning" means a procurement method wherein bidders are invited to bid on specified
 9364 goods or nonprofessional services through real-time electronic bidding, with the award being made to
 9365 the lowest responsive and responsible bidder. During the bidding process, bidders' prices are revealed
 9366 and bidders shall have the opportunity to modify their bid prices for the duration of the time period
 9367 established for bid opening.

9368 "Rules" means these Rules Governing Procurement of Goods, Services, Insurance, and Construction
 9369 adopted by the governing body of the Covered Institution.

9370 "Services" means any work performed by an independent contractor wherein the service rendered
 9371 does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials
 9372 and supplies.

9373 "Sheltered workshop" means a work-oriented rehabilitative facility with a controlled working
 9374 environment and individual goals that utilizes work experience and related services for assisting the
 9375 handicapped person to progress toward normal living and a productive vocational status.

9376 § 5. Methods of procurement. -

9377 A. All public contracts with nongovernmental contractors for the purchase or lease of goods, or for
 9378 the purchase of services, insurance, or construction, shall be awarded after competitive sealed bidding, or
 9379 competitive negotiation as provided in this section, unless otherwise authorized by law.

9380 B. Professional services shall be procured by competitive negotiation. Qualification-based selection
 9381 shall be used for design services.

9382 C. Goods, services, or insurance may be procured by competitive negotiation.

9383 D. Construction may be procured only by competitive sealed bidding, except that competitive
 9384 negotiation may be used in the following instances upon a determination made in advance by the
 9385 Institution and set forth in writing that competitive sealed bidding is either not practicable or not fiscally
 9386 advantageous to the public, which writing shall document the basis for this determination:

- 9387 1. By the Institution on a fixed price design-build basis or construction management basis under § 7;
- 9388 2. By the Institution for the construction, alteration, repair, renovation or demolition of buildings; or
- 9389 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 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

9451 Institution's business goals and objectives, and as authorized by the United States Congress and
 9452 consistent with applicable federal regulations, and provided the terms of the contract permit such
 9453 purchases:

9454 1. The Institution may purchase goods and nonprofessional services, from a United States General
 9455 Services Administration contract or a contract awarded by any other agency of the United States
 9456 government; and

9457 2. The Institution may purchase telecommunications and information technology goods and
 9458 nonprofessional services from a United States General Services Administration contract or a contract
 9459 awarded by any other agency of the United States government.

9460 § 7. Design-build or construction management contracts authorized. -

9461 A. Notwithstanding any other provisions of law, the Institution may enter into contracts on a fixed
 9462 price design-build basis or construction management basis in accordance with the provisions of this
 9463 section.

9464 B. Procurement of construction by the design-build or construction management method shall be a
 9465 two-step competitive negotiation process. In the first step, offerors shall be requested to submit their
 9466 qualifications. Based upon the information submitted and any other relevant information which the
 9467 Commonwealth may obtain, no more than five offerors deemed most suitable for the project shall be
 9468 selected by the Commonwealth and requested to submit proposals.

9469 § 8. Modification of the contract. -

9470 A. A contract awarded by the Institution may include provisions for modification of the contract
 9471 during performance, but no fixed-price contract may be increased by more than 25% of the amount of
 9472 the contract or \$50,000, whichever is greater, without the advance written approval of the Institution's
 9473 president or his designee. In no event may the amount of any contract, without adequate consideration,
 9474 be increased for any purpose, including, but not limited to, relief of an offeror from the consequences of
 9475 an error in its bid or offer.

9476 B. The Institution may extend the term of an existing contract for services to allow completion of
 9477 any work undertaken but not completed during the original term of the contract.

9478 C. Nothing in this section shall prevent the Institution from placing greater restrictions on contract
 9479 modifications.

9480 § 9. Discrimination prohibited; participation of small, women- and minority-owned business. -

9481 A. In the solicitation or awarding of contracts, the Institution shall not discriminate against a bidder
 9482 or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis
 9483 prohibited by state law relating to discrimination in employment. Whenever solicitations are made, the
 9484 Institution shall include businesses selected from a list made available by the Department of Minority
 9485 Business Enterprise.

9486 B. The Institution shall establish programs consistent with this section to facilitate the participation
 9487 of small businesses and businesses owned by women and minorities in procurement transactions. The
 9488 programs established shall be in writing and shall include cooperation with the Department of Minority
 9489 Business Enterprise, the United States Small Business Administration, and other public or private
 9490 agencies. The Institution shall submit annual progress reports on minority business procurement to the
 9491 Department of Minority Business Enterprise.

9492 C. Whenever there exists (i) a rational basis for small business enhancement or (ii) a persuasive
 9493 analysis that documents a statistically significant disparity between the availability and utilization of
 9494 women- and minority-owned businesses, the Governor is by law authorized and encouraged to require
 9495 the Institution to implement appropriate enhancement or remedial measures consistent with prevailing
 9496 law.

9497 D. In the solicitation or awarding of contracts, the Institution shall not discriminate against a bidder
 9498 or offeror because the bidder or offeror employs ex-offenders unless it has made a written determination
 9499 that employing ex-offenders on the specific contract is not in its best interest.

9500 § 10. Employment discrimination by contractor prohibited; required contract provisions. -

9501 The Institution shall include in every contract of more than \$10,000 the following provisions:

9502 1. During the performance of this contract, the contractor agrees as follows:

9503 a. The contractor will not discriminate against any employee or applicant for employment because of
 9504 race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to
 9505 discrimination in employment, except where there is a bona fide occupational qualification reasonably
 9506 necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places,
 9507 available to employees and applicants for employment, notices setting forth the provisions of this
 9508 nondiscrimination clause.

9509 b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the
 9510 contractor, will state that such contractor is an equal opportunity employer.

9511 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.

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;

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

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

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

§ 15. Negotiation with lowest responsible bidder. -

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

9695 price, provided such bidder is a responsible and responsive bidder.

9696 § 24. Contract Pricing Arrangements. -

9697 A. Public contracts may be awarded on a fixed price or cost reimbursement basis, or on any other
9698 basis that is not prohibited by these Rules.

9699 B. Except in case of emergency affecting the public health, safety or welfare, no public contract
9700 shall be awarded on the basis of cost plus a percentage of cost.

9701 C. A policy or contract of insurance or prepaid coverage having a premium computed on the basis
9702 of claims paid or incurred, plus the insurance carrier's administrative costs and retention stated in whole
9703 or part as a percentage of such claims, shall not be prohibited by this section.

9704 § 25. Workers' compensation requirements for construction contractors and subcontractors. -

9705 A. No contractor shall perform any work on a construction project of the Institution unless he (i) has
9706 obtained, and continues to maintain for the duration of the work, workers' compensation coverage
9707 required pursuant to the provisions of Chapter 8 (§ 65.2-800 et seq.) of Title 65.2 of the Code of
9708 Virginia, and (ii) provides prior to the award of contract, on a form furnished by the Institution,
9709 evidence of such coverage.

9710 B. The Department of General Services shall provide the form to the Institution. Failure of the
9711 Institution to provide the form prior to the award of contract shall waive the requirements of clause (ii)
9712 of subsection A.

9713 C. No subcontractor shall perform any work on a construction project of the Institution unless he
9714 has obtained, and continues to maintain for the duration of such work, workers' compensation coverage
9715 required pursuant to the provisions of Chapter 8 (§ 65.2-800 et seq.) of Title 65.2 of the Code of
9716 Virginia.

9717 § 26. Retainage on construction contracts. -

9718 A. In any contract issued by the Institution for construction that provides for progress payments in
9719 installments based upon an estimated percentage of completion, the contractor shall be paid at least 95%
9720 of the earned sum when payment is due, with no more than 5% being retained to ensure faithful
9721 performance of the contract. All amounts withheld may be included in the final payment.

9722 B. Any subcontract for a public project that provides for similar progress payments shall be subject
9723 to the provisions of this section.

9724 § 27. Public construction contract provisions barring damages for unreasonable delays declared
9725 void. -

9726 A. Any provision contained in any public construction contract of the Institution that purports to
9727 waive, release, or extinguish the rights of a contractor to recover costs or damages for unreasonable
9728 delay in performing such contract, either on his behalf or on behalf of his subcontractor if and to the
9729 extent the delay is caused by acts or omissions of the Institution, its agents or employees and due to
9730 causes within their control shall be void and unenforceable as against public policy.

9731 B. Subsection A shall not be construed to render void any provision of a public construction
9732 contract awarded by the Institution that:

9733 1. Allows the recovery of that portion of delay costs caused by the acts or omissions of the
9734 contractor, or its subcontractors, agents or employees;

9735 2. Requires notice of any delay by the party claiming the delay;

9736 3. Provides for liquidated damages for delay; or

9737 4. Provides for arbitration or any other procedure designed to settle contract disputes.

9738 C. A contractor making a claim against the Institution for costs or damages due to the alleged
9739 delaying of the contractor in the performance of its work under any public construction contract of the
9740 Institution shall be liable to the Institution and shall pay it for a percentage of all costs incurred by the
9741 Institution in investigating, analyzing, negotiating, litigating and arbitrating the claim, which percentage
9742 shall be equal to the percentage of the contractor's total delay claim that is determined through litigation
9743 or arbitration to be false or to have no basis in law or in fact.

9744 D. If the Institution denies a contractor's claim for costs or damages due to the alleged delaying of
9745 the contractor in the performance of work under any public construction contract for the Institution, it
9746 shall be liable to and shall pay such contractor a percentage of all costs incurred by the contractor to
9747 investigate, analyze, negotiate, litigate and arbitrate the claim. The percentage paid by the Institution
9748 shall be equal to the percentage of the contractor's total delay claim for which the Institution's denial is
9749 determined through litigation or arbitration to have been made in bad faith.

9750 § 28. Bid bonds. -

9751 A. Except in cases of emergency, all bids or proposals for construction contracts in excess of \$1
9752 million shall be accompanied by a bid bond from a surety company selected by the bidder that is
9753 authorized to do business in Virginia, as a guarantee that if the contract is awarded to the bidder, he will
9754 enter into the contract for the work mentioned in the bid. The amount of the bid bond shall not exceed
9755 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 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

9939 consulted, or expert witnesses or other services associated with litigation or regulatory proceedings; or
 9940 *10. Maintenance contract renewals for scientific research equipment and software, provided that the*
 9941 *institution has posted the renewal to eVA and documented that there was only one response or less and*
 9942 *such documentation includes a statement signed by the buyer indicating that no firm other than the*
 9943 *original manufacturer/developer offers the service.*

9944 § 38. Exemptions from competitive sealed bidding and competitive negotiation for certain
 9945 transactions; limitations. -

9946 The Institution may enter into contracts for insurance or electric utility service without competitive
 9947 sealed bidding or competitive negotiation if purchased through an association of which the Institution is
 9948 a member if the association was formed and is maintained for the purpose of promoting the interest and
 9949 welfare of and developing close relationships with similar public bodies, provided such association has
 9950 procured the insurance or electric utility services by use of competitive principles and provided that the
 9951 Institution has made a determination in advance after reasonable notice to the public and set forth in
 9952 writing that competitive sealed bidding and competitive negotiation are not fiscally advantageous to the
 9953 public. The writing shall document the basis for this determination.

9954 § 39. Definitions. -

9955 As used in §§ 39 through 46, unless the context requires a different meaning:

9956 "Contractor" means the entity that has a direct contract with the Institution.

9957 "Debtor" means any individual, business, or group having a delinquent debt or account with any state
 9958 agency that obligation has not been satisfied or set aside by court order or discharged in bankruptcy.

9959 "Payment date" means either (i) the date on which payment is due under the terms of a contract for
 9960 provision of goods or services; or (ii) if such date has not been established by contract, (a) 30 days after
 9961 receipt of a proper invoice by the Institution or its agent or (b) 30 days after receipt of the goods or
 9962 services by the Institution.

9963 "Subcontractor" means any entity that has a contract to supply labor or materials to the contractor to
 9964 whom the contract was awarded or to any subcontractor in the performance of the work provided for in
 9965 such contract.

9966 § 40. Exemptions. -

9967 The provisions of §§ 39 through 46 shall not apply to the late payment provisions contained in any
 9968 public utility tariffs prescribed by the State Corporation Commission.

9969 § 41. Retainage to remain valid. -

9970 Notwithstanding the provisions of §§ 39 through 46, the provisions of § 26 relating to retainage shall
 9971 remain valid.

9972 § 42. Prompt payment of bills by the Institution. -

9973 A. The Institution shall promptly pay for the completely delivered goods or services by the required
 9974 payment date.

9975 Payment shall be deemed to have been made when offset proceedings have been instituted, as
 9976 authorized under the Virginia Debt Collection Act (§ 2.2-4800 et seq.).

9977 B. Separate payment dates may be specified for contracts under which goods or services are
 9978 provided in a series of partial deliveries or executions to the extent that such contract provides for
 9979 separate payment for such partial delivery or execution.

9980 § 43. Defect or impropriety in the invoice or goods and/or services received. -

9981 In instances where there is a defect or impropriety in an invoice or in the goods or services received,
 9982 the Institution shall notify the supplier of the defect or impropriety, if the defect or impropriety would
 9983 prevent payment by the payment date. The notice shall be sent within 15 days after receipt of the
 9984 invoice or the goods or services.

9985 § 44. Date of postmark deemed to be date payment is made. -

9986 In those cases where payment is made by mail, the date of postmark shall be deemed to be the date
 9987 payment is made for purposes of these Rules.

9988 § 45. Payment clauses to be included in contracts. -

9989 Any contract awarded by the Institution shall include:

9990 1. A payment clause that obligates the contractor to take one of the two following actions within
 9991 seven days after receipt of amounts paid to the contractor by the Institution for work performed by the
 9992 subcontractor under that contract:

9993 a. Pay the subcontractor for the proportionate share of the total payment received from the
 9994 Institution attributable to the work performed by the subcontractor under that contract; or

9995 b. Notify the Institution and subcontractor, in writing, of his intention to withhold all or a part of the
 9996 subcontractor's payment with the reason for nonpayment.

9997 2. A payment clause that requires (i) individual contractors to provide their social security numbers
 9998 and (ii) proprietorships, partnerships, and corporations to provide their federal employer identification
 9999 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. -

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

10305 entities. The University will have the option to receive a subset of vendor related data. Until an
 10306 enterprise W-9 process is established, the University will be responsible for collection of W-9
 10307 information.

10308 VIII. For major system changes, DGS/DPS will collaborate in advance (advance notice defined as at
 10309 least six (6) months prior to change or as soon as any new plan is proposed) with the University
 10310 regarding any proposed replacement to the CoVA's electronic procurement system and on changes that
 10311 may affect the technical changes described herein.

10312 IX. Integration of the University's electronic procurement solution with the University's ERP is the
 10313 responsibility of the University. The solution must provide for orders, change orders and cancellations.

10314 Guidelines

10315 1. The establishment of this agreement is intended to formulate the basis for a long-term solution for
 10316 electronic procurement between the University and the CoVA.

10317 2. Orders may be batched and transmitted to eVA as often as needed except between the hours of 8
 10318 p.m. and 4 a.m. eVA will transmit registered vendor orders it receives within 15 minutes or less.

10319 3. Nonexempt orders to unregistered vendors are to be transmitted to eVA for loading to the Data
 10320 Warehouse. The University shall be responsible for payment of all eVA transaction fees for nonexempt
 10321 orders to unregistered vendors and exempt orders the University chooses to issue to unregistered and
 10322 registered vendors through eVA. See eVA Business Plan Section 3 for specific processing requirements
 10323 for unregistered vendor orders.

10324 4. Change Orders are to be transmitted to eVA as replacement orders complying with the eVA
 10325 standard format.

10326 5. Cancellations are to be transmitted to eVA complying with the eVA standard format.

10327 6. eVA Interface standard does not currently support PCard orders; however these orders may be
 10328 processed via the interface as (a) confirming orders or (b) orders for PCards on file with the vendor.

10329 Schedule

10330 The University shall implement this agreement no later than December 2006.

10331 Metrics

10332 A. The University shall comply with the following Governor's eVA Management:

10333 Objective

10334 ~~Ninety-five~~ Eighty percent of all nonexempt orders to be processed by eVA. Includes nonexempt
 10335 orders issued by end users (PCard & LPO) and the central purchasing office. Nonexempt orders to
 10336 unregistered vendors received into the eVA Data Warehouse are considered compliant orders. For
 10337 clarity, it is understood that exempt orders are purchase transactions specifically exempted, in writing by
 10338 DPS, from mandatory processing through eVA. All nonexempt orders not processed by eVA shall be
 10339 reported on the eVA Dashboard and the corresponding non-use fee paid by the University.

10340 B. The University shall meet the following management objectives for electronic procurement:

10341 1. Provide end users, including purchase-card users, access to an electronic system for buying;

10342 2. Conduct business with eVA registered vendors whenever possible;

10343 3. Place nonexempt orders, including change orders and cancellations, to eVA suppliers electronically
 10344 using eVA;

10345 4. To the greatest extent possible, transmit real-time electronic purchase orders, regardless of dollar
 10346 value, that include commodity codes, complete item descriptions, quantities, and unit prices;

10347 5. To the greatest extent feasible, the University will transmit confirming orders to eVA within five
 10348 (5) business days after placing the order. Commodity codes, complete item descriptions, quantities, and
 10349 unit prices will be provided for all confirming orders. DGS/DPS will provide periodic reports on the
 10350 number and timeliness of confirming orders enabling the University and DGS/DPS to work together to
 10351 monitor the usage of confirming orders with the objective of reducing their numbers to the extent
 10352 possible.

10353 The University agrees that, for confirming orders, it will resolve any vendor dispute, including
 10354 disputes related to payment of eVA transaction fees, by working directly with the vendor whether such
 10355 vendor contacts the University directly or the dispute is referred to the University by DGS/DPS or
 10356 CGI-AMS.

10357 The University further agrees that:

10358 a. It will provide the DGS/DPS eVA Business Manager (or designee) email notification of the
 10359 resolution agreed to by the university and the vendor within 10 business days, unless otherwise agreed
 10360 on a case-by-case basis by the DGS/DPS eVA Business Manager (or designee);

10361 b. It will pay the eVA transaction fee unless it notifies the eVA Business Manager (or designee)
 10362 within the specified time that the dispute has been resolved and the vendor agreed to pay the fee; and

10363 c. In the event the University does not provide resolution notification to the eVA Business Manager
 10364 (or designee) within the specified timeframe, DGS/DPS will automatically execute a manual adjustment
 10365 reversing disputed transaction fees from the vendor to the University and the University will pay the fee.

- 10366 6. Timely process electronic change orders and cancellations;
 10367 7. Post all solicitations and business opportunities greater than \$50,000 on the eVA website except as
 10368 specifically exempted by DPS;
 10369 8. To the extent technically feasible, make eVA catalogs, especially contract catalogs, available to
 10370 end users using the ERP/SciQuest Integration system. The University will be responsible for the
 10371 accuracy of contract catalog pricing loaded into the ERP/SciQuest;
 10372 9. Use eVA electronic vendor notification for procurement opportunities (per plans to post
 10373 solicitations specified in item 7 above and the use of Quick Quote/Reverse Auctions specified in item 10
 10374 below);
 10375 10. Use eVA on-line bidding functions of Quick Quote and Reverse Auction for appropriate
 10376 commodities, when such are identified;
 10377 11. Complete and certify the monthly eVA Dashboard Report; and
 10378 12. Timely remit any eVA transaction and non-use fees incurred by the institution.
 10379 C. The University shall be subject to eVA fees assessed per the eVA Business Plan.
 10380 The University shall assure that payments to CGI-AMS are current.

10381 EXHIBIT R
 10382 MANAGEMENT AGREEMENT
 10383 BETWEEN
 10384 THE COMMONWEALTH OF VIRGINIA
 10385 AND
 10386 THE UNIVERSITY OF VIRGINIA
 10387 PURSUANT TO
 10388 THE RESTRUCTURED HIGHER EDUCATION
 10389 FINANCIAL AND ADMINISTRATIVE OPERATIONS
 10390 ACT OF 2005
 10391 POLICY GOVERNING
 10392 FINANCIAL OPERATIONS AND MANAGEMENT
 10393 THE RECTOR AND VISITORS OF THE UNIVERSITY OF VIRGINIA
 10394 POLICY GOVERNING FINANCIAL OPERATIONS AND MANAGEMENT

10395 I. PREAMBLE.

10396 The Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter
 10397 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia, establishes by law a process for granting
 10398 additional authority to institutions of higher education for financial operations and management, subject
 10399 to the adoption of policies by their governing boards and the approval of management agreements to be
 10400 negotiated with the Commonwealth.

10401 The following provisions of this Policy constitute the adopted Board of Visitors policies regarding
 10402 the University of Virginia's financial operations and management.

10403 This Policy is intended to cover the authority that may be granted to the University pursuant to
 10404 Subchapter 3 of the Act. Any other powers and authorities granted to the University pursuant to the
 10405 Appropriation Act, or any other sections of the Code of Virginia, including other provisions of the Act
 10406 and the University's Enabling Legislation, are not affected by this Policy. In particular, other powers
 10407 and authorities granted to the Medical Center by law, to the extent they exceed those granted to the
 10408 University pursuant to Subchapter 3 of the Act, are not affected by this Policy Statement.

10409 II. DEFINITIONS.

10410 As used in this policy, the following terms shall have the following meanings, unless the context
 10411 requires otherwise:

10412 "Academic Division" means that part of the University known as (State Agency 207).

10413 "Act" means the Restructured Higher Education Financial and Administrative Operations Act,
 10414 Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia.

10415 "Board of Visitors" or "Board" means the Rector and Board of Visitors of the University of Virginia.

10416 "College" means that part of the University operated as the University of Virginia's College at Wise,
 10417 also known as (State Agency 246).

10418 "Covered Institution" means, on or after the Effective Date of its initial Management Agreement with
 10419 the Commonwealth of Virginia, a public institution of higher education of the Commonwealth that has
 10420 entered into a Management Agreement with the Commonwealth to be governed by the provisions of
 10421 Subchapter 3 of the Act.

10422 "Effective Date" means the effective date of the initial Management Agreement between the
 10423 University and the Commonwealth.

10424 "Enabling Legislation" means those chapters, other than Chapter 4.10, of title 23 of the Code of
 10425 Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and missions
 10426 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

10427 the University of Virginia Medical Center.

10428 "Management Agreement" means the agreement required by subsection D of § 23-38.88 of the Act
10429 between the University and the Commonwealth of Virginia.

10430 "Medical Center" means that part of the University consisting of the University of Virginia Medical
10431 Center, known as (State Agency 209), and related health care and health maintenance facilities.

10432 "State Tax Supported Debt" means bonds, notes or other obligations issued under Article X, Section
10433 9(a), 9(b), or 9(c), or 9(d), if the debt service payments are made or ultimately are to be made from
10434 general government funds, as defined in the December 20, 2004 Report to the Governor and General
10435 Assembly of the Debt Capacity Advisory Committee or as that definition is amended from time to time.

10436 "University" means the University of Virginia, consisting of the Academic Division, the College, and
10437 the Medical Center.

10438 III. SCOPE OF POLICY.

10439 This Policy applies to the University's responsibility for management, investment and stewardship of
10440 all its financial resources, including but not limited to, general, non-general and private funds. This
10441 responsibility includes maintaining an independent uniform system of accounting, financial reporting,
10442 and internal controls adequate to protect and account for the University's financial resources.

10443 The University of Virginia's College at Wise shall receive the benefits of this Policy as it is
10444 implemented by the University on behalf of the College at Wise, but the College at Wise shall not
10445 receive any additional independent financial operations and management authority as a result of this
10446 Management Agreement beyond the independent financial operations and management authority that it
10447 had prior to the Effective Date of the University's initial Management Agreement with the
10448 Commonwealth or that it may be granted by law in the future.

10449 IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.

10450 The Board of Visitors of the University shall at all times be fully and ultimately accountable for the
10451 proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation
10452 of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant
10453 to its legally permissible procedures, specifically delegate either herein or by separate Board resolution
10454 the duties and responsibilities set forth in this Policy to a person or persons within the University, who,
10455 while continuing to be fully accountable for such duties and responsibilities, may further delegate the
10456 implementation of those duties and responsibilities pursuant to the University's usual delegation policies
10457 and procedures.

10458 V. FINANCIAL MANAGEMENT AND REPORTING SYSTEM.

10459 The President, acting through the Executive Vice President and Chief Operating Officer, shall
10460 continue to be authorized by the Board to maintain existing and implement new policies governing the
10461 management of University financial resources. These policies shall continue to (i) ensure compliance
10462 with Generally Accepted Accounting Principles, (ii) ensure consistency with the current accounting
10463 principles employed by the Commonwealth, including the use of fund accounting principles, with regard
10464 to the establishment of the underlying accounting records of the University and the allocation and
10465 utilization of resources within the accounting system, including the relevant guidance provided by the
10466 State Council of Higher Education for Virginia chart of accounts with regard to the allocation and
10467 proper use of funds from specific types of fund sources, (iii) provide adequate risk management and
10468 internal controls to protect and safeguard all financial resources, including moneys transferred to the
10469 University pursuant to a general fund appropriation, and ensure compliance with the requirements of the
10470 Appropriation Act.

10471 The financial management system shall continue to include a financial reporting system to satisfy
10472 both the requirements for inclusion into the Commonwealth's Comprehensive Annual Financial Report,
10473 as specified in the related State Comptroller's Directives, and the University's separately audited financial
10474 statements. To ensure observance of limitations and restrictions placed on the use of the resources
10475 available to the University, the accounting and bookkeeping system of the University shall continue to
10476 be maintained in accordance with the principles prescribed for governmental organizations by the
10477 Governmental Accounting Standards Board.

10478 In addition, the financial management system shall continue to provide financial reporting for the
10479 President, acting through the Executive Vice President and Chief Operating Officer, and the Board of
10480 Visitors to enable them to provide adequate oversight of the financial operations of the University.
10481 Upon the Effective Date of the initial Management Agreement between the University and the
10482 Commonwealth, except for the recordation of daily revenue deposits of State funds as specified in
10483 Section VII below, the University shall not be required to record its financial transactions in the
10484 Commonwealth's Accounting and Reporting System (CARS), including the current monthly interfacing
10485 with CARS, or to record its financial transactions in any subsequent Commonwealth financial systems
10486 that replace CARS or are in addition to CARS, but shall have its own financial reporting system. The
10487 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 Department of Medical Assistance Services, 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 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

10549 § 2.2-5005, after which time the University may expend the funds for purposes related to its mission. If
 10550 public institutions of higher education of the Commonwealth are permitted, or the University in
 10551 particular is permitted, by the Appropriation Act or other law to retain or be paid the interest the
 10552 Commonwealth would have earned on sponsored programs and research funds, then this paragraph shall
 10553 not apply to such interest on such funds, and such interest shall not be held in escrow.

10554 iv) If in any given year the University does not receive the certification from the State Council of
 10555 Higher Education for Virginia that it has met for that year the institutional benchmarks called for by
 10556 subsection C of § 23-9.6:1.01 and approved in the then-current Appropriation Act, the Comptroller shall
 10557 transfer to the general fund the balance in the escrow account as of June 30 of that year.

10558 v) Beginning on the effective date of its initial Management Agreement with the University until the
 10559 beginning of the first fiscal year following the fiscal year for which it has received the required
 10560 certification from SCHEV, the University shall continue to deposit tuition and all other non-general
 10561 funds with the State Treasurer by the same process that it would have been required to use if it had not
 10562 entered into a Management Agreement with the Commonwealth.

10563 vi) On the first business day of the first fiscal year following the fiscal year for which it has
 10564 received the required certification from SCHEV, the University may draw down all cash balances held
 10565 by the State Treasurer on behalf of the University related to tuition, E&G fees, research and sponsored
 10566 programs, auxiliary enterprises, and all other non-general fund revenues.

10567 vii) The Commonwealth shall retain all funds related to general fund appropriations, but shall pay
 10568 these funds to the University as specified in Section IX below.

10569 The University also shall have sum sufficient appropriation authority for all non-general funds as
 10570 approved by the Governor and the General Assembly in the Commonwealth's biennial appropriations
 10571 process, and shall report to the Department of Planning and Budget (i) its estimate of the non-general
 10572 fund revenues for the sum sufficient appropriation to be included in the biennial Budget Bill for each of
 10573 the two years in the next biennium by November 1 of each odd numbered year and the estimate to be
 10574 included in the Budget Bill for the first and second year of the then-current biennium by November 1 of
 10575 each even numbered year, and (ii) report its actual non-general fund revenues for each fiscal year to the
 10576 Department of Planning and Budget by July 31 of the subsequent fiscal year.

10577 The Board of Visitors shall retain the authority to establish tuition, fee, room, board, and other
 10578 charges, with appropriate commitment provided to need-based grant aid for middle- and lower-income
 10579 undergraduate Virginians. Except as provided otherwise in the Appropriation Act then in effect, it is the
 10580 intent of the Commonwealth and the University that the University shall be exempt from the revenue
 10581 restrictions in the general provisions of the Appropriation Act related to non-general funds. In addition,
 10582 unless prohibited by the Appropriation Act then in effect, it is the intent of the Commonwealth and the
 10583 University that the University shall be entitled to retain non-general fund savings generated from
 10584 changes in Commonwealth rates and charges, including but not limited to health, life, and disability
 10585 insurance rates, retirement contribution rates, telecommunications charges, and utility rates, rather than
 10586 reverting such savings back to the Commonwealth. This financial resource policy assists the University
 10587 by providing the framework for retaining and managing non-general funds, for the receipt of general
 10588 funds, and for the use and stewardship of all these funds.

10589 The President, acting through the Executive Vice President and Chief Operating Officer, shall
 10590 continue to provide oversight of the University's cash management system which is the framework for
 10591 the retention of non-general funds. The Internal Audit Department of the University shall periodically
 10592 audit the University's cash management system in accordance with appropriate risk assessment models
 10593 and make reports to the Audit and Compliance Committee of the Board of Visitors. Additional
 10594 oversight shall continue to be provided through the annual audit and assessment of internal controls
 10595 performed by the Auditor of Public Accounts.

10596 For the receipt of general and non-general funds, the University shall conform to the Security for
 10597 Public Deposits Act, Chapter 44 (§ 2.2-4400 et seq.) of Title 2.2 of the Code of Virginia as it currently
 10598 exists and from time to time may be amended.

10599 VIII. ACCOUNTS RECEIVABLE MANAGEMENT AND COLLECTION.

10600 The President, through the Executive Vice President and Chief Operating Officer, shall continue to
 10601 be authorized to create and implement any and all Accounts Receivable Management and Collection
 10602 policies as part of a system for the management of University financial resources. The policies shall be
 10603 guided by the requirements of the Virginia Debt Collection Act, Chapter 48 (§ 2.2-4800 et seq.) of the
 10604 Code of Virginia, such that the University shall take all appropriate and cost effective actions to
 10605 aggressively collect accounts receivable in a timely manner.

10606 These shall include, but not be limited to, establishing the criteria for granting credit to University
 10607 customers; establishing the nature and timing of collection procedures within the above general
 10608 principles; and the independent authority to select and contract with collection agencies and, after
 10609 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 as needed to meet short-term cash requirements associated with the Commonwealth's bi-monthly 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.

10671 The President, acting through the Executive Vice President and Chief Operating Officer, shall
 10672 continue to be authorized to create and implement any and all debt management policies as part of a
 10673 system for the management of University financial resources.

10674 Pursuant to § 23-38.108(B) of the Act, the University shall have the authority to issue bonds, notes,
 10675 or other obligations that do not constitute State Tax Supported Debt, as determined by the Treasury
 10676 Board, and that are consistent with debt capacity and management policies and guidelines established by
 10677 its Board of Visitors, without obtaining the consent of any legislative body, elected official, commission,
 10678 board, bureau, or agency of the Commonwealth or of any political subdivision, and without any
 10679 proceedings or conditions other than those specifically required by Subchapter 3 of the Act; provided
 10680 that, the University shall notify the Treasurer of Virginia of its intention to issue bonds pursuant to this
 10681 Policy at the time it adopts the bond issuance planning schedule for those bonds. Any new or revised
 10682 debt capacity and management policy shall be submitted to the Treasurer of Virginia for review and
 10683 comment prior to its adoption by the University.

10684 The University recognizes that there are numerous types of financing structures and funding sources
 10685 available each with specific benefits, risks, and costs. All potential funding sources shall be reviewed by
 10686 the President, acting through the Executive Vice President and Chief Operating Officer, within the
 10687 context of the overall portfolio to ensure that any financial product or structure is consistent with the
 10688 University's objectives. Regardless of the financing structure(s) utilized, the President, acting through the
 10689 Executive Vice President and Chief Operating Officer, shall obtain sufficient documentation to gain a
 10690 full understanding of the transaction, including (i) the identification of potential risks and benefits, and
 10691 (ii) an analysis of the impact on University creditworthiness and debt capacity. All such debt or
 10692 financial products issued pursuant to the provisions of §§ 23.38-107 and 23.38-108 of the Act shall be
 10693 authorized by resolution of the Board, providing that they do not constitute State Tax Supported Debt.

10694 The University currently has established guidelines relating to the total permissible amount of
 10695 outstanding debt by monitoring University-wide ratios that measure debt compared to University
 10696 balance-sheet resources and annual debt service burden. These measures are monitored and reviewed
 10697 regularly in light of the University's current strategic initiatives and expected debt requirements. The
 10698 Board of Visitors shall periodically review and approve the University's debt capacity and debt
 10699 management guidelines. Any change in the current guidelines shall be submitted to the Treasurer of
 10700 Virginia for review and comment prior to their adoption by the University.

10701 XI. INVESTMENT POLICY.

10702 It is the policy of the University to invest its operating and reserve funds solely in the interest of the
 10703 University and in a manner that will provide the highest investment return with the maximum security
 10704 while meeting daily cash flow demands and conforming to the Investment of Public Funds Act
 10705 (§ 2.2-4500 et seq.) of the Code of Virginia). Investments shall be made with the care, skill, prudence
 10706 and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and
 10707 familiar with such matters would use in the conduct of an enterprise of a like character and with like
 10708 aims.

10709 Endowment investments shall be invested and managed in accordance with the Uniform Management
 10710 of Institutional Funds Act, §§ 55-268.1 through 55-268.10, and § 23-76.1 of the Code of Virginia.

10711 The Board of Visitors shall periodically review and approve the investment guidelines governing the
 10712 University's operating and reserve funds.

10713 XII. INSURANCE AND RISK MANAGEMENT.

10714 By July 1 of each odd-numbered year, the University shall inform the Secretary of Finance of any
 10715 intent during the next biennium to withdraw from any insurance or risk management program made
 10716 available to the University through the Commonwealth's Division of Risk Management and in which the
 10717 University is then participating, to enable the Commonwealth to complete an adverse selection analysis
 10718 of any such decision and to determine the additional costs to the Commonwealth that would result from
 10719 any such withdrawal. If upon notice of such additional costs to the Commonwealth, the University
 10720 proceeds to withdraw from the insurance or risk management program, the University shall reimburse
 10721 the Commonwealth for all such additional costs attributable to such withdrawal, as determined by the
 10722 Commonwealth's actuaries. Such payment shall be made in a manner agreeable to both the University
 10723 and the Commonwealth.

10724 5. That the provisions of the first, second, and third enactments of this Act shall expire at midnight
 10725 on June 30, 2010, *provided that on or before November 15, 2011, the Governor provides to the*
 10726 *Chairmen of the House Committee on Appropriations and the Senate Committee on Finance written*
 10727 *notification that this Management Agreement needs to be renegotiated or revised. If such notification is*
 10728 *not received, this Management Agreement shall continue in effect until June 30, 2015.* The expiration of
 10729 such enactments shall automatically result in the expiration of the provisions of any management
 10730 agreement between the Commonwealth and Virginia Polytechnic Institute and State University, The
 10731 College of William and Mary in Virginia, and The University of Virginia, respectively, which was

entered into prior to January 1, 2006, and incorporated into this Act.

3. That § 4.3, Attachment 1 of Exhibit D, and Exhibit F of the first enactment, and the third enactment of Chapter 594 of the Acts of Assembly of 2008 are amended and reenacted as follows:

SECTION 4.3. Term of Agreement. This Management Agreement shall expire at midnight on June 30, 2012, *provided that on or before November 15, 2011, the Governor provides to the Chairmen of the House Committee on Appropriations and the Senate Committee on Finance written notification that this Management Agreement needs to be renegotiated or revised. If such notification is not received, this Management Agreement shall continue in effect until June 30, 2015.*

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:

§ 1. Purpose.

The purpose of these Rules is to enunciate the public policies pertaining to procurement of goods, 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 subdivision D 4 of § 23-38.88 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 percent 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.

10793 "Business" means any type of corporation, partnership, limited liability company, association, or sole
 10794 proprietorship operated for profit.

10795 "Competitive negotiation" is a method of contractor selection that includes the following elements:

10796 1. Issuance of a written Request for Proposal indicating in general terms that which is sought to be
 10797 procured, specifying the factors that will be used in evaluating the proposal and containing or
 10798 incorporating by reference the other applicable contractual terms and conditions, including any unique
 10799 capabilities or qualifications that will be required of the contractor.

10800 2. Public notice of the Request for Proposal at least 10 days prior to the date set for receipt of
 10801 proposals by publication in a newspaper or newspapers of general circulation in the area in which the
 10802 contract is to be performed so as to provide reasonable notice to the maximum number of offerors that
 10803 can be reasonably anticipated to submit proposals in response to the particular request. Public notice also
 10804 shall be published on the Department of General Services' central electronic procurement website and
 10805 may be published on other appropriate websites. In addition, proposals may be solicited directly from
 10806 potential contractors.

10807 3. a. Procurement of professional services. The procurement of professional services for capital
 10808 projects shall be conducted using a qualification-based selection process. The Institution shall engage in
 10809 individual discussions with two or more offerors deemed fully qualified, responsible and suitable on the
 10810 basis of initial responses and with emphasis on professional competence, to provide the required
 10811 services. Repetitive informal interviews shall be permissible. The offerors shall be encouraged to
 10812 elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project,
 10813 as well as alternative concepts. The Request for Proposal shall not, however, request that offerors
 10814 furnish estimates of man-hours or costs for services. At the discussion stage, the Institution may discuss
 10815 nonbinding estimates of total project costs, including, but not limited to, life-cycle costing, and where
 10816 appropriate, nonbinding estimates of price for services. Proprietary information from competing offerors
 10817 shall not be disclosed to the public or to competitors. At the conclusion of discussion, outlined in this
 10818 subdivision, on the basis of evaluation factors published in the Request for Proposal and all information
 10819 developed in the selection process to this point, the Institution shall select in the order of preference two
 10820 or more offerors whose professional qualifications and proposed services are deemed most meritorious.
 10821 Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract satisfactory
 10822 and advantageous to the Institution can be negotiated at a price considered fair and reasonable, the
 10823 award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first shall be
 10824 formally terminated and negotiations conducted with the offeror ranked second, and so on until such a
 10825 contract can be negotiated at a fair and reasonable price. Should the Institution determine in writing and
 10826 in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly
 10827 qualified and suitable than the others under consideration, a contract may be negotiated and awarded to
 10828 that offeror.

10829 A contract for architectural or professional engineering services relating to construction projects may
 10830 be negotiated by the Institution for multiple projects provided (i) the projects require similar experience
 10831 and expertise, and (ii) the nature of the projects is clearly identified in the Request for Proposal. Under
 10832 such contract, (a) the fair and reasonable prices, as negotiated, shall be used in determining the cost of
 10833 each project performed; (b) the sum of all projects performed in one contract term shall be as set in the
 10834 Request for Proposal; and (c) the project fee of any single project shall not exceed the term limit as set
 10835 in the Request for Proposal. Any unused amounts from any contract term may be carried forward.
 10836 Competitive negotiations for such contracts may result in awards to more than one offeror provided the
 10837 Request for Proposal stated the potential for a multi-vendor award.

10838 Multiphase professional services contracts satisfactory and advantageous to the Institution for
 10839 environmental, location, design and inspection work regarding construction of infrastructure projects may
 10840 be negotiated and awarded based on qualifications at a fair and reasonable price for the first phase only,
 10841 when completion of the earlier phases is necessary to provide information critical to the negotiation of a
 10842 fair and reasonable price for succeeding phases. Prior to the procurement of any such contract, the
 10843 Institution shall state the anticipated intended total scope of the project and determine in writing that the
 10844 nature of the work is such that the best interests of such Institution require awarding the contract.

10845 b. Procurement of other than professional services. Selection shall be made of two or more offerors
 10846 deemed to be fully qualified and best suited among those submitting proposals, on the basis of the
 10847 factors involved in the Request for Proposal, including price if so stated in the Request for Proposal.
 10848 Negotiations shall then be conducted with each of the offerors so selected. Price shall be considered, but
 10849 need not be the sole determining factor. After negotiations have been conducted with each offeror so
 10850 selected, the Institution shall select the offeror which, in its opinion, has made the best proposal, and
 10851 shall award the contract to that offeror. When the terms and conditions of multiple awards are so
 10852 provided in the Request for Proposal, awards may be made to more than one offeror. Should the
 10853 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 3 a 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 lease of goods, or the sale of services, insurance or construction, of the type to be procured under the contract, and who at such time is eligible and qualified in all respects to perform that contract, and who would have been eligible and qualified to submit a bid or proposal had the contract been procured through competitive sealed bidding or competitive negotiation.

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

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

"Public contract" means an agreement between the Institution and a nongovernmental source that is

10915 enforceable in a court of law.

10916 "Responsible bidder" or "responsible offeror" means a person who has the capability, in all respects,
10917 to perform fully the contract requirements and the moral and business integrity and reliability that will
10918 assure good faith performance, and who has been prequalified, if required.

10919 "Responsive bidder" means a person who has submitted a bid that conforms in all material respects
10920 to the Invitation to Bid.

10921 "Restructuring Act" or "Act" means the Restructured Higher Education Financial and Administrative
10922 Operations Act, Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia.

10923 "Reverse auctioning" means a procurement method wherein bidders are invited to bid on specified
10924 goods or nonprofessional services through real-time electronic bidding, with the award being made to
10925 the lowest responsive and responsible bidder. During the bidding process, bidders' prices are revealed
10926 and bidders shall have the opportunity to modify their bid prices for the duration of the time period
10927 established for bid opening.

10928 "Rules" means these Rules Governing Procurement of Goods, Services, Insurance, and Construction
10929 adopted by the governing body of the Covered Institution.

10930 "Services" means any work performed by an independent contractor wherein the service rendered
10931 does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials
10932 and supplies.

10933 "Sheltered workshop" means a work-oriented rehabilitative facility with a controlled working
10934 environment and individual goals that utilizes work experience and related services for assisting the
10935 handicapped person to progress toward normal living and a productive vocational status.

10936 § 5. Methods of procurement.

10937 A. All public contracts with nongovernmental contractors for the purchase or lease of goods, or for
10938 the purchase of services, insurance, or construction, shall be awarded after competitive sealed bidding, or
10939 competitive negotiation as provided in this section, unless otherwise authorized by law.

10940 B. Professional services shall be procured by competitive negotiation. Qualification-based selection
10941 shall be used for design services.

10942 C. Goods, services, or insurance may be procured by competitive negotiation.

10943 D. Construction may be procured only by competitive sealed bidding, except that competitive
10944 negotiation may be used in the following instances upon a determination made in advance by the
10945 Institution and set forth in writing that competitive sealed bidding is either not practicable or not fiscally
10946 advantageous to the public, which writing shall document the basis for this determination:

- 10947 1. By the Institution on a fixed price design-build basis or construction management basis under § 7;
- 10948 2. By the Institution for the construction, alteration, repair, renovation or demolition of buildings; or
- 10949 3. By the Institution for the construction of highways and any draining, dredging, excavation, grading
10950 or similar work upon real property.

10951 E. Upon a determination in writing that there is only one source practicably available for that which
10952 is to be procured, a contract may be negotiated and awarded to that source without competitive sealed
10953 bidding or competitive negotiation. The writing shall document the basis for this determination. The
10954 Institution shall issue a written notice stating that only one source was determined to be practicably
10955 available, and identifying that which is being procured, the contractor selected, and the date on which
10956 the contract was or will be awarded. This notice shall be posted in a designated public area, which may
10957 be the Department of General Services' website for the Commonwealth's central electronic procurement
10958 system, or published in a newspaper of general circulation on the day the Institution awards or
10959 announces its decision to award the contract, whichever occurs first. Public notice shall also be
10960 published on the Department of General Services' website for the Commonwealth's central electronic
10961 procurement system and may be published on other appropriate websites.

10962 F. In case of emergency, a contract may be awarded without competitive sealed bidding or
10963 competitive negotiation; however, such procurement shall be made with such competition as is
10964 practicable under the circumstances. A written determination of the basis for the emergency and for the
10965 selection of the particular contractor shall be included in the contract file. The Institution shall issue a
10966 written notice stating that the contract is being awarded on an emergency basis, and identifying that
10967 which is being procured, the contractor selected, and the date on which the contract was or will be
10968 awarded. This notice shall be posted in a designated public area, which may be the Department of
10969 General Services' website for the Commonwealth's central electronic procurement system, or published
10970 in a newspaper of general circulation on the day the Institution awards or announces its decision to
10971 award the contract, whichever occurs first, or as soon thereafter as is practicable. Public notice may also
10972 be published on the Department of General Services' website for the Commonwealth's central electronic
10973 procurement system and other appropriate websites.

10974 G. The Institution may establish purchase procedures, if adopted in writing, not requiring competitive
10975 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 qualifications. Based upon the information submitted and any other relevant information which the Commonwealth may obtain, no more than five offerors deemed most suitable for the project shall be selected by the Commonwealth and requested to submit proposals.

§ 8. Modification of the contract.

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

B. The Institution may extend the term of an existing contract for services to allow completion of

any work undertaken but not completed during the original term of the contract.

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

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

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

7. The contractor failed to provide to the Institution in a timely manner any information requested by

11159 the Institution relevant to subdivisions 1 through 6 of this subsection.

11160 § 15. Negotiation with lowest responsible bidder.

11161 Unless canceled or rejected, a responsive bid from the lowest responsible bidder shall be accepted as
 11162 submitted, except that if the bid from the lowest responsible bidder exceeds available funds, the
 11163 Institution may negotiate with the apparent low bidder to obtain a contract price within available funds.
 11164 However, the negotiation may be undertaken only under conditions and procedures described in writing
 11165 and approved by the Institution prior to issuance of the Invitation to Bid and summarized therein.

11166 § 16. Cancellation, rejection of bids; waiver of informalities.

11167 A. An Invitation to Bid, a Request for Proposal, any other solicitation, or any and all bids or
 11168 proposals, may be canceled or rejected. The reasons for cancellation or rejection shall be made part of
 11169 the contract file. The Institution shall not cancel or reject an Invitation to Bid, a Request for Proposal,
 11170 any other solicitation, bid or proposal pursuant to this section solely to avoid awarding a contract to a
 11171 particular responsive and responsible bidder or offeror.

11172 B. The Institution may waive informalities in bids.

11173 § 17. Exclusion of insurance bids prohibited.

11174 Notwithstanding any other provision of law, no insurer licensed to transact the business of insurance
 11175 in the Commonwealth or approved to issue surplus lines insurance in the Commonwealth shall be
 11176 excluded from presenting an insurance bid proposal to the Institution in response to a request for
 11177 proposal or an invitation to bid. Nothing in this section shall preclude the Institution from debarring a
 11178 prospective insurer pursuant to § 18.

11179 § 18. Debarment.

11180 Prospective contractors may be debarred from contracting for particular types of supplies, services,
 11181 insurance or construction, for specified periods of time. Any debarment procedure shall be established in
 11182 writing by the Institution. Any debarment procedure may provide for debarment on the basis of a
 11183 contractor's unsatisfactory performance for the Institution.

11184 § 19. Purchase programs for recycled goods; Institution responsibilities.

11185 A. The Institution may implement a purchase program for recycled goods and may coordinate its
 11186 efforts so as to achieve the goals and objectives set forth in §§ 10.1-1425.6, 10.1-1425.7, and
 11187 10.1-1425.8 of the Code of Virginia, and §§ 20 and 22 of these Rules.

11188 B. The Department of Environmental Quality, with advice from the Virginia Recycling Markets
 11189 Development Council, shall advise the Institution concerning the designation of recycled goods.

11190 § 20. Preference for Virginia products with recycled content and for Virginia firms.

11191 A. In the case of a tie bid, preference shall be given to goods produced in Virginia and goods or
 11192 services or construction provided by Virginia persons, firms or corporations; otherwise the tie shall be
 11193 decided by lot.

11194 B. Whenever any bidder is a resident of any other state and such state under its laws allows a
 11195 resident contractor of that state a preference, a like preference may be allowed by the Institution to the
 11196 lowest responsive and responsible bidder who is a resident of Virginia.

11197 C. Notwithstanding the provisions of subsections A and B, in the case of a tie bid in instances where
 11198 goods are being offered, and existing price preferences have already been taken into account, preference
 11199 shall be given to the bidder whose goods contain the greatest amount of recycled content.

11200 § 21. Preference for Virginia coal used in the Institution.

11201 In determining the award of any contract for coal to be purchased for use in the Institution with state
 11202 funds, the Institution shall procure using competitive sealed bidding and shall award to the lowest
 11203 responsive and responsible bidder offering coal mined in Virginia so long as its bid price is not more
 11204 than 4 percent greater than the bid price of the lowest responsive and responsible bidder offering coal
 11205 mined elsewhere.

11206 § 22. Preference for recycled paper and paper products used by the Institution.

11207 A. In determining the award of any contract for paper and paper products to be purchased for use by
 11208 the Institution, it shall competitively procure recycled paper and paper products of a quality suitable for
 11209 the purpose intended, so long as the price is not more than 10 percent greater than the price of the
 11210 lowest responsive and responsible bidder or offeror offering a product that does not qualify under
 11211 subsection B.

11212 B. For purposes of this section, recycled paper and paper products means any paper or paper
 11213 products meeting the EPA Recommended Content Standards as defined in 40 C.F.R. Part 247.

11214 § 23. Withdrawal of bid due to error.

11215 A. A bidder for a public construction contract, other than a contract for construction or maintenance
 11216 of public highways, may withdraw his bid from consideration if the price bid was substantially lower
 11217 than the other bids due solely to a mistake in the bid, provided the bid was submitted in good faith, and
 11218 the mistake was a clerical mistake as opposed to a judgment mistake, and was actually due to an
 11219 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 percent.

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) of subsection A.

C. No subcontractor shall perform any work on a construction project of the Institution unless he has obtained, and continues to maintain for the duration of such 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.

§ 26. Retainage on construction contracts.

A. In any contract issued by the Institution for construction that provides for progress payments in installments based upon an estimated percentage of completion, the contractor shall be paid at least 95

11281 percent of the earned sum when payment is due, with no more than 5 percent being retained to ensure
 11282 faithful performance of the contract. All amounts withheld may be included in the final payment.

11283 B. Any subcontract for a public project that provides for similar progress payments shall be subject
 11284 to the provisions of this section.

11285 § 27. Public construction contract provisions barring damages for unreasonable delays declared void.

11286 A. Any provision contained in any public construction contract of the Institution that purports to
 11287 waive, release, or extinguish the rights of a contractor to recover costs or damages for unreasonable
 11288 delay in performing such contract, either on his behalf or on behalf of his subcontractor if and to the
 11289 extent the delay is caused by acts or omissions of the Institution, its agents or employees and due to
 11290 causes within their control shall be void and unenforceable as against public policy.

11291 B. Subsection A shall not be construed to render void any provision of a public construction contract
 11292 awarded by the Institution that:

11293 1. Allows the recovery of that portion of delay costs caused by the acts or omissions of the
 11294 contractor, or its subcontractors, agents or employees;

11295 2. Requires notice of any delay by the party claiming the delay;

11296 3. Provides for liquidated damages for delay; or

11297 4. Provides for arbitration or any other procedure designed to settle contract disputes.

11298 C. A contractor making a claim against the Institution for costs or damages due to the alleged
 11299 delaying of the contractor in the performance of its work under any public construction contract of the
 11300 Institution shall be liable to the Institution and shall pay it for a percentage of all costs incurred by the
 11301 Institution in investigating, analyzing, negotiating, litigating and arbitrating the claim, which percentage
 11302 shall be equal to the percentage of the contractor's total delay claim that is determined through litigation
 11303 or arbitration to be false or to have no basis in law or in fact.

11304 D. If the Institution denies a contractor's claim for costs or damages due to the alleged delaying of
 11305 the contractor in the performance of work under any public construction contract for the Institution, it
 11306 shall be liable to and shall pay such contractor a percentage of all costs incurred by the contractor to
 11307 investigate, analyze, negotiate, litigate and arbitrate the claim. The percentage paid by the Institution
 11308 shall be equal to the percentage of the contractor's total delay claim for which the Institution's denial is
 11309 determined through litigation or arbitration to have been made in bad faith.

11310 § 28. Bid bonds.

11311 A. Except in cases of emergency, all bids or proposals for construction contracts in excess of \$1
 11312 million shall be accompanied by a bid bond from a surety company selected by the bidder that is
 11313 authorized to do business in Virginia, as a guarantee that if the contract is awarded to the bidder, he will
 11314 enter into the contract for the work mentioned in the bid. The amount of the bid bond shall not exceed
 11315 5 percent of the amount bid.

11316 B. No forfeiture under a bid bond shall exceed the lesser of (i) the difference between the bid for
 11317 which the bond was written and the next low bid, or (ii) the face amount of the bid bond.

11318 C. Nothing in this section shall preclude the Institution from requiring bid bonds to accompany bids
 11319 or proposals for construction contracts anticipated to be less than \$1 million.

11320 § 29. Performance and payment bonds.

11321 A. Upon the award by the Institution of any (i) public construction contract exceeding \$1 million
 11322 awarded to any prime contractor or (ii) public construction contract exceeding \$1 million awarded to
 11323 any prime contractor requiring the performance of labor or the furnishing of materials for buildings,
 11324 structures or other improvements to real property owned by the Institution, the contractor shall furnish to
 11325 the Institution the following bonds:

11326 1. Except for transportation-related projects, a performance bond in the sum of the contract amount
 11327 conditioned upon the faithful performance of the contract in strict conformity with the plans,
 11328 specifications and conditions of the contract. For transportation-related projects, such bond shall be in a
 11329 form and amount satisfactory to the Institution.

11330 2. A payment bond in the sum of the contract amount. The bond shall be for the protection of
 11331 claimants who have and fulfill contracts to supply labor or materials to the prime contractor to whom
 11332 the contract was awarded, or to any subcontractors, in furtherance of the work provided for in the
 11333 contract, and shall be conditioned upon the prompt payment for all materials furnished or labor supplied
 11334 or performed in the furtherance of the work.

11335 "Labor or materials" shall include public utility services and reasonable rentals of equipment, but
 11336 only for periods when the equipment rented is actually used at the site.

11337 B. Each of the bonds shall be executed by one or more surety companies selected by the contractor
 11338 that are authorized to do business in Virginia.

11339 C. The bonds shall be payable to the Commonwealth of Virginia naming also the Institution.

11340 D. Each of the bonds shall be filed with the Institution, or a designated office or official thereof.

11341 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

11403 restrictions to ensure the security and integrity of the records.

11404 F. Trade secrets or proprietary information submitted by a bidder, offeror or contractor in connection
11405 with a procurement transaction or prequalification application submitted pursuant to subsection B of § 14
11406 shall not be subject to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.); however, the
11407 bidder, offeror or contractor shall (i) invoke the protections of this section prior to or upon submission
11408 of the data or other materials, (ii) identify the data or other materials to be protected, and (iii) state the
11409 reasons why protection is necessary.

11410 § 35. Exemption for certain transactions.

11411 A. The provisions of these Rules shall not apply to:

11412 1. The selection of services related to the management and investment of the Institution's endowment
11413 funds, endowment income, or gifts pursuant to § 23-76.1. However, selection of these services shall be
11414 governed by the Uniform Management of Institutional Funds Act (§ 55-268.1 et seq.) as required by
11415 § 23-76.1.

11416 2. The purchase of items for resale at retail bookstores and similar retail outlets operated by the
11417 Institution. However, such purchase procedures shall provide for competition where practicable.

11418 3. Procurement of any construction or planning and design services for construction by the Institution
11419 when (i) the planning, design or construction is \$50,000 or less or (ii) the Institution is obligated to
11420 conform to procurement procedures that are established by federal statutes or regulations, whether or not
11421 those federal procedures are in conformance with the provisions of these Rules.

11422 4. The purchase of goods and services by the Institution when such purchases are made under a
11423 remedial plan established by the Governor pursuant to subsection C of § 9 of these Rules.

11424 B. Where a procurement transaction involves the expenditure of federal assistance or contract funds,
11425 the receipt of which is conditioned upon compliance with mandatory requirements in federal laws or
11426 regulations not in conformance with the provisions of these Rules, the Institution may comply with such
11427 federal requirements, notwithstanding the provisions of these Rules, only upon the written determination
11428 of the Institution's President or his designee that acceptance of the grant or contract funds under the
11429 applicable conditions is in the public interest. Such determination shall state the specific provision of
11430 these Rules in conflict with the conditions of the grant or contract.

11431 § 36. Permitted contracts with certain religious organizations; purpose; limitations.

11432 A. The Opportunity Reconciliation Act of 1996, P.L. 104-193, authorizes public bodies to enter into
11433 contracts with faith-based organizations for the purposes described in this section on the same basis as
11434 any other nongovernmental source without impairing the religious character of such organization, and
11435 without diminishing the religious freedom of the beneficiaries of assistance provided under this section.

11436 B. For the purposes of this section, "faith-based organization" means a religious organization that is
11437 or applies to be a contractor to provide goods or services for programs funded by the block grant
11438 provided pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L.
11439 104-193.

11440 C. The Institution, in procuring goods or services, or in making disbursements pursuant to this
11441 section, shall not (i) discriminate against a faith-based organization on the basis of the organization's
11442 religious character or (ii) impose conditions that (a) restrict the religious character of the faith-based
11443 organization, except as provided in subsection F, or (b) impair, diminish, or discourage the exercise of
11444 religious freedom by the recipients of such goods, services, or disbursements.

11445 D. The Institution shall ensure that all invitations to bid, requests for proposals, contracts, and
11446 purchase orders prominently display a nondiscrimination statement indicating that it does not
11447 discriminate against faith-based organizations.

11448 E. A faith-based organization contracting with the Institution (i) shall not discriminate against any
11449 recipient of goods, services, or disbursements made pursuant to a contract authorized by this section on
11450 the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on
11451 the basis of race, age, color, gender or national origin and (ii) shall be subject to the same rules as other
11452 organizations that contract with public bodies to account for the use of the funds provided; however, if
11453 the faith-based organization segregates public funds into separate accounts, only the accounts and
11454 programs funded with public funds shall be subject to audit by the Institution. Nothing in clause (ii)
11455 shall be construed to supersede or otherwise override any other applicable state law.

11456 F. Consistent with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996,
11457 P.L. 104-193, funds provided for expenditure pursuant to contracts with public bodies shall not be spent
11458 for sectarian worship, instruction, or proselytizing; however, this prohibition shall not apply to
11459 expenditures pursuant to contracts, if any, for the services of chaplains.

11460 G. Nothing in this section shall be construed as barring or prohibiting a faith-based organization from
11461 any opportunity to make a bid or proposal or contract on the grounds that the faith-based organization
11462 has exercised the right, as expressed in 42 U.S.C. (§ 2000e-1 et seq.), to employ persons of a particular
11463 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 institutions 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.

11525 § 40. Exemptions.

11526 The provisions of §§ 39 through 46 shall not apply to the late payment provisions contained in any
11527 public utility tariffs prescribed by the State Corporation Commission.

11528 § 41. Retainage to remain valid.

11529 Notwithstanding the provisions of §§ 39 through 46, the provisions of § 26 relating to retainage shall
11530 remain valid.

11531 § 42. Prompt payment of bills by the Institution.

11532 A. The Institution shall promptly pay for the completely delivered goods or services by the required
11533 payment date.

11534 Payment shall be deemed to have been made when offset proceedings have been instituted, as
11535 authorized under the Virginia Debt Collection Act (§ 2.2-4800 et seq.).

11536 B. Separate payment dates may be specified for contracts under which goods or services are provided
11537 in a series of partial deliveries or executions to the extent that such contract provides for separate
11538 payment for such partial delivery or execution.

11539 § 43. Defect or impropriety in the invoice or goods and/or services received.

11540 In instances where there is a defect or impropriety in an invoice or in the goods or services received,
11541 the Institution shall notify the supplier of the defect or impropriety, if the defect or impropriety would
11542 prevent payment by the payment date. The notice shall be sent within 15 days after receipt of the
11543 invoice or the goods or services.

11544 § 44. Date of postmark deemed to be date payment is made.

11545 In those cases where payment is made by mail, the date of postmark shall be deemed to be the date
11546 payment is made for purposes of these Rules.

11547 § 45. Payment clauses to be included in contracts.

11548 Any contract awarded by the Institution shall include:

11549 1. A payment clause that obligates the contractor to take one of the two following actions within
11550 seven days after receipt of amounts paid to the contractor by the Institution for work performed by the
11551 subcontractor under that contract:

11552 a. Pay the subcontractor for the proportionate share of the total payment received from the Institution
11553 attributable to the work performed by the subcontractor under that contract; or

11554 b. Notify the Institution and subcontractor, in writing, of his intention to withhold all or a part of the
11555 subcontractor's payment with the reason for nonpayment.

11556 2. A payment clause that requires (i) individual contractors to provide their social security numbers
11557 and (ii) proprietorships, partnerships, and corporations to provide their federal employer identification
11558 numbers.

11559 3. An interest clause that obligates the contractor to pay interest to the subcontractor on all amounts
11560 owed by the contractor that remain unpaid after seven days following receipt by the contractor of
11561 payment from the Institution for work performed by the subcontractor under that contract, except for
11562 amounts withheld as allowed in subdivision 1b.

11563 4. An interest rate clause stating, "Unless otherwise provided under the terms of this contract, interest
11564 shall accrue at the rate of 1 percent per month."

11565 Any such contract awarded shall further require the contractor to include in each of its subcontracts a
11566 provision requiring each subcontractor to include or otherwise be subject to the same payment and
11567 interest requirements with respect to each lower-tier subcontractor.

11568 A contractor's obligation to pay an interest charge to a subcontractor pursuant to the payment clause
11569 in this section shall not be construed to be an obligation of the Institution. A contract modification shall
11570 not be made for the purpose of providing reimbursement for the interest charge. A cost reimbursement
11571 claim shall not include any amount for reimbursement for the interest charge.

11572 § 46. Interest penalty; exceptions.

11573 A. Interest shall accrue, at the rate determined pursuant to subsection B, on all amounts owed by the
11574 Institution to a vendor that remain unpaid after seven days following the payment date. However,
11575 nothing in this section shall affect any contract providing for a different rate of interest, or for the
11576 payment of interest in a different manner.

11577 B. The rate of interest charged the Institution pursuant to subsection A shall be the base rate on
11578 corporate loans (prime rate) at large United States money center commercial banks as reported daily in
11579 the publication entitled The Wall Street Journal. Whenever a split prime rate is published, the lower of
11580 the two rates shall be used. However, in no event shall the rate of interest charged exceed the rate of
11581 interest established pursuant to § 58.1-1812 of the Code of Virginia.

11582 C. Notwithstanding subsection A, no interest penalty shall be charged when payment is delayed
11583 because of disagreement between the Institution and a vendor regarding the quantity, quality or time of
11584 delivery of goods or services or the accuracy of any invoice received for the goods or services. The
11585 exception from the interest penalty provided by this subsection shall apply only to that portion of a

11586 delayed payment that is actually the subject of the disagreement and shall apply only for the duration of
11587 the disagreement.

11588 D. This section shall not apply to § 26 pertaining to retainage on construction contracts, during the
11589 period of time prior to the date the final payment is due. Nothing contained herein shall prevent a
11590 contractor from receiving interest on such funds under an approved escrow agreement.

11591 E. Notwithstanding subsection A, no interest penalty shall be paid to any debtor on any payment, or
11592 portion thereof, withheld pursuant to the Comptroller's Debt Setoff Program, as authorized by the
11593 Virginia Debt Collection Act (§ 2.2-4800 et seq.) of the Code of Virginia, commencing with the date the
11594 payment is withheld. If, as a result of an error, a payment or portion thereof is withheld, and it is
11595 determined that at the time of setoff no debt was owed to the Commonwealth, then interest shall accrue
11596 at the rate determined pursuant to subsection B on amounts withheld that remain unpaid after seven days
11597 following the payment date.

11598 § 47. Ineligibility.

11599 A. Any bidder, offeror or contractor refused permission to participate, or disqualified from
11600 participation, in public contracts to be issued by the Institution shall be notified in writing. Prior to the
11601 issuance of a written determination of disqualification or ineligibility, the Institution shall (i) notify the
11602 bidder in writing of the results of the evaluation, (ii) disclose the factual support for the determination,
11603 and (iii) allow the bidder an opportunity to inspect any documents that relate to the determination, if so
11604 requested by the bidder within five business days after receipt of the notice.

11605 Within 10 business days after receipt of the notice, the bidder may submit rebuttal information
11606 challenging the evaluation. The Institution shall issue its written determination of disqualification or
11607 ineligibility based on all information in the possession of the Institution, including any rebuttal
11608 information, within five business days of the date the Institution received such rebuttal information.

11609 If the evaluation reveals that the bidder, offeror or contractor should be allowed permission to
11610 participate in the public contract, the Institution shall cancel the proposed disqualification action. If the
11611 evaluation reveals that the bidder should be refused permission to participate, or disqualified from
11612 participation, in the public contract, the Institution shall so notify the bidder, offeror or contractor. The
11613 notice shall state the basis for the determination, which shall be final unless the bidder appeals the
11614 decision within 10 days after receipt of the notice by invoking administrative procedures meeting the
11615 standards of § 55 of these Rules, if available, or in the alternative by instituting legal action as provided
11616 in § 54.

11617 B. If, upon appeal, it is determined that the action taken was arbitrary or capricious, or not in
11618 accordance with the Constitution of Virginia, applicable state law or regulations, the sole relief shall be
11619 restoration of eligibility.

11620 § 48. Appeal of denial of withdrawal of bid.

11621 A. A decision denying withdrawal of bid under the provisions of § 23 of these Rules shall be final
11622 and conclusive unless the bidder appeals the decision within 10 days after receipt of the decision by
11623 invoking administrative procedures meeting the standards of § 55, if available, or in the alternative by
11624 instituting legal action as provided in § 54.

11625 B. If no bid bond was posted, a bidder refused withdrawal of a bid under the provisions of § 23,
11626 prior to appealing, shall deliver to the Institution a certified check or cash bond in the amount of the
11627 difference between the bid sought to be withdrawn and the next low bid. Such security shall be released
11628 only upon a final determination that the bidder was entitled to withdraw the bid.

11629 C. If, upon appeal, it is determined that the decision refusing withdrawal of the bid was not (i) an
11630 honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the
11631 Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to
11632 Bid, the sole relief shall be withdrawal of the bid.

11633 § 49. Determination of nonresponsibility.

11634 A. Following public opening and announcement of bids received on an Invitation to Bid, the
11635 Institution shall evaluate the bids in accordance with element 4 of the definition of "Competitive sealed
11636 bidding" in § 4 of these Rules. At the same time, the Institution shall determine whether the apparent
11637 low bidder is responsible. If the Institution so determines, then it may proceed with an award in
11638 accordance with element 5 of the definition of "Competitive sealed bidding" in § 4. If the Institution
11639 determines that the apparent low bidder is not responsible, it shall proceed as follows:

11640 1. Prior to the issuance of a written determination of nonresponsibility, the Institution shall (i) notify
11641 the apparent low bidder in writing of the results of the evaluation, (ii) disclose the factual support for
11642 the determination, and (iii) allow the apparent low bidder an opportunity to inspect any documents that
11643 relate to the determination, if so requested by the bidder within five business days after receipt of the
11644 notice.

11645 2. Within 10 business days after receipt of the notice, the bidder may submit rebuttal information
11646 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

11769 appropriate circuit court. Notwithstanding any other provision of law, the Comptroller shall not be
 11770 named as a defendant in any action brought pursuant to these Rules or § 33.1-387 of the Code of
 11771 Virginia, except for disputes involving contracts of the Office of the Comptroller or the Department of
 11772 Accounts.

11773 F. A bidder, offeror or contractor need not utilize administrative procedures meeting the standards of
 11774 § 55 of these Rules, if available, but if those procedures are invoked by the bidder, offeror or contractor,
 11775 the procedures shall be exhausted prior to instituting legal action concerning the same procurement
 11776 transaction unless the Institution agrees otherwise.

11777 G. Nothing herein shall be construed to prevent the Institution from instituting legal action against a
 11778 contractor.

11779 § 55. Administrative appeals procedure.

11780 A. The Institution may establish an administrative procedure for hearing (i) protests of a decision to
 11781 award or an award, (ii) appeals from refusals to allow withdrawal of bids, (iii) appeals from
 11782 disqualifications and determinations of nonresponsibility, and (iv) appeals from decisions on disputes
 11783 arising during the performance of a contract, or (v) any of these. Such administrative procedure may
 11784 include the use of Alternative Dispute Resolution (ADR) or shall provide for a hearing before a
 11785 disinterested person or panel, and the opportunity to present pertinent information and the issuance of a
 11786 written decision containing findings of fact. The disinterested person or panel shall not be an employee
 11787 of the governmental entity against whom the claim has been filed. The findings of fact shall be final and
 11788 conclusive and shall not be set aside unless the same are (a) fraudulent, arbitrary or capricious; (b) so
 11789 grossly erroneous as to imply bad faith; or (c) in the case of denial of prequalification, the findings were
 11790 not based upon the criteria for denial of prequalification set forth in subsection B of § 14 of these Rules.
 11791 No determination on an issue of law shall be final if appropriate legal action is instituted in a timely
 11792 manner. The Institution may seek advice and input from the Alternative Dispute Resolution Council in
 11793 establishing an Alternative Dispute Resolution (ADR) procedure.

11794 B. Any party to the administrative procedure, including the Institution, shall be entitled to institute
 11795 judicial review if such action is brought within 30 days of receipt of the written decision.

11796 § 56. Alternative dispute resolution.

11797 The Institution may enter into agreements to submit disputes arising from contracts entered into
 11798 pursuant to these Rules to arbitration and utilize mediation and other alternative dispute resolution
 11799 procedures. However, such procedures shall be nonbinding and subject to § 2.2-514 of the Code of
 11800 Virginia, as applicable.

11801 § 57. Ethics in public contracting.

11802 The Institution and its governing body, officers and employees shall be governed by the Ethics in
 11803 Public Contracting provisions of the Virginia Public Procurement Act, Article 6 (§ 2.2-4367 et seq.) of
 11804 Chapter 43 of Title 2.2 of the Code of Virginia.

11805 EXHIBIT F

11806 MANAGEMENT AGREEMENT

11807 BETWEEN

11808 THE COMMONWEALTH OF VIRGINIA

11809 AND

11810 VIRGINIA COMMONWEALTH UNIVERSITY

11811 PURSUANT TO

11812 THE RESTRUCTURED HIGHER EDUCATION

11813 FINANCIAL AND ADMINISTRATIVE OPERATIONS

11814 ACT OF 2005

11815 POLICY GOVERNING FINANCIAL OPERATIONS AND MANAGEMENT

11816 THE RECTOR AND VISITORS OF VIRGINIA COMMONWEALTH UNIVERSITY

11817 POLICY GOVERNING FINANCIAL OPERATIONS AND MANAGEMENT

11818 I. PREAMBLE.

11819 The Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter
 11820 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia, establishes by law a process for granting
 11821 additional authority to institutions of higher education for financial operations and management, subject
 11822 to the adoption of policies by their governing boards and the approval of management agreements to be
 11823 negotiated with the Commonwealth.

11824 The following provisions of this Policy constitute the adopted Board of Visitors policies regarding
 11825 Virginia Commonwealth University's financial operations and management.

11826 This Policy is intended to cover the authority that may be granted to the University pursuant to
 11827 Subchapter 3 of the Act. Any other powers and authorities granted to the University pursuant to the
 11828 Appropriation Act, or any other sections of the Code of Virginia, including other provisions of the Act
 11829 and the University'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 Virginia Commonwealth University.

"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.

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

"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 and 2.2-2905.

"Management Agreement" means the agreement required by subsection D of § 23-38.88 of the Act between the University 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 2006 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 Virginia Commonwealth University.

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.

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

V. FINANCIAL MANAGEMENT AND REPORTING SYSTEM.

The President, acting through the Senior Vice President for Finance and Administration or other designee, shall continue to be authorized by the Board to maintain existing and implement new policies governing the management of University financial resources. These policies shall continue to (i) ensure compliance with Generally Accepted Accounting Principles, (ii) ensure consistency with the current accounting 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 (iv) 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 Senior Vice President for Finance and Administration or other designee, 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) monthly summary 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 Department of Medical Assistance Services, 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 Senior Vice President for Finance and Administration or other designee, 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 subsection A of § 23-38.104 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 12 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 (excluding gift, agency and endowment funds and the investment income thereon) subject to the following requirements:

1. The University shall deposit such funds in the State Treasury pursuant to the State process in place at the time of such deposit.

2. Such non-general funds deposited in the State Treasury shall be disbursed as provided in Section IX below.

3. 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.

4. 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.

5. 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.

6. 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.

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

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

The Board of Visitors shall retain the authority to establish tuition, fee, room, board, and other charges, with appropriate commitment provided to need-based grant aid for middle- and lower-income undergraduate Virginians. Except as provided otherwise in the Appropriation Act then in effect, it is the intent of the Commonwealth and the University that the University shall be exempt from the revenue restrictions in the general provisions of the Appropriation Act related to non-general funds. In addition, unless prohibited by the Appropriation Act then in effect, it is the intent of the Commonwealth and the University that the University shall be entitled to retain non-general fund savings generated from changes in Commonwealth rates and charges, including but not limited to health, life, and disability insurance rates, retirement contribution rates, telecommunications charges, and utility rates, rather than 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 Senior Vice President for Finance and Administration or other designee, shall continue to provide oversight of the University's cash management system which is the framework for the retention of non-general funds. The Assurance Services 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 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, acting through the Senior Vice President for Finance and Administration or other designee, shall continue to be authorized to create and implement any and all Accounts Receivable

12013 Management and Collection policies as part of a system for the management of University financial
 12014 resources. The policies shall be guided by the requirements of the Virginia Debt Collection Act, Chapter
 12015 48 (§ 2.2-4800 et seq.) of the Code of Virginia, such that the University shall take all appropriate and
 12016 cost effective actions to aggressively collect accounts receivable in a timely manner.

12017 These shall include, but not be limited to, establishing the criteria for granting credit to University
 12018 customers; establishing the nature and timing of collection procedures within the above general
 12019 principles; and the independent authority to select and contract with collection agencies and, after
 12020 consultation with the Office of the Attorney General, private attorneys as needed to perform any and all
 12021 collection activities for all University accounts receivable such as reporting delinquent accounts to credit
 12022 bureaus, obtaining judgments, garnishments, and liens against such debtors, and other actions. In
 12023 accordance with sound collection activities, the University shall continue to utilize the Commonwealth's
 12024 Debt Set-Off Collection Programs, shall develop procedures acceptable to the Tax Commissioner and the
 12025 State Comptroller to implement such Programs, and shall provide a quarterly summary report of
 12026 receivables to the Department of Accounts in accordance with the reporting procedures established
 12027 pursuant to the Virginia Debt Collection Act.

12028 IX. DISBURSEMENT MANAGEMENT.

12029 The President, through the Senior Vice President for Finance and Administration or other designee,
 12030 shall continue to be authorized to create and implement any and all disbursement policies as part of a
 12031 system for the management of University financial resources. The disbursement management policies
 12032 shall continue to define the appropriate and reasonable uses of all funds, from whatever source derived,
 12033 in the execution of the University's operations. These policies also shall continue to address the timing
 12034 of appropriate and reasonable disbursements consistent with the Prompt Payment Act, and the
 12035 appropriateness of certain goods or services relative to the University's mission, including travel-related
 12036 disbursements. Further, the University's disbursement policy shall continue to provide for the
 12037 mechanisms by which payments are made including the use of charge cards, warrants, and electronic
 12038 payments. Since the University no longer will interface to the CARS system or any replacement for the
 12039 CARS system for disbursements, the University shall establish its own mechanisms for electronic
 12040 payments to vendors through Electronic Data Interchange (EDI) or similar process and payments to the
 12041 Commonwealth's Debt Set-Off Collection Programs.

12042 Beginning with the fiscal year after the first fiscal year for which it first receives the required
 12043 certification from SCHEV, the University may draw down its general fund appropriations (subject to
 12044 available cash) and tuition and E&G fees and other non-general fund revenues from the State Treasury.
 12045 Such funds shall be available to the University for disbursement as provided in the then-current rules of
 12046 the Automated Clearing House (ACH) Network. The drawing down of funds may be initiated in
 12047 accordance with the following schedule:

12048 1. The University may draw down one-twenty-fourth (1/24) of its annual general fund appropriation
 12049 for Educational and General programs on *or about* the first and fifteenth days of each month *with*
 12050 *adjustments as needed to meet short-term cash requirements associated with the Commonwealth's*
 12051 *bi-monthly pay dates*, and up to 50 percent of its annual general fund appropriation for Student Financial
 12052 Assistance on or after September 1 of each year with the remaining 50 percent to be drawn on or after
 12053 February 1 of each year in order to meet student obligations;

12054 2. The University may draw down the sum of all tuition and E&G fees and all other non-general
 12055 fund revenues deposited to the State Treasury each day on the same business day they were deposited;
 12056 and

12057 3. The University anticipates that expenditures could exceed available revenues from time to time
 12058 during the year if the above disbursement schedule is used. When the University projects a cash deficit
 12059 is likely in activities supported by general fund appropriations, the University may make a request to the
 12060 State Comptroller for an early draw on its appropriated general funds deposited in the State Treasury, in
 12061 a form and within a time frame agreeable to the parties, in order to cover expenditures.

12062 These disbursement policies shall authorize the President, acting through the Senior Vice President
 12063 for Finance and Administration or other designee, to independently select, engage, and contract for such
 12064 consultants, accountants, and financial experts, and other such providers of expert advice and
 12065 consultation, and, after consultation with the Office of the Attorney General, private attorneys, as may
 12066 be necessary or desirable in his or her discretion. The policies also shall continue to include the ability
 12067 to locally manage and administer the Commonwealth's credit card and cost recovery programs related to
 12068 disbursements, subject to any restrictions contained in the Commonwealth's contracts governing those
 12069 programs, provided that the University shall submit the credit card and cost recovery aspects of its
 12070 financial and operations policies to the State Comptroller for review and comment prior to implementing
 12071 those aspects of those policies. The disbursement policies shall ensure that adequate risk management
 12072 and internal control procedures shall be maintained over previously decentralized processes for public
 12073 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 Senior Vice President for Finance and Administration or other designee, is 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 subsection B of § 23-38.108 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 the University's debt-management policy 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 Senior Vice President for Finance and Administration or other designee, 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 Senior Vice President for Finance and Administration or other 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 University 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, providing that they do not constitute State Tax Supported Debt.

The University currently has established policy relating to the total permissible amount of outstanding debt by monitoring University-wide ratios that measure debt compared to University balance-sheet resources and annual debt service burden. These measures are monitored and reviewed regularly in light of the University's current strategic initiatives and expected debt requirements. The Board of Visitors shall periodically review and approve the University's debt management policy. Any change in the current policy shall be submitted to the Treasurer of Virginia for review and comment prior to their adoption by the University.

XI. INVESTMENT POLICY.

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

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

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

XII. INSURANCE AND RISK MANAGEMENT.

By July 1 of each odd-numbered year, the University shall inform the Secretary of Finance of any intent during the next biennium to withdraw from any insurance or risk management program made available to the University through the Commonwealth's Division of Risk Management and in which the 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

12135 Commonwealth's actuaries. Such payment shall be made in a manner agreeable to both the University
12136 and the Commonwealth.

12137 3. That the provisions of the first enactment of this Act shall expire at midnight on June 30, 2012,
12138 *provided that on or before November 15, 2011, the Governor provides to the Chairmen of the House*
12139 *Committee on Appropriations and the Senate Committee on Finance written notification that this*
12140 *Management Agreement needs to be renegotiated or revised. If such notification is not received, this*
12141 *Management Agreement shall continue in effect until June 30, 2015.* The expiration of such enactment
12142 shall automatically result in the expiration of the provisions of any management agreement between the
12143 Commonwealth and Virginia Commonwealth University that was entered into prior to January 1, 2008,
12144 and incorporated into this Act.

12145 **4. That § 4.3, Attachment 1 of Exhibit D, and Exhibit F of the first enactment, and the third**
12146 **enactment of Chapter 616 of the Acts of Assembly of 2008 are amended and reenacted as follows:**

12147 SECTION 4.3. Term of Agreement. This Management Agreement shall expire at midnight on June
12148 30, 2012, *provided that on or before November 15, 2011, the Governor provides to the Chairmen of the*
12149 *House Committee on Appropriations and the Senate Committee on Finance written notification that this*
12150 *Management Agreement needs to be renegotiated or revised. If such notification is not received, this*
12151 *Management Agreement shall continue in effect until June 30, 2015.*

12152 ATTACHMENT 1

12153 Rules Governing Procurement of Goods, Services, Insurance, and Construction
12154 by a Public Institution of Higher Education of the Commonwealth of Virginia

12155 Governed by Subchapter 3 of the

12156 Restructured Higher Education Financial and Administrative Operations Act,

12157 Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia

12158 In accordance with the provisions of the Restructured Higher Education Financial and Administrative
12159 Operations Act (the Act), Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia, and in
12160 particular § 23-38.110 of the Act, the governing body of a public institution of higher education of the
12161 Commonwealth of Virginia that has entered into a Management Agreement with the Commonwealth
12162 pursuant to Subchapter 3 of the Act has adopted the following Rules Governing Procurement of Goods,
12163 Services, Insurance, and Construction to govern the procurement of goods, services, insurance, and
12164 construction by the Institution:

12165 § 1. Purpose.

12166 The purpose of these Rules is to enunciate the public policies pertaining to procurement of goods,
12167 services, insurance, and construction by the Institution from nongovernmental sources, to include
12168 governmental procurement that may or may not result in monetary consideration for either party. These
12169 Rules shall apply whether the consideration is monetary or nonmonetary and regardless of whether the
12170 Institution, the contractor, or some third party is providing the consideration.

12171 § 2. Scope of Procurement Authority.

12172 Subject to these Rules, and the Institution's continued substantial compliance with the terms and
12173 conditions of its Management Agreement with the Commonwealth pursuant to subdivision D 4 of
12174 § 23-38.88 and the requirements of Chapter 4.10 of the Act, the Institution shall have and shall be
12175 authorized to have and exercise all of the authority relating to procurement of goods, services, insurance,
12176 and construction, including but not limited to capital outlay-related procurement and information
12177 technology-related procurement, that Institutions are authorized to exercise pursuant to Subchapter 3 of
12178 the Restructuring Act.

12179 § 3. Competition is the Priority.

12180 To the end that the Institution shall obtain high quality goods and services at reasonable cost, that all
12181 procurement procedures be conducted in an open, fair and impartial manner with avoidance of any
12182 impropriety or appearance of impropriety, that all qualified vendors have access to the Institution's
12183 business and that no offeror be arbitrarily or capriciously excluded, it is the intent of the governing body
12184 of the Institution that competition be sought to the maximum feasible degree, that procurement
12185 procedures involve openness and administrative efficiency, that individual public bodies enjoy broad
12186 flexibility in fashioning details of such competition, that the rules governing contract awards be made
12187 clear in advance of the competition, that specifications reflect the procurement needs of the purchasing
12188 body rather than being drawn to favor a particular vendor, and that the purchaser and vendor freely
12189 exchange information concerning what is sought to be procured and what is offered. The Institution may
12190 consider best value concepts when procuring goods and nonprofessional services, but not construction or
12191 professional services. Professional services will be procured using a qualification-based selection process.
12192 The criteria, factors, and basis for consideration of best value and the process for the consideration of
12193 best value shall be as stated in the procurement solicitation.

12194 § 4. Definitions.

12195 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 percent 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 costs 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.

12257 b. Procurement of other than professional services. Selection shall be made of two or more offerors
 12258 deemed to be fully qualified and best suited among those submitting proposals, on the basis of the
 12259 factors involved in the Request for Proposal, including price if so stated in the Request for Proposal.
 12260 Negotiations shall then be conducted with each of the offerors so selected. Price shall be considered, but
 12261 need not be the sole determining factor. After negotiations have been conducted with each offeror so
 12262 selected, the Institution shall select the offeror which, in its opinion, has made the best proposal, and
 12263 shall award the contract to that offeror. When the terms and conditions of multiple awards are so
 12264 provided in the Request for Proposal, awards may be made to more than one offeror. Should the
 12265 Institution determine in writing and in its sole discretion that only one offeror has made the best
 12266 proposal, a contract may be negotiated and awarded to that offeror.

12267 "Competitive sealed bidding" is a method of contractor selection, other than for professional services,
 12268 which includes the following elements:

12269 1. Issuance of a written Invitation to Bid containing or incorporating by reference the specifications
 12270 and contractual terms and conditions applicable to the procurement. Unless the Institution has provided
 12271 for prequalification of bidders, the Invitation to Bid shall include a statement of any requisite
 12272 qualifications of potential contractors. When it is impractical to prepare initially a purchase description
 12273 to support an award based on prices, an Invitation to Bid may be issued requesting the submission of
 12274 unpriced offers to be followed by an Invitation to Bid limited to those bidders whose offers have been
 12275 qualified under the criteria set forth in the first solicitation.

12276 2. Public notice of the Invitation to Bid at least 10 days prior to the date set for receipt of bids by
 12277 publication on the Department of General Services' central electronic procurement website. Public notice
 12278 also may be published in a newspaper of general circulation or on other appropriate websites, or both. In
 12279 addition, bids may be solicited directly from potential contractors. Any additional solicitations shall
 12280 include businesses selected from a list made available by the Department of Minority Business
 12281 Enterprise.

12282 3. Public opening and announcement of all bids received.

12283 4. Evaluation of bids based upon the requirements set forth in the invitation, which may include
 12284 special qualifications of potential contractors, life-cycle costing, value analysis, and any other criteria
 12285 such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose, which
 12286 are helpful in determining acceptability.

12287 5. Award to the lowest responsive and responsible bidder. When the terms and conditions of multiple
 12288 awards are so provided in the Invitation to Bid, awards may be made to more than one bidder.

12289 "Construction" means building, altering, repairing, improving or demolishing any structure, building
 12290 or highway, and any draining, dredging, excavation, grading or similar work upon real property.

12291 "Construction management contract" means a contract in which a party is retained by the owner to
 12292 coordinate and administer contracts for construction services for the benefit of the owner, and may also
 12293 include, if provided in the contract, the furnishing of construction services to the owner.

12294 "Covered Institution" or "Institution" means, on and after the effective date of the initial management
 12295 agreement with the Commonwealth of Virginia, a public institution of higher education of the
 12296 Commonwealth that has entered into a management agreement with the Commonwealth to be governed
 12297 by the provisions of Subchapter 3 of the Restructuring Act.

12298 "Design-build contract" means a contract between the Institution and another party in which the party
 12299 contracting with the Institution agrees to both design and build the structure, roadway or other item
 12300 specified in the contract.

12301 "Goods" means all material, equipment, supplies, and printing, including information technology and
 12302 telecommunications goods such as automated data processing hardware and software.

12303 "Informality" means a minor defect or variation of a bid or proposal from the exact requirements of
 12304 the Invitation to Bid, or the Request for Proposal, which does not affect the price, quality, quantity or
 12305 delivery schedule for the goods, services or construction being procured.

12306 "Multiphase professional services contract" means a contract for the providing of professional
 12307 services where the total scope of work of the second or subsequent phase of the contract cannot be
 12308 specified without the results of the first or prior phase of the contract.

12309 "Nonprofessional services" means any services not specifically identified as professional services in
 12310 the definition of professional services and includes small construction projects valued not over \$1
 12311 million; provided that subdivision 3 a of the definition of "competitive negotiation" in this section shall
 12312 still apply to professional services for such small construction projects.

12313 "Potential bidder or offeror" for the purposes of §§ 50 and 54 of these Rules means a person who, at
 12314 the time the Institution negotiates and awards or proposes to award a contract, is engaged in the sale or
 12315 lease of goods, or the sale of services, insurance or construction, of the type to be procured under the
 12316 contract, and who at such time is eligible and qualified in all respects to perform that contract, and who
 12317 would have been eligible and qualified to submit a bid or proposal had the contract been procured

12318 through competitive sealed bidding or competitive negotiation.

12319 "Professional services" means work performed by an independent contractor within the scope of the
12320 practice of accounting, actuarial services, architecture, land surveying, landscape architecture, law,
12321 dentistry, medicine, optometry, pharmacy or professional engineering.

12322 "Public body" means any legislative, executive or judicial body, agency, office, department, authority,
12323 post, commission, committee, institution, board or political subdivision created by law to exercise some
12324 sovereign power or to perform some governmental duty, and empowered by law to undertake the
12325 activities described in these Rules.

12326 "Public contract" means an agreement between the Institution and a nongovernmental source that is
12327 enforceable in a court of law.

12328 "Responsible bidder" or "responsible offeror" means a person who has the capability, in all respects,
12329 to perform fully the contract requirements and the moral and business integrity and reliability that will
12330 assure good faith performance, and who has been prequalified, if required.

12331 "Responsive bidder" means a person who has submitted a bid that conforms in all material respects
12332 to the Invitation to Bid.

12333 "Restructuring Act" or "Act" means the Restructured Higher Education Financial and Administrative
12334 Operations Act, Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia.

12335 "Reverse auctioning" means a procurement method wherein bidders are invited to bid on specified
12336 goods or nonprofessional services through real-time electronic bidding, with the award being made to
12337 the lowest responsive and responsible bidder. During the bidding process, bidders' prices are revealed
12338 and bidders shall have the opportunity to modify their bid prices for the duration of the time period
12339 established for bid opening.

12340 "Rules" means these Rules Governing Procurement of Goods, Services, Insurance, and Construction
12341 adopted by the governing body of the Covered Institution.

12342 "Services" means any work performed by an independent contractor wherein the service rendered
12343 does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials
12344 and supplies.

12345 "Sheltered workshop" means a work-oriented rehabilitative facility with a controlled working
12346 environment and individual goals that utilizes work experience and related services for assisting the
12347 handicapped person to progress toward normal living and a productive vocational status.

12348 § 5. Methods of procurement.

12349 A. All public contracts with nongovernmental contractors for the purchase or lease of goods, or for
12350 the purchase of services, insurance, or construction, shall be awarded after competitive sealed bidding, or
12351 competitive negotiation as provided in this section, unless otherwise authorized by law.

12352 B. Professional services shall be procured by competitive negotiation. Qualification-based selection
12353 shall be used for design services.

12354 C. Goods, services, or insurance may be procured by competitive negotiation.

12355 D. Construction may be procured only by competitive sealed bidding, except that competitive
12356 negotiation may be used in the following instances upon a determination made in advance by the
12357 Institution and set forth in writing that competitive sealed bidding is either not practicable or not fiscally
12358 advantageous to the public, which writing shall document the basis for this determination:

- 12359 1. By the Institution on a fixed price design-build basis or construction management basis under § 7;
- 12360 2. By the Institution for the construction, alteration, repair, renovation or demolition of buildings; or
- 12361 3. By the Institution for the construction of highways and any draining, dredging, excavation, grading
12362 or similar work upon real property.

12363 E. Upon a determination in writing that there is only one source practicably available for that which
12364 is to be procured, a contract may be negotiated and awarded to that source without competitive sealed
12365 bidding or competitive negotiation. The writing shall document the basis for this determination. The
12366 Institution shall issue a written notice stating that only one source was determined to be practicably
12367 available, and identifying that which is being procured, the contractor selected, and the date on which
12368 the contract was or will be awarded. This notice shall be posted in a designated public area, which may
12369 be the Department of General Services' website for the Commonwealth's central electronic procurement
12370 system, or published in a newspaper of general circulation on the day the Institution awards or
12371 announces its decision to award the contract, whichever occurs first. Public notice shall also be
12372 published on the Department of General Services' website for the Commonwealth's central electronic
12373 procurement system and may be published on other appropriate websites.

12374 F. In case of emergency, a contract may be awarded without competitive sealed bidding or
12375 competitive negotiation; however, such procurement shall be made with such competition as is
12376 practicable under the circumstances. A written determination of the basis for the emergency and for the
12377 selection of the particular contractor shall be included in the contract file. The Institution shall issue a
12378 written notice stating that the contract is being awarded on an emergency basis, and identifying that

12379 which is being procured, the contractor selected, and the date on which the contract was or will be
 12380 awarded. This notice shall be posted in a designated public area, which may be the Department of
 12381 General Services' website for the Commonwealth's central electronic procurement system, or published
 12382 in a newspaper of general circulation on the day the Institution awards or announces its decision to
 12383 award the contract, whichever occurs first, or as soon thereafter as is practicable. Public notice may also
 12384 be published on the Department of General Services' website for the Commonwealth's central electronic
 12385 procurement system and other appropriate websites.

12386 G. The Institution may establish purchase procedures, if adopted in writing, not requiring competitive
 12387 sealed bids or competitive negotiation for single or term contracts for goods and services other than
 12388 professional services if the aggregate or the sum of all phases is not expected to exceed \$50,000;
 12389 however, such small purchase procedures shall provide for competition wherever practicable.

12390 H. The Institution may establish purchase procedures, if adopted in writing, not requiring competitive
 12391 negotiation for single or term contracts for professional services if the aggregate or the sum of all phases
 12392 is not expected to exceed \$50,000; however such small purchase procedures shall provide for
 12393 competition wherever practicable.

12394 I. Upon a determination made in advance by the Institution and set forth in writing that the purchase
 12395 of goods, products or commodities from a public auction sale is in the best interests of the public, such
 12396 items may be purchased at the auction, including online public auctions. The writing shall document the
 12397 basis for this determination.

12398 J. The purchase of goods or nonprofessional services, but not construction or professional services,
 12399 may be made by reverse auctioning.

12400 § 6. Cooperative procurement.

12401 A. In circumstances where the Institution determines and documents that statewide contracts for
 12402 goods and services, including information technology and telecommunications goods and services, do not
 12403 provide goods and services to the Institution that meet its business goals and objectives, the Institution is
 12404 authorized to participate in, sponsor, conduct, or administer a cooperative procurement arrangement on
 12405 behalf of or in conjunction with public bodies, public or private health or educational institutions, other
 12406 public or private organizations or entities, including public-private partnerships, charitable organizations,
 12407 health care provider alliances or purchasing organizations or entities, or with public agencies or
 12408 institutions or group purchasing organizations of the several states, territories of the United States, or the
 12409 District of Columbia, for the purpose of combining requirements to effect cost savings or reduce
 12410 administrative expense in any acquisition of goods and services, other than professional services. The
 12411 Institution may purchase from any authority, department, agency, institution, city, county, town, or other
 12412 political subdivision of the Commonwealth's contract even if it did not participate in the request for
 12413 proposal or invitation to bid, if the request for proposal or invitation to bid specified that the
 12414 procurement was being conducted on behalf of other public bodies. In such instances, deviation from the
 12415 procurement procedures set forth in these Rules and the administrative policies and procedures
 12416 established to implement these Rules shall be permitted. Notwithstanding all of the above, use of
 12417 cooperative contracts shall conform to the business requirements of the Commonwealth's electronic
 12418 procurement system, including the requirement for payment of applicable fees. Nothing herein shall
 12419 prohibit the payment by direct or indirect means of any administrative fee that will allow for
 12420 participation in any such arrangement.

12421 B. In circumstances where statewide contracts for goods and services, including information
 12422 technology and telecommunications goods and services, do not provide goods and services to meet the
 12423 Institution's business goals and objectives, and as authorized by the United States Congress and
 12424 consistent with applicable federal regulations, and provided the terms of the contract permit such
 12425 purchases:

12426 1. The Institution may purchase goods and nonprofessional services, from a United States General
 12427 Services Administration contract or a contract awarded by any other agency of the United States
 12428 government; and

12429 2. The Institution may purchase telecommunications and information technology goods and
 12430 nonprofessional services from a United States General Services Administration contract or a contract
 12431 awarded by any other agency of the United States government.

12432 § 7. Design-build or construction management contracts authorized.

12433 A. Notwithstanding any other provisions of law, the Institution may enter into contracts on a fixed
 12434 price design-build basis or construction management basis in accordance with the provisions of this
 12435 section.

12436 B. Procurement of construction by the design-build or construction management method shall be a
 12437 two-step competitive negotiation process. In the first step, offerors shall be requested to submit their
 12438 qualifications. Based upon the information submitted and any other relevant information which the
 12439 Commonwealth may obtain, no more than five offerors deemed most suitable for the project shall be

selected by the Commonwealth and requested to submit proposals.

§ 8. Modification of the contract.

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

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

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

5. The contractor or any officer, director, owner, project manager, procurement manager or chief

12562 financial official thereof has been convicted within the past 10 years of a crime related to governmental
 12563 or nongovernmental construction or contracting, including, but not limited to, a violation of (i) Article 6
 12564 (§ 2.2-4367 et seq.) of Chapter 43 of Title 2.2 of the Code of Virginia, (ii) the Virginia Governmental
 12565 Frauds Act (§ 18.2-498.1 et seq.) of the Code of Virginia, (iii) Chapter 4.2 (§ 59.1-68.6 et seq.) of Title
 12566 59.1 of the Code of Virginia, or (iv) any substantially similar law of the United States or another state;

12567 6. The contractor or any officer, director or owner thereof is currently debarred pursuant to an
 12568 established debarment procedure from bidding or contracting by any public body, agency of another
 12569 state or agency of the federal government;

12570 7. The contractor failed to provide to the Institution in a timely manner any information requested by
 12571 the Institution relevant to subdivisions 1 through 6 of this subsection.

12572 § 15. Negotiation with lowest responsible bidder.

12573 Unless canceled or rejected, a responsive bid from the lowest responsible bidder shall be accepted as
 12574 submitted, except that if the bid from the lowest responsible bidder exceeds available funds, the
 12575 Institution may negotiate with the apparent low bidder to obtain a contract price within available funds.
 12576 However, the negotiation may be undertaken only under conditions and procedures described in writing
 12577 and approved by the Institution prior to issuance of the Invitation to Bid and summarized therein.

12578 § 16. Cancellation, rejection of bids; waiver of informalities.

12579 A. An Invitation to Bid, a Request for Proposal, any other solicitation, or any and all bids or
 12580 proposals, may be canceled or rejected. The reasons for cancellation or rejection shall be made part of
 12581 the contract file. The Institution shall not cancel or reject an Invitation to Bid, a Request for Proposal,
 12582 any other solicitation, bid or proposal pursuant to this section solely to avoid awarding a contract to a
 12583 particular responsive and responsible bidder or offeror.

12584 B. The Institution may waive informalities in bids.

12585 § 17. Exclusion of insurance bids prohibited.

12586 Notwithstanding any other provision of law, no insurer licensed to transact the business of insurance
 12587 in the Commonwealth or approved to issue surplus lines insurance in the Commonwealth shall be
 12588 excluded from presenting an insurance bid proposal to the Institution in response to a request for
 12589 proposal or an invitation to bid. Nothing in this section shall preclude the Institution from debarring a
 12590 prospective insurer pursuant to § 18.

12591 § 18. Debarment.

12592 Prospective contractors may be debarred from contracting for particular types of supplies, services,
 12593 insurance or construction, for specified periods of time. Any debarment procedure shall be established in
 12594 writing by the Institution. Any debarment procedure may provide for debarment on the basis of a
 12595 contractor's unsatisfactory performance for the Institution.

12596 § 19. Purchase programs for recycled goods; Institution responsibilities.

12597 A. The Institution may implement a purchase program for recycled goods and may coordinate its
 12598 efforts so as to achieve the goals and objectives set forth in §§ 10.1-1425.6, 10.1-1425.7, and
 12599 10.1-1425.8 of the Code of Virginia, and §§ 20 and 22 of these Rules.

12600 B. The Department of Environmental Quality, with advice from the Virginia Recycling Markets
 12601 Development Council, shall advise the Institution concerning the designation of recycled goods.

12602 § 20. Preference for Virginia products with recycled content and for Virginia firms.

12603 A. In the case of a tie bid, preference shall be given to goods produced in Virginia and goods or
 12604 services or construction provided by Virginia persons, firms or corporations; otherwise the tie shall be
 12605 decided by lot.

12606 B. Whenever any bidder is a resident of any other state and such state under its laws allows a
 12607 resident contractor of that state a preference, a like preference may be allowed by the Institution to the
 12608 lowest responsive and responsible bidder who is a resident of Virginia.

12609 C. Notwithstanding the provisions of subsections A and B, in the case of a tie bid in instances where
 12610 goods are being offered, and existing price preferences have already been taken into account, preference
 12611 shall be given to the bidder whose goods contain the greatest amount of recycled content.

12612 § 21. Preference for Virginia coal used in the Institution.

12613 In determining the award of any contract for coal to be purchased for use in the Institution with state
 12614 funds, the Institution shall procure using competitive sealed bidding and shall award to the lowest
 12615 responsive and responsible bidder offering coal mined in Virginia so long as its bid price is not more
 12616 than 4 percent greater than the bid price of the lowest responsive and responsible bidder offering coal
 12617 mined elsewhere.

12618 § 22. Preference for recycled paper and paper products used by the Institution.

12619 A. In determining the award of any contract for paper and paper products to be purchased for use by
 12620 the Institution, it shall competitively procure recycled paper and paper products of a quality suitable for
 12621 the purpose intended, so long as the price is not more than 10 percent greater than the price of the
 12622 lowest responsive and responsible bidder or offeror offering a product that does not qualify under

12623 subsection B.

12624 B. For purposes of this section, recycled paper and paper products means any paper or paper
12625 products meeting the EPA Recommended Content Standards as defined in 40 C.F.R. Part 247.

12626 § 23. Withdrawal of bid due to error.

12627 A. A bidder for a public construction contract, other than a contract for construction or maintenance
12628 of public highways, may withdraw his bid from consideration if the price bid was substantially lower
12629 than the other bids due solely to a mistake in the bid, provided the bid was submitted in good faith, and
12630 the mistake was a clerical mistake as opposed to a judgment mistake, and was actually due to an
12631 unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made
12632 directly in the compilation of a bid, which unintentional arithmetic error or unintentional omission can
12633 be clearly shown by objective evidence drawn from inspection of original work papers, documents and
12634 materials used in the preparation of the bid sought to be withdrawn.

12635 If a bid contains both clerical and judgment mistakes, a bidder may withdraw his bid from
12636 consideration if the price bid would have been substantially lower than the other bids due solely to the
12637 clerical mistake, that was an unintentional arithmetic error or an unintentional omission of a quantity of
12638 work, labor or material made directly in the compilation of a bid that shall be clearly shown by
12639 objective evidence drawn from inspection of original work papers, documents and materials used in the
12640 preparation of the bid sought to be withdrawn.

12641 One of the following procedures for withdrawal of a bid shall be selected by the Institution and
12642 stated in the advertisement for bids: (i) the bidder shall give notice in writing of his claim of right to
12643 withdraw his bid within two business days after the conclusion of the bid opening procedure and shall
12644 submit original work papers with such notice; or (ii) the bidder shall submit to the Institution or
12645 designated official his original work papers, documents and materials used in the preparation of the bid
12646 within one day after the date fixed for submission of bids. The work papers shall be delivered by the
12647 bidder in person or by registered mail at or prior to the time fixed for the opening of bids. In either
12648 instance, the work papers, documents and materials may be considered as trade secrets or proprietary
12649 information subject to the conditions of subsection F of § 34 of these Rules. The bids shall be opened
12650 one day following the time fixed by the Institution for the submission of bids. Thereafter, the bidder
12651 shall have two hours after the opening of bids within which to claim in writing any mistake as defined
12652 herein and withdraw his bid. The contract shall not be awarded by the Institution until the two-hour
12653 period has elapsed. The mistake shall be proved only from the original work papers, documents and
12654 materials delivered as required herein.

12655 B. The Institution may establish procedures for the withdrawal of bids for other than construction
12656 contracts.

12657 C. No bid shall be withdrawn under this section when the result would be the awarding of the
12658 contract on another bid of the same bidder or of another bidder in which the ownership of the
12659 withdrawing bidder is more than 5 percent.

12660 D. If a bid is withdrawn in accordance with this section, the lowest remaining bid shall be deemed to
12661 be the low bid.

12662 E. No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or
12663 labor to or perform any subcontract or other work agreement for the person or firm to whom the
12664 contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for
12665 which the withdrawn bid was submitted.

12666 F. If the Institution denies the withdrawal of a bid under the provisions of this section, it shall notify
12667 the bidder in writing stating the reasons for its decision and award the contract to such bidder at the bid
12668 price, provided such bidder is a responsible and responsive bidder.

12669 § 24. Contract Pricing Arrangements.

12670 A. Public contracts may be awarded on a fixed price or cost reimbursement basis, or on any other
12671 basis that is not prohibited by these Rules.

12672 B. Except in case of emergency affecting the public health, safety or welfare, no public contract shall
12673 be awarded on the basis of cost plus a percentage of cost.

12674 C. A policy or contract of insurance or prepaid coverage having a premium computed on the basis of
12675 claims paid or incurred, plus the insurance carrier's administrative costs and retention stated in whole or
12676 part as a percentage of such claims, shall not be prohibited by this section.

12677 § 25. Workers' compensation requirements for construction contractors and subcontractors.

12678 A. No contractor shall perform any work on a construction project of the Institution unless he (i) has
12679 obtained, and continues to maintain for the duration of the work, workers' compensation coverage
12680 required pursuant to the provisions of Chapter 8 (§ 65.2-800 et seq.) of Title 65.2 of the Code of
12681 Virginia, and (ii) provides prior to the award of contract, on a form furnished by the Institution,
12682 evidence of such coverage.

12683 B. The Department of General Services shall provide the form to the Institution. Failure of the

12684 Institution to provide the form prior to the award of contract shall waive the requirements of clause (ii)
12685 of subsection A.

12686 C. No subcontractor shall perform any work on a construction project of the Institution unless he has
12687 obtained, and continues to maintain for the duration of such work, workers' compensation coverage
12688 required pursuant to the provisions of Chapter 8 (§ 65.2-800 et seq.) of Title 65.2 of the Code of
12689 Virginia.

12690 § 26. Retainage on construction contracts.

12691 A. In any contract issued by the Institution for construction that provides for progress payments in
12692 installments based upon an estimated percentage of completion, the contractor shall be paid at least 95
12693 percent of the earned sum when payment is due, with no more than 5 percent being retained to ensure
12694 faithful performance of the contract. All amounts withheld may be included in the final payment.

12695 B. Any subcontract for a public project that provides for similar progress payments shall be subject
12696 to the provisions of this section.

12697 § 27. Public construction contract provisions barring damages for unreasonable delays declared void.

12698 A. Any provision contained in any public construction contract of the Institution that purports to
12699 waive, release, or extinguish the rights of a contractor to recover costs or damages for unreasonable
12700 delay in performing such contract, either on his behalf or on behalf of his subcontractor if and to the
12701 extent the delay is caused by acts or omissions of the Institution, its agents or employees and due to
12702 causes within their control shall be void and unenforceable as against public policy.

12703 B. Subsection A shall not be construed to render void any provision of a public construction contract
12704 awarded by the Institution that:

12705 1. Allows the recovery of that portion of delay costs caused by the acts or omissions of the
12706 contractor, or its subcontractors, agents or employees;

12707 2. Requires notice of any delay by the party claiming the delay;

12708 3. Provides for liquidated damages for delay; or

12709 4. Provides for arbitration or any other procedure designed to settle contract disputes.

12710 C. A contractor making a claim against the Institution for costs or damages due to the alleged
12711 delaying of the contractor in the performance of its work under any public construction contract of the
12712 Institution shall be liable to the Institution and shall pay it for a percentage of all costs incurred by the
12713 Institution in investigating, analyzing, negotiating, litigating and arbitrating the claim, which percentage
12714 shall be equal to the percentage of the contractor's total delay claim that is determined through litigation
12715 or arbitration to be false or to have no basis in law or in fact.

12716 D. If the Institution denies a contractor's claim for costs or damages due to the alleged delaying of
12717 the contractor in the performance of work under any public construction contract for the Institution, it
12718 shall be liable to and shall pay such contractor a percentage of all costs incurred by the contractor to
12719 investigate, analyze, negotiate, litigate and arbitrate the claim. The percentage paid by the Institution
12720 shall be equal to the percentage of the contractor's total delay claim for which the Institution's denial is
12721 determined through litigation or arbitration to have been made in bad faith.

12722 § 28. Bid bonds.

12723 A. Except in cases of emergency, all bids or proposals for construction contracts in excess of \$1
12724 million shall be accompanied by a bid bond from a surety company selected by the bidder that is
12725 authorized to do business in Virginia, as a guarantee that if the contract is awarded to the bidder, he will
12726 enter into the contract for the work mentioned in the bid. The amount of the bid bond shall not exceed
12727 5 percent of the amount bid.

12728 B. No forfeiture under a bid bond shall exceed the lesser of (i) the difference between the bid for
12729 which the bond was written and the next low bid, or (ii) the face amount of the bid bond.

12730 C. Nothing in this section shall preclude the Institution from requiring bid bonds to accompany bids
12731 or proposals for construction contracts anticipated to be less than \$1 million.

12732 § 29. Performance and payment bonds.

12733 A. Upon the award by the Institution of any (i) public construction contract exceeding \$1 million
12734 awarded to any prime contractor or (ii) public construction contract exceeding \$1 million awarded to
12735 any prime contractor requiring the performance of labor or the furnishing of materials for buildings,
12736 structures or other improvements to real property owned by the Institution, the contractor shall furnish to
12737 the Institution the following bonds:

12738 1. Except for transportation-related projects, a performance bond in the sum of the contract amount
12739 conditioned upon the faithful performance of the contract in strict conformity with the plans,
12740 specifications and conditions of the contract. For transportation-related projects, such bond shall be in a
12741 form and amount satisfactory to the Institution.

12742 2. A payment bond in the sum of the contract amount. The bond shall be for the protection of
12743 claimants who have and fulfill contracts to supply labor or materials to the prime contractor to whom
12744 the contract was awarded, or to any subcontractors, in furtherance of the work provided for in the

12745 contract, and shall be conditioned upon the prompt payment for all materials furnished or labor supplied
 12746 or performed in the furtherance of the work.

12747 "Labor or materials" shall include public utility services and reasonable rentals of equipment, but
 12748 only for periods when the equipment rented is actually used at the site.

12749 B. Each of the bonds shall be executed by one or more surety companies selected by the contractor
 12750 that are authorized to do business in Virginia.

12751 C. The bonds shall be payable to the Commonwealth of Virginia naming also the Institution.

12752 D. Each of the bonds shall be filed with the Institution, or a designated office or official thereof.

12753 E. Nothing in this section shall preclude the Institution from requiring payment or performance bonds
 12754 for construction contracts below \$1 million.

12755 F. Nothing in this section shall preclude the contractor from requiring each subcontractor to furnish a
 12756 payment bond with surety thereon in the sum of the full amount of the contract with such subcontractor
 12757 conditioned upon the payment to all persons who have and fulfill contracts that are directly with the
 12758 subcontractor for performing labor and furnishing materials in the prosecution of the work provided for
 12759 in the subcontract.

12760 § 30. Alternative forms of security.

12761 A. In lieu of a bid, payment, or performance bond, a bidder may furnish a certified check or cash
 12762 escrow in the face amount required for the bond.

12763 B. If approved by the Institution's General Counsel or his equivalent, a bidder may furnish to the
 12764 Institution a personal bond, property bond, or bank or savings institution's letter of credit on certain
 12765 designated funds in the face amount required for the bid, payment or performance bond. Approval shall
 12766 be granted only upon a determination that the alternative form of security proffered affords protection to
 12767 the Institution equivalent to a corporate surety's bond.

12768 § 31. Bonds on other than construction contracts.

12769 The Institution may require bid, payment, or performance bonds for contracts for goods or services if
 12770 provided in the Invitation to Bid or Request for Proposal.

12771 § 32. Action on performance bond.

12772 No action against the surety on a performance bond shall be brought by the Institution unless
 12773 brought within one year after (i) completion of the contract, including the expiration of all warranties
 12774 and guarantees, or (ii) discovery of the defect or breach of warranty that gave rise to the action.

12775 § 33. Actions on payment bonds; waiver of right to sue.

12776 A. Subject to the provisions of subsection B, any claimant who has performed labor or furnished
 12777 material in accordance with the contract documents in furtherance of the work provided in any contract
 12778 for which a payment bond has been given, and who has not been paid in full before the expiration of 90
 12779 days after the day on which the claimant performed the last of the labor or furnished the last of the
 12780 materials for which he claims payment, may bring an action on the payment bond to recover any
 12781 amount due him for the labor or material. The obligee named in the bond need not be named a party to
 12782 the action.

12783 B. Any claimant who has a direct contractual relationship with any subcontractor but who has no
 12784 contractual relationship, express or implied, with the contractor, may bring an action on the contractor's
 12785 payment bond only if he has given written notice to the contractor within 180 days from the day on
 12786 which the claimant performed the last of the labor or furnished the last of the materials for which he
 12787 claims payment, stating with substantial accuracy the amount claimed and the name of the person for
 12788 whom the work was performed or to whom the material was furnished. Notice to the contractor shall be
 12789 served by registered or certified mail, postage prepaid, in an envelope addressed to such contractor at
 12790 any place where his office is regularly maintained for the transaction of business. Claims for sums
 12791 withheld as retainages with respect to labor performed or materials furnished, shall not be subject to the
 12792 time limitations stated in this subsection.

12793 C. Any action on a payment bond shall be brought within one year after the day on which the
 12794 person bringing such action last performed labor or last furnished or supplied materials.

12795 D. Any waiver of the right to sue on the payment bond required by this section shall be void unless
 12796 it is in writing, signed by the person whose right is waived, and executed after such person has
 12797 performed labor or furnished material in accordance with the contract documents.

12798 § 34. Public inspection of certain records.

12799 A. Except as provided in this section, all proceedings, records, contracts and other public records
 12800 relating to procurement transactions shall be open to the inspection of any citizen, or any interested
 12801 person, firm or corporation, in accordance with the Virginia Freedom of Information Act (§ 2.2-3700 et
 12802 seq.).

12803 B. Cost estimates relating to a proposed procurement transaction prepared by or for the Institution
 12804 shall not be open to public inspection.

12805 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 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.

12928 "Debtor" means any individual, business, or group having a delinquent debt or account with any state
12929 agency that obligation has not been satisfied or set aside by court order or discharged in bankruptcy.

12930 "Payment date" means either (i) the date on which payment is due under the terms of a contract for
12931 provision of goods or services; or (ii) if such date has not been established by contract, (a) 30 days after
12932 receipt of a proper invoice by the Institution or its agent or (b) 30 days after receipt of the goods or
12933 services by the Institution.

12934 "Subcontractor" means any entity that has a contract to supply labor or materials to the contractor to
12935 whom the contract was awarded or to any subcontractor in the performance of the work provided for in
12936 such contract.

12937 § 40. Exemptions.

12938 The provisions of §§ 39 through 46 shall not apply to the late payment provisions contained in any
12939 public utility tariffs prescribed by the State Corporation Commission.

12940 § 41. Retainage to remain valid.

12941 Notwithstanding the provisions of §§ 39 through 46, the provisions of § 26 relating to retainage shall
12942 remain valid.

12943 § 42. Prompt payment of bills by the Institution.

12944 A. The Institution shall promptly pay for the completely delivered goods or services by the required
12945 payment date.

12946 Payment shall be deemed to have been made when offset proceedings have been instituted, as
12947 authorized under the Virginia Debt Collection Act (§ 2.2-4800 et seq.).

12948 B. Separate payment dates may be specified for contracts under which goods or services are provided
12949 in a series of partial deliveries or executions to the extent that such contract provides for separate
12950 payment for such partial delivery or execution.

12951 § 43. Defect or impropriety in the invoice or goods and/or services received.

12952 In instances where there is a defect or impropriety in an invoice or in the goods or services received,
12953 the Institution shall notify the supplier of the defect or impropriety, if the defect or impropriety would
12954 prevent payment by the payment date. The notice shall be sent within 15 days after receipt of the
12955 invoice or the goods or services.

12956 § 44. Date of postmark deemed to be date payment is made.

12957 In those cases where payment is made by mail, the date of postmark shall be deemed to be the date
12958 payment is made for purposes of these Rules.

12959 § 45. Payment clauses to be included in contracts.

12960 Any contract awarded by the Institution shall include:

12961 1. A payment clause that obligates the contractor to take one of the two following actions within
12962 seven days after receipt of amounts paid to the contractor by the Institution for work performed by the
12963 subcontractor under that contract:

12964 a. Pay the subcontractor for the proportionate share of the total payment received from the Institution
12965 attributable to the work performed by the subcontractor under that contract; or

12966 b. Notify the Institution and subcontractor, in writing, of his intention to withhold all or a part of the
12967 subcontractor's payment with the reason for nonpayment.

12968 2. A payment clause that requires (i) individual contractors to provide their social security numbers
12969 and (ii) proprietorships, partnerships, and corporations to provide their federal employer identification
12970 numbers.

12971 3. An interest clause that obligates the contractor to pay interest to the subcontractor on all amounts
12972 owed by the contractor that remain unpaid after seven days following receipt by the contractor of
12973 payment from the Institution for work performed by the subcontractor under that contract, except for
12974 amounts withheld as allowed in subdivision 1b.

12975 4. An interest rate clause stating, "Unless otherwise provided under the terms of this contract, interest
12976 shall accrue at the rate of 1 percent per month."

12977 Any such contract awarded shall further require the contractor to include in each of its subcontracts a
12978 provision requiring each subcontractor to include or otherwise be subject to the same payment and
12979 interest requirements with respect to each lower-tier subcontractor.

12980 A contractor's obligation to pay an interest charge to a subcontractor pursuant to the payment clause
12981 in this section shall not be construed to be an obligation of the Institution. A contract modification shall
12982 not be made for the purpose of providing reimbursement for the interest charge. A cost reimbursement
12983 claim shall not include any amount for reimbursement for the interest charge.

12984 § 46. Interest penalty; exceptions.

12985 A. Interest shall accrue, at the rate determined pursuant to subsection B, on all amounts owed by the
12986 Institution to a vendor that remain unpaid after seven days following the payment date. However,
12987 nothing in this section shall affect any contract providing for a different rate of interest, or for the
12988 payment of interest in a different manner.

12989 B. The rate of interest charged the Institution pursuant to subsection A shall be the base rate on
 12990 corporate loans (prime rate) at large United States money center commercial banks as reported daily in
 12991 the publication entitled The Wall Street Journal. Whenever a split prime rate is published, the lower of
 12992 the two rates shall be used. However, in no event shall the rate of interest charged exceed the rate of
 12993 interest established pursuant to § 58.1-1812 of the Code of Virginia.

12994 C. Notwithstanding subsection A, no interest penalty shall be charged when payment is delayed
 12995 because of disagreement between the Institution and a vendor regarding the quantity, quality or time of
 12996 delivery of goods or services or the accuracy of any invoice received for the goods or services. The
 12997 exception from the interest penalty provided by this subsection shall apply only to that portion of a
 12998 delayed payment that is actually the subject of the disagreement and shall apply only for the duration of
 12999 the disagreement.

13000 D. This section shall not apply to § 26 pertaining to retainage on construction contracts, during the
 13001 period of time prior to the date the final payment is due. Nothing contained herein shall prevent a
 13002 contractor from receiving interest on such funds under an approved escrow agreement.

13003 E. Notwithstanding subsection A, no interest penalty shall be paid to any debtor on any payment, or
 13004 portion thereof, withheld pursuant to the Comptroller's Debt Setoff Program, as authorized by the
 13005 Virginia Debt Collection Act (§ 2.2-4800 et seq.) of the Code of Virginia, commencing with the date the
 13006 payment is withheld. If, as a result of an error, a payment or portion thereof is withheld, and it is
 13007 determined that at the time of setoff no debt was owed to the Commonwealth, then interest shall accrue
 13008 at the rate determined pursuant to subsection B on amounts withheld that remain unpaid after seven days
 13009 following the payment date.

13010 § 47. Ineligibility.

13011 A. Any bidder, offeror or contractor refused permission to participate, or disqualified from
 13012 participation, in public contracts to be issued by the Institution shall be notified in writing. Prior to the
 13013 issuance of a written determination of disqualification or ineligibility, the Institution shall (i) notify the
 13014 bidder in writing of the results of the evaluation, (ii) disclose the factual support for the determination,
 13015 and (iii) allow the bidder an opportunity to inspect any documents that relate to the determination, if so
 13016 requested by the bidder within five business days after receipt of the notice.

13017 Within 10 business days after receipt of the notice, the bidder may submit rebuttal information
 13018 challenging the evaluation. The Institution shall issue its written determination of disqualification or
 13019 ineligibility based on all information in the possession of the Institution, including any rebuttal
 13020 information, within five business days of the date the Institution received such rebuttal information.

13021 If the evaluation reveals that the bidder, offeror or contractor should be allowed permission to
 13022 participate in the public contract, the Institution shall cancel the proposed disqualification action. If the
 13023 evaluation reveals that the bidder should be refused permission to participate, or disqualified from
 13024 participation, in the public contract, the Institution shall so notify the bidder, offeror or contractor. The
 13025 notice shall state the basis for the determination, which shall be final unless the bidder appeals the
 13026 decision within 10 days after receipt of the notice by invoking administrative procedures meeting the
 13027 standards of § 55 of these Rules, if available, or in the alternative by instituting legal action as provided
 13028 in § 54.

13029 B. If, upon appeal, it is determined that the action taken was arbitrary or capricious, or not in
 13030 accordance with the Constitution of Virginia, applicable state law or regulations, the sole relief shall be
 13031 restoration of eligibility.

13032 § 48. Appeal of denial of withdrawal of bid.

13033 A. A decision denying withdrawal of bid under the provisions of § 23 of these Rules shall be final
 13034 and conclusive unless the bidder appeals the decision within 10 days after receipt of the decision by
 13035 invoking administrative procedures meeting the standards of § 55, if available, or in the alternative by
 13036 instituting legal action as provided in § 54.

13037 B. If no bid bond was posted, a bidder refused withdrawal of a bid under the provisions of § 23,
 13038 prior to appealing, shall deliver to the Institution a certified check or cash bond in the amount of the
 13039 difference between the bid sought to be withdrawn and the next low bid. Such security shall be released
 13040 only upon a final determination that the bidder was entitled to withdraw the bid.

13041 C. If, upon appeal, it is determined that the decision refusing withdrawal of the bid was not (i) an
 13042 honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the
 13043 Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to
 13044 Bid, the sole relief shall be withdrawal of the bid.

13045 § 49. Determination of nonresponsibility.

13046 A. Following public opening and announcement of bids received on an Invitation to Bid, the
 13047 Institution shall evaluate the bids in accordance with element 4 of the definition of "Competitive sealed
 13048 bidding" in § 4 of these Rules. At the same time, the Institution shall determine whether the apparent
 13049 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

13111 capricious, then the sole relief shall be as hereinafter provided.

13112 Where the award has been made but performance has not begun, the performance of the contract
 13113 may be enjoined. Where the award has been made and performance has begun, the Institution may
 13114 declare the contract void upon a finding that this action is in the best interest of the public. Where a
 13115 contract is declared void, the performing contractor shall be compensated for the cost of performance up
 13116 to the time of such declaration. In no event shall the performing contractor be entitled to lost profits.

13117 C. Where the Institution, an official designated by it, or an appeals board determines, after a hearing
 13118 held following reasonable notice to all bidders, that there is probable cause to believe that a decision to
 13119 award was based on fraud or corruption or on an act in violation of these Rules, the Institution,
 13120 designated official or appeals board may enjoin the award of the contract to a particular bidder.

13121 § 51. Effect of appeal upon contract.

13122 Pending final determination of a protest or appeal, the validity of a contract awarded and accepted in
 13123 good faith in accordance with these Rules shall not be affected by the fact that a protest or appeal has
 13124 been filed.

13125 § 52. Stay of award during protest.

13126 An award need not be delayed for the period allowed a bidder or offeror to protest, but in the event
 13127 of a timely protest as provided in § 50 of these Rules, or the filing of a timely legal action as provided
 13128 in § 54, no further action to award the contract shall be taken unless there is a written determination that
 13129 proceeding without delay is necessary to protect the public interest or unless the bid or offer would
 13130 expire.

13131 § 53. Contractual disputes.

13132 A. Contractual claims, whether for money or other relief, shall be submitted in writing no later than
 13133 60 days after final payment. However, written notice of the contractor's intention to file a claim shall be
 13134 given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing
 13135 herein shall preclude a contract from requiring submission of an invoice for final payment within a
 13136 certain time after completion and acceptance of the work or acceptance of the goods. Pendency of
 13137 claims shall not delay payment of amounts agreed due in the final payment.

13138 B. The Institution shall include in its contracts a procedure for consideration of contractual claims.
 13139 Such procedure, which may be contained in the contract or may be specifically incorporated into the
 13140 contract by reference and made available to the contractor, shall establish a time limit for a final
 13141 decision in writing by the Institution. If the Institution has established administrative procedures meeting
 13142 the standards of § 55 of these Rules, such procedures shall be contained in the contract or specifically
 13143 incorporated in the contract by reference and made available to the contractor. The Institution may
 13144 require the submission of contractual claims pursuant to any contract to Alternative Dispute Resolution
 13145 (ADR) as an administrative procedure.

13146 C. A contractor may not invoke administrative procedures meeting the standards of § 55 of these
 13147 Rules, if available, or institute legal action as provided in § 54, prior to receipt of the Institution's
 13148 decision on the claim, unless the Institution fails to render such decision within the time specified in the
 13149 contract.

13150 D. The decision of the Institution shall be final and conclusive unless the contractor appeals within
 13151 six months of the date of the final decision on the claim by the Institution by invoking administrative
 13152 procedures meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting
 13153 legal action as provided in § 54.

13154 § 54. Legal actions.

13155 A. A bidder or offeror, actual or prospective, who is refused permission or disqualified from
 13156 participation in bidding or competitive negotiation, or who is determined not to be a responsible bidder
 13157 or offeror for a particular contract, may bring an action in the appropriate circuit court challenging that
 13158 decision, which shall be reversed only if the petitioner establishes that the decision was not (i) an honest
 13159 exercise of discretion, but rather was arbitrary or capricious; (ii) in accordance with the Constitution of
 13160 Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid; or (iii) in
 13161 the case of denial of prequalification, based upon the criteria for denial of prequalification set forth in
 13162 subsection B of § 14 of these Rules. In the event the apparent low bidder, having been previously
 13163 determined by the Institution to be not responsible in accordance with § 4, is found by the court to be a
 13164 responsible bidder, the court may direct the Institution to award the contract to such bidder in
 13165 accordance with the requirements of this section and the Invitation to Bid.

13166 B. A bidder denied withdrawal of a bid under § 23 of these Rules may bring an action in the
 13167 appropriate circuit court challenging that decision, which shall be reversed only if the bidder establishes
 13168 that the decision of the Institution was not (i) an honest exercise of discretion, but rather was arbitrary
 13169 or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation,
 13170 or the terms or conditions of the Invitation to Bid.

13171 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, and 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.

EXHIBIT F MANAGEMENT AGREEMENT BETWEEN

THE COMMONWEALTH OF VIRGINIA
AND

VIRGINIA COMMONWEALTH UNIVERSITY
PURSUANT TO
THE RESTRUCTURED HIGHER EDUCATION
FINANCIAL AND ADMINISTRATIVE OPERATIONS
ACT OF 2005

POLICY GOVERNING FINANCIAL OPERATIONS AND MANAGEMENT
THE RECTOR AND VISITORS OF VIRGINIA COMMONWEALTH UNIVERSITY
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

13233 additional authority to institutions of higher education for financial operations and management, subject
 13234 to the adoption of policies by their governing boards and the approval of management agreements to be
 13235 negotiated with the Commonwealth.

13236 The following provisions of this Policy constitute the adopted Board of Visitors policies regarding
 13237 Virginia Commonwealth University's financial operations and management.

13238 This Policy is intended to cover the authority that may be granted to the University pursuant to
 13239 Subchapter 3 of the Act. Any other powers and authorities granted to the University pursuant to the
 13240 Appropriation Act, or any other sections of the Code of Virginia, including other provisions of the Act
 13241 and the University's Enabling Legislation, are not affected by this Policy.

13242 II. DEFINITIONS.

13243 As used in this policy, the following terms shall have the following meanings, unless the context
 13244 requires otherwise:

13245 "Act" means the Restructured Higher Education Financial and Administrative Operations Act,
 13246 Chapter 4.10 (§ 23-38.88 et seq.) of Title 23 of the Code of Virginia.

13247 "Board of Visitors" or "Board" means the Rector and Board of Visitors of Virginia Commonwealth
 13248 University.

13249 "Covered Institution" means, on or after the Effective Date of its initial Management Agreement with
 13250 the Commonwealth of Virginia, a public institution of higher education of the Commonwealth that has
 13251 entered into a Management Agreement with the Commonwealth to be governed by the provisions of
 13252 Subchapter 3 of the Act.

13253 "Effective Date" means the effective date of the initial Management Agreement between the
 13254 University and the Commonwealth.

13255 "Enabling Legislation" means those chapters, other than Chapter 4.10, of Title 23 of the Code of
 13256 Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and missions
 13257 of the University, and as provided in §§ 2.2-2817.2 and 2.2-2905.

13258 "Management Agreement" means the agreement required by subsection D of § 23-38.88 of the Act
 13259 between the University and the Commonwealth of Virginia.

13260 "State Tax Supported Debt" means bonds, notes or other obligations issued under Article X, Section
 13261 9(a), 9(b), or 9(c), or 9(d), if the debt service payments are made or ultimately are to be made from
 13262 general government funds, as defined in the December 2006 Report to the Governor and General
 13263 Assembly of the Debt Capacity Advisory Committee or as that definition is amended from time to time.

13264 "University" means Virginia Commonwealth University.

13265 III. SCOPE OF POLICY.

13266 This Policy applies to the University's responsibility for management, investment and stewardship of
 13267 all its financial resources, including but not limited to, general, non-general and private funds. This
 13268 responsibility includes maintaining an independent uniform system of accounting, financial reporting,
 13269 and internal controls adequate to protect and account for the University's financial resources.

13270 IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.

13271 The Board of Visitors of the University shall at all times be fully and ultimately accountable for the
 13272 proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation
 13273 of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant
 13274 to its legally permissible procedures, specifically delegate either herein or by separate Board resolution
 13275 the duties and responsibilities set forth in this Policy to a person or persons within the University, who,
 13276 while continuing to be fully accountable for such duties and responsibilities, may further delegate the
 13277 implementation of those duties and responsibilities pursuant to the University's usual delegation policies
 13278 and procedures.

13279 V. FINANCIAL MANAGEMENT AND REPORTING SYSTEM.

13280 The President, acting through the Senior Vice President for Finance and Administration or other
 13281 designee, shall continue to be authorized by the Board to maintain existing and implement new policies
 13282 governing the management of University financial resources. These policies shall continue to (i) ensure
 13283 compliance with Generally Accepted Accounting Principles, (ii) ensure consistency with the current
 13284 accounting principles employed by the Commonwealth, including the use of fund accounting principles,
 13285 with regard to the establishment of the underlying accounting records of the University and the
 13286 allocation and utilization of resources within the accounting system, including the relevant guidance
 13287 provided by the State Council of Higher Education for Virginia chart of accounts with regard to the
 13288 allocation and proper use of funds from specific types of fund sources, (iii) provide adequate risk
 13289 management and internal controls to protect and safeguard all financial resources, including moneys
 13290 transferred to the University pursuant to a general fund appropriation, and (iv) ensure compliance with
 13291 the requirements of the Appropriation Act.

13292 The financial management system shall continue to include a financial reporting system to satisfy
 13293 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 Senior Vice President for Finance and Administration or other designee, 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) monthly summary 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 Department of Medical Assistance Services, 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 Senior Vice President for Finance and Administration or other designee, 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 subsection A of § 23-38.104 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 12 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.

13355 Consistent with the prior paragraph, beginning with the fiscal year following the first fiscal year for
 13356 which it has received such certification from SCHEV, the University is authorized to hold and invest
 13357 tuition, Educational and General (E&G) fees, research and sponsored program funds, auxiliary enterprise
 13358 funds, and all other non-general fund revenues (excluding gift, agency and endowment funds and the
 13359 investment income thereon) subject to the following requirements:

13360 1. The University shall deposit such funds in the State Treasury pursuant to the State process in
 13361 place at the time of such deposit.

13362 2. Such non-general funds deposited in the State Treasury shall be disbursed as provided in Section
 13363 IX below.

13364 3. The University shall remit to the State Comptroller quarterly and the State Comptroller shall hold
 13365 in escrow all interest earned on the University's tuition and fees and other non-general fund Educational
 13366 and General Revenues. *Interest earned on the on the escrow account shall be deposited to the account.*
 13367 Upon receipt of the required State Council of Higher Education for Virginia certification that the
 13368 University has met such institutional performance benchmarks and the conditions prescribed in
 13369 subsection B of § 23-38.88, the Governor shall include in the next budget bill a non-general fund
 13370 appropriation, payable no later than July 1 of the immediately following fiscal year, equivalent to the
 13371 amount deposited in the escrow account as the financial incentive provided in subdivision 1 of
 13372 § 2.2-5005, after which time the University may expend the funds for purposes related to its mission. If
 13373 public institutions of higher education of the Commonwealth are permitted, or the University in
 13374 particular is permitted, by the Appropriation Act or other law to retain or be paid the interest the
 13375 Commonwealth would have earned on sponsored programs and research funds, then this paragraph shall
 13376 not apply to such interest on such funds, and such interest shall not be held in escrow.

13377 4. If in any given year the University does not receive the certification from the State Council of
 13378 Higher Education for Virginia that it has met for that year the institutional benchmarks called for by
 13379 subsection C of § 23-9.6:1.01 and approved in the then-current Appropriation Act, the Comptroller shall
 13380 transfer to the general fund the balance in the escrow account as of June 30 of that year.

13381 5. Beginning on the effective date of its initial management agreement with the University until the
 13382 beginning of the first fiscal year following the fiscal year for which it has received the required
 13383 certification from SCHEV, the University shall continue to deposit tuition and all other non-general
 13384 funds with the State Treasurer by the same process that it would have been required to use if it had not
 13385 entered into a management agreement with the Commonwealth.

13386 6. On the first business day of the first fiscal year following the fiscal year for which it has received
 13387 the required certification from SCHEV, the University may draw down all cash balances held by the
 13388 State Treasurer on behalf of the University related to tuition, E&G fees, research and sponsored
 13389 programs, auxiliary enterprises, and all other non-general fund revenues.

13390 7. The Commonwealth shall retain all funds related to general fund appropriations, but shall pay
 13391 these funds to the University as specified in Section IX below.

13392 The University also shall have sum sufficient appropriation authority for all non-general funds as
 13393 approved by the Governor and the General Assembly in the Commonwealth's biennial appropriations
 13394 process, and shall report to the Department of Planning and Budget (i) its estimate of the non-general
 13395 fund revenues for the sum sufficient appropriation to be included in the biennial Budget Bill for each of
 13396 the two years in the next biennium by November 1 of each odd-numbered year and the estimate to be
 13397 included in the Budget Bill for the first and second year of the then-current biennium by November 1 of
 13398 each even-numbered year, and (ii) report its actual non-general fund revenues for each fiscal year to the
 13399 Department of Planning and Budget by July 31 of the subsequent fiscal year.

13400 The Board of Visitors shall retain the authority to establish tuition, fee, room, board, and other
 13401 charges, with appropriate commitment provided to need-based grant aid for middle- and lower-income
 13402 undergraduate Virginians. Except as provided otherwise in the Appropriation Act then in effect, it is the
 13403 intent of the Commonwealth and the University that the University shall be exempt from the revenue
 13404 restrictions in the general provisions of the Appropriation Act related to non-general funds. In addition,
 13405 unless prohibited by the Appropriation Act then in effect, it is the intent of the Commonwealth and the
 13406 University that the University shall be entitled to retain non-general fund savings generated from
 13407 changes in Commonwealth rates and charges, including but not limited to health, life, and disability
 13408 insurance rates, retirement contribution rates, telecommunications charges, and utility rates, rather than
 13409 reverting such savings back to the Commonwealth. This financial resource policy assists the University
 13410 by providing the framework for retaining and managing non-general funds, for the receipt of general
 13411 funds, and for the use and stewardship of all these funds.

13412 The President, acting through the Senior Vice President for Finance and Administration or other
 13413 designee, shall continue to provide oversight of the University's cash management system which is the
 13414 framework for the retention of non-general funds. The Assurance Services Department of the University
 13415 shall periodically audit the University's cash management system in accordance with appropriate risk

assessment models and make reports to the Audit 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, acting through the Senior Vice President for Finance and Administration or other designee, 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, through the Senior Vice President for Finance and Administration or other designee, 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 drawing down of funds may be initiated in accordance with the following schedule:

1. 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 bi-monthly pay dates*, and up to 50 percent of its annual general fund appropriation for Student Financial Assistance on or after September 1 of each year with the remaining 50 percent to be drawn on or after February 1 of each year in order to meet student obligations;

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

3. 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 time frame agreeable to the parties, in order to cover expenditures.

These disbursement policies shall authorize the President, acting through the Senior Vice President for Finance and Administration or other 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 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 Senior Vice President for Finance and Administration or other designee, is 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 subsection B of § 23-38.108 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 the University's debt-management policy 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 Senior Vice President for Finance and Administration or other designee, 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 Senior Vice President for Finance and Administration or other 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 University 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, providing that they do not constitute State Tax Supported Debt.

The University currently has established policy relating to the total permissible amount of outstanding debt by monitoring University-wide ratios that measure debt compared to University balance-sheet resources and annual debt service burden. These measures are monitored and reviewed regularly in light of the University's current strategic initiatives and expected debt requirements. The Board of Visitors shall periodically review and approve the University's debt management policy. Any change in the current policy shall be submitted to the Treasurer of Virginia for review and comment prior to their adoption by the University.

XI. INVESTMENT POLICY.

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

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

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

XII. INSURANCE AND RISK MANAGEMENT.

By July 1 of each odd-numbered year, the University shall inform the Secretary of Finance of any intent during the next biennium to withdraw from any insurance or risk management program made available to the University through the Commonwealth's Division of Risk Management and in which the 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.

3. That the provisions of the first enactment of this Act shall expire at midnight on June 30, 2012, *provided that on or before November 15, 2011, the Governor provides to the Chairmen of the House Committee on Appropriations and the Senate Committee on Finance written notification that this Management Agreement needs to be renegotiated or revised. If such notification is not received, this Management Agreement shall continue in effect until June 30, 2015.* The expiration of such enactment shall automatically result in the expiration of the provisions of any management agreement between the Commonwealth and Virginia Commonwealth University that was entered into prior to January 1, 2008, and incorporated into this Act.