CHAPTER 11 – CONSTRUCTION SERVICES: PROCUREMENT PROCEDURES

SECTION 11.1 GENERAL

11.1.1 Sealed Bidding and Competitive Negotiations

Construction will be procured by competitive sealed bidding in accordance with the procedures of this chapter. However, competitive negotiations may be used on (1) projects using a fixed price design-build or construction management contract or (2) projects for the alteration, repair, renovation or demolition of buildings upon a determination in writing made in advance and approved by the CBO or University Architect that competitive sealed bidding is either not practicable or not fiscally advantageous to the public. See Chapter 12 for Special Procedures.

11.1.2 Contract Documents

Contract documents for capital, maintenance reserve and non-capital construction projects including, but not limited to, renovation, remodeling, demolition and repair work on buildings and other structures shall include the General Conditions of the Construction Contract HECO-7, Supplemental General Conditions – SWaM, and Supplemental General Conditions-Hazardous Waste & Disposal.

The Agency, at its discretion, may include a Supplemental General Condition to waive the requirements of Section 12 (b) of the General Conditions of the Contract, HECO-7, as it relates to the requirement for all Builders' Risk insurance for these categories of work if the Agency has, for each project, verified with the Department of Risk Management that its insurance will provide adequate coverage. Use the wording shown in the Sample in Appendix I.

11.1.3 Applicability for Small Projects

Paragraphs 11.3 through 11.5 are applicable for all projects but small project procedures in paragraph 11.2 may be used for projects valued at $500,000 or less.

11.1.4 Completeness of Design Packages

Design packages shall not be released for bidding or finalization of the Guaranteed Maximum Price (GMP) until receipt of signed/sealed WD. Early release packages or partial GMP packages may be used when a deviation is granted by the CBO or University Architect; the University PM is responsible to ensure that the design ultimately placed under contract is the final permitted design.

11.1.5 Prevailing Wage

Projects with a construction value greater than or equal to $5 million for public works, paid for in whole or in part by state general funds or by incurring state general fund debt, shall include provision of prevailing wage rates to pay wages, salaries, benefits, and other remuneration to any mechanic, laborer, or worker employed, retained, or otherwise hired to perform services. This provision shall apply to procurement for services or construction contracts initiated after July 1, 2027.

For such projects, the VCCO will coordinate with the Department of Labor and Industry to obtain project-specific prevailing wage determinations and applicable rates that will be included in the front-end documentation of the applicable project manual. The university will comply with public works contract requirements set forth in Code of Virginia § 2.2-4321.3.

11.1.5.1 – At least ten (10) but not more than twenty (20) days prior to the date the bid or RFP will be advertised or solicited, the VCCO shall contact DOLI at prevailingwage@doli.virginia.gov to request the Wage Determination for the project and provide the following information:

- Project Name and
- University and State Project Codes
- Location of Project (county or independent city)
- DOLI Construction Type (Building, Residential, Highway, Heavy)

11.1.5.2 – DOLI will respond with an official Wage Determination. The university shall include that official Wage Determination in the Project Manual immediately following the Instructions to Bidders or in the Request for Proposals with the following statement: *"Rates of pay, benefits and other remuneration for this contract shall utilize the wage determinations listed in the following Wage Determination from the Virginia Department of Labor and Industry for the purposes of compliance with Section 3 m of the General Conditions (HECO-7 series) "Payment of Prevailing Wages Pursuant to Virginia Code 2.2-4321.3".*

11.1.5.3 – For Construction Management projects, the university shall provide an official, project specific Wage Determination to the Construction Manager at Risk for use in development of the Guaranteed Maximum Price (GMP) proposal. Such determination shall be requested by the contracting Agency from DOLI at least ten (10) but not more than twenty (20) days prior to the date that the CM will advertise for subcontractor bids.

11.1.5.4 – At contract award, the university shall contact DOLI to determine if modification is required to the official Wage Determination. Changes to the official Wage Determination shall be incorporated into the contract by change order.

SECTION 11.2 SMALL PROJECT PROCUREMENT PROCEDURES

Construction, repair or replacement in kind, or remodeling or renovation work which is valued at $500,000 or less may be procured by using the procedures of Sections 11.2.1 and 11.2.2. A pre-bid conference shall not be mandatory for projects with an estimated cost of less than $100,000.

11.2.1 Projects Costing Less Than $150,000

- Develop scope of work in enough detail to convey the requirements of the project (bid documents).
- Solicit bids from 1 or more Contractors.
- Receive emailed or digitally submitted bids by specified deadline.
- If the price received from the solicitation is determined to be fair and reasonable, award the contract using a HECO-9.

11.2.2 Projects Costing From $150,000 to $500,000

- Develop scope of work in enough detail to convey the requirements of the project (bid documents).
- Post notice of IFB in eVA when the estimated contract amount is expected to exceed $150,000 and the procurement is not made from a prequalified pool of Contractors.
- Solicit bids from 3 or more Contractors.
- Receive emailed or digitally submitted bids by specified deadline.
- Post notice of award in eVA if the contract amount exceeds $150,000.
- If the price received from the solicitation is determined to be fair and reasonable, award the contract using HECO-9.

SECTION 11.3 CONSTRUCTION BIDS

11.3.1 Instructions to Bidders

Use the HECO-7A as addressed in chapter 9.

11.3.2 Virginia Construction Contracting Officer (VCCO)

Unless unavailable, a VCCO shall supervise the bidding and awarding construction contracts. Procedures stipulated in this Manual shall be used in all cases.

11.3.3 Authorization to Advertise for Bids and Building Permit

Authorization to advertise for bids is given on completion of technical review(s) of the project documents by DEB and, approval of the University Architect.

11.3.4 Preparation of Bid Forms

Bid Forms shall be prepared using the format and wording shown on the Standard Bid Form Format, the Notice of Invitation for Bids Format, the IFB Cover Format and the Invitation for Bids Contents Format in DCM Appendix H. The Contractor's Disqualification Statement and the Immigration Reform and Control Act of 1986 statement shall be included on each Bid Form. In preparing these Bid Forms, A/E's are reminded to keep the number of additives to a minimum and when including more than one, they should be listed in order of importance. See Chapter 9 for further requirements and procedures concerning Additive Bid Items. Including or use of "Allowances" in the Bidding is not permitted except in Construction Management project delivery.

11.3.5 Advertising

OUA shall establish a time and place for receiving bids. The A/E shall use this information in completing the advertisement on the Notice of Invitation for Bids. Bids are generally not received or opened on Mondays and Fridays. For general preparation of bid documents see Chapter 9. The advertisement will be circulated and posted for appropriate maximum exposure by OUA and be posted on the eVA web site when the expected procurement exceeds $500,000.

11.3.6 Pre-bid Conference

If a Prebid Conference or project showing is held (whether optional or mandatory), representatives of the University and the A/E shall attend. The University shall make the project location or building available to the attendees / prospective bidders for their observation or inspection.

- The University PM shall conduct the Prebid conference with assistance from the A/E and VCCO.

- The agenda shall include the following:
    - Introductions of A/E and Agency representatives
    - Synopsis of the work by citing or reading portions of
        - Notice of Invitation for Bid
        - Instructions to Bidders
        - Prebid Question Form
        - Bid Form
        - Supplemental General Conditions
        - Special Condition
        - General Requirements
        - Other conditions or requirements included in the Bid Documents that should be called to the attention of the bidders
- Questions from the floor - A/E should answer only those questions where the response is to direct the questioner's attention to a particular portion of the bid documents. ALL OTHER QUESTIONS SHOULD BE RECEIVED IN WRITING OR DOCUMENTED BY THE A/E AND RESPONDED TO IN WRITING IN AN ADDENDUM.
- The A/E should issue an Addendum to include a copy of the attendee sign-in sheet and the questions posed with the response to each.
- The Agency and the A/E must be careful not to provide any information, instruction, or clarification to Prebid attendees which is not made available to all potential bidders.

11.3.7 Addenda to the Bid Documents

Addenda shall be issued as necessary to clarify or correct information in the Bid Documents, to respond to questions raised by the Bidders, and/or to modify the Bid Receipt Date.

11.3.7.1 - No oral explanation in regard to the meaning of the drawings and specifications shall be made and no oral instructions shall be given to the Bidders.

11.3.7.2 - Addenda to clarify or correct information in the Bid Documents should be issued at least 10 days prior to the Bid Receipt Date. Addenda which add work to the project, which provide significant information, which must be considered by Subcontractors and suppliers, or which contain many pages of corrections must be issued at least 10 days prior to the date set for receipt of bids or the bid date must be delayed to allow the 10 days. Addenda which serve primarily to provide clarifications or corrections which can be covered in a one-page Addendum may be issued up to 6 days prior to bid receipt date. Addenda which only delay or cancel the date for receipt of bids must be issued at least 24 hours prior to the date and time set for bid receipt.

11.3.7.3 - One copy of all Addenda shall be submitted to DEB at the same time and by the same means as the Addenda are issued to the Bidders. A copy of all addenda shall also be sent to the responsible State Fire Marshal Office which will have jurisdiction over the project.

11.3.8 Receipt of Bids

A VCCO or a person acting under the supervision of a VCCO will receive the bids when submitted through the buyW&M portal. The system will record the time and date of receipt. That record shall be retained. No envelopes, papers and data submitted in hard copy form with the bid will be accepted. Digital data submitted will be permanently retained, except for bid securities or work papers which shall be retained only until a signed

contract is obtained. At that time, bid securities must be returned to the bidder. Until that time, bid securities must be retained in a secure place. Work papers will be returned to the bidder unopened, unless needed to resolve a withdrawal of bid due to error claim. The preferred days for bid receipt are Tuesdays and Wednesdays.

11.3.9 Bid Opening

Bids shall be publicly opened by a VCCO or their representatives(s) and shall be reviewed for completeness. A tabulation shall be made showing bid price, presence of bid bond or certified check, completion time, work papers, acknowledgement of receipt of addenda, and any other pertinent information. See Appendix P for Procedures for Opening Bids.

11.3.9.1 - Once the designated bid opening time has arrived, which shall be at least 24 hours after the receipt of bids and as indicated in the Invitation for Bids, the VCCO will review buyW&M and a statement should be made as to the number of bids received. It is prudent to inquire whether any bidder has any question about the pending opening. After receiving either, a negative reply or after answering questions, proceed to open the bids in alphabetical order. Do not open work papers! If the low bid is within budget, the bids will be announced immediately. If all bids are over budget the results of the bid opening will not be made public until the contract is awarded. At that time, the list of firms whose bids were received will be made available to the public.

11.3.10 Provisions for Negotiation with Low Bidder

When the low bid exceeds available funds and upon approval of the University Architect negotiations with the lowest responsive and responsible bidder may occur. A record of the negotiations will become a part of the procurement file for the project.

SECTION 11.4 AUTHORITY TO AWARD A CAPITAL OUTLAY PROJECT CONTRACT

The request to award a contract to the low responsive and responsible bidder is granted by approval of the HECO- 8. Note the construction line of the budget shall reflect the award amount. Once the award is approved, the University shall "Post" a Notice of Intent To Award (NOITA) on the eVA website 10 days prior to contract award.

SECTION 11.5 EXECUTION OF CONTRACTS

11.5.1 Execution Authority

The EVPFA or their delegate (the CBO or University Architect) will execute contracts using the HECO-9.

11.5.2 Protest of Award or Decision to Award

Any bidder who desires to protest the award or decision to award a contract shall submit such protest in writing to the University, no later than ten days after the award or the announcement of the Notice of Intent to award,

whichever occurs first. No bid protest shall lie for a claim that the selected bidder or offeror is not a responsible bidder. The written protest shall include the basis for the protest and the relief sought. The University shall issue a decision in writing within ten days of receipt of the written protest stating the reasons for the action taken.

This decision shall be final unless the bidder or offeror appeals within ten days of the written decision by instituting legal action.

11.5.3 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, no further action to award the contract will 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.

11.5.4 Notices to Proceed (NTP)

A Notice to Proceed will be issued by the VCCO after bonds and insurance certificates have been reviewed by Legal Counsel and the Building Permit has been issued.