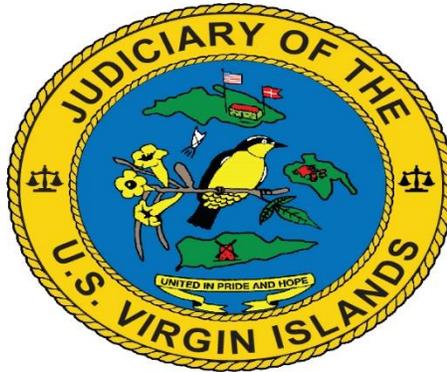


PROCUREMENT POLICY AND PROCEDURES MANUAL



Supreme Court Locations:

St. Thomas-St. John District
8174 Subbase
St. Thomas, VI 00802

St. Croix District
#18 Strand Street
Frederiksted, VI 00841

Mailing Address:
P. O. Box 590
St. Thomas, VI 00804

Mailing Address:
P. O. Box 336
Frederiksted, VI 00841

Superior Court Locations:

St. Thomas-St. John District
Alexander A. Farrelly Justice Center
5400 Veterans Drive
Charlotte Amalie, St. Thomas, VI

St. Croix District
R.H. Amphlett Leader Justice Complex
RR Box 1-9000 Kingshill
Christiansted, St. Croix, VI

Mailing Address:
P.O. Box 70
St. Thomas, VI 00804

Mailing Address:
P.O. Box 929
Christiansted, St. Croix, VI 00821-0929

Magistrate Division
Barbel Plaza South
No 8A Estate Ross
St. Thomas, VI 00802

Mailing Address:
P.O. Box 929, Christiansted
St. Croix, VI 00821-0929

Mailing Address:
P.O. Box 70
St. Thomas, VI 00804

ORDER ADOPTING PROCUREMENT POLICY AND PROCEDURES

Pursuant to the authority vested in the Chief Justice of the Judicial Branch of the Virgin Islands at 4 V.I.C. § 4, 30, and 31, these Procurement Policies and Procedures are hereby adopted for the Judicial Branch of the U.S. Virgin Islands effective May 5, 2017. All previous procurement policies and procedures are hereby rescinded.

/s/ Rhys S. Hodge
RHYS S. HODGE
Chief Justice

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INTRODUCTION

In accordance with 4 V.I.C. § 4, 30, 31, as amended by Act No. 7888, the Chief Justice is the administrative head of the Judicial Branch of the Virgin Islands, and the Supreme Court is the administrative policy making body of the entire Virgin Islands court system. Pursuant to this administrative authority, the Judicial Branch Administrative Office, headed by the Administrator of Courts, was established and vested with the authority to, amongst other responsibilities, establish policies and procedures to procure goods and services for the benefit and use of the Judicial Branch of the Virgin Islands.

DEFINITIONS

1. “Administrator of Courts” means the person appointed by the Chief Justice to manage and oversee the Virgin Islands Judicial Branch Administrative Office.
2. “Best Value” means a Procurement method that emphasizes value over price. The best value might not be the lowest cost. Generally achieved through the Request for Proposals (RFP) method. 2. An assessment of the return that can be achieved based on the total life cycle cost of the item; may include an analysis of the functionality of the item; can use cost-benefit analysis to define the best combinations of quality, services, time, and cost considerations over the useful life of the acquired item.
3. “Bid” means the response submitted by a bidder to an invitation for bids (IFB) or to a multi-step bid.
4. “Bid Bond” means an insurance agreement, accompanied by a monetary commitment, by which a third party (the surety) accepts liability and guarantees that the bidder will not withdraw the bid. The bidder will furnish bonds in the required amount and if the contract is awarded to the bonded bidder, the bidder will accept the contract as bid, or else the surety will pay a specific amount.
5. “Blanket Purchase Agreements” means a simplified method of filling anticipated repetitive needs for supplies or services by establishing “charge accounts” with qualified sources of supply and is to be used only if the services or supplies

cannot be properly identified as to the quantity and the type of services or supplies required.

6. "Central Procurement" means the Central Warehouse Division of the Government of the Virgin Islands' Department of Property and Procurement.
7. "Emergency Procurement" is an unforeseen or unanticipated urgent and immediate need for equipment, supplies or services where protection of life, health, safety or welfare of the community or the preservation of public properties would not be possible using normal purchasing procedures.
8. "Invitation to Bid (IFB)" means all documents used to solicit competitive or multi-step sealed bids.
9. "Non-Purchase Order Invoices" means the direct recurring payments that are excluded from the Procurement process.
10. "Payment Bond" means a financial or contractual instrument, issued by a surety that guarantees that subcontractors will be paid for labor and materials expended on the contract. Acceptable forms of payment bonds may include cashier's check, certified check, or irrevocable letter of credit issued by a financial institution; a surety or blanket bond; United States Treasury bond; or certificate of deposit. Also, known as Labor and Materials Bond.
11. "Performance Bond" means an instrument executed, subsequent to award, by a successful bidder that protects the public entity from loss due to the bidder's inability to complete the contract as agreed. A risk mechanism that secures the fulfillment of all contract requirements.
12. "Procurement" means purchasing, renting, leasing, or otherwise acquiring any supplies, services, or construction; includes all functions that pertain to the acquisition, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration. The combined functions of purchasing, inventory control, traffic and transportation, receiving, inspection, storekeeping, salvage and disposal operations.

13. “Professional Services” means service requiring the provider to possess specialized knowledge or technical training, educational degrees or certifications, or licenses. Professional services do not include services by interns, law clerks, attorneys, marriage counselors, psychiatrists, psychologists, therapists, interpreters or to the contracting of services related to legal research.
14. “Proposal” means a document submitted by a vendor in response to some type of bid solicitation to be used as the basis for negotiations or for entering into a contract.
15. “Responsible bidder” or offeror means a business entity or individual who has the financial and technical capacity to perform the requirements of the solicitation and subsequent contract.
16. “Responsive Bidder” means a contractor, business entity, or individual who has submitted a bid or proposal that fully conforms in all material respects to the Invitation for Bids (IFB)/Request for Proposals (RFP) and all of its requirements, including all form and substance.
17. “Request for Information (RFI)” means a non-binding method whereby a jurisdiction publishes via newspaper, Internet, or direct mail its need for input from interested parties for an upcoming solicitation. A procurement practice used to obtain comments, feedback, or reactions from potential responders (suppliers, contractors) prior to the issuing of a solicitation. Generally, price or cost is not required. Feedback may include best practices, industry standards, technology issues, etc.
18. “Request for Proposals (RFP)” means the document used to solicit proposals from potential providers (proposers) for goods and services. Price is usually not a primary evaluation factor. Provides for the negotiation of all terms, including price, prior to contract award. May include a provision for the negotiation of best and final offers. May be a single-step or multi-step process.

19. "Request for Quotation (RFQ)" Purchasing method generally used for small orders under a certain dollar threshold, for purchases where the expected dollar amount is \$15,000 through \$50,000. A request is sent to suppliers along with a description of the commodity or services needed and the supplier is asked to respond with price and other information by a predetermined date. Evaluation and recommendation for award should be based on the quotation that best meets price, quality, delivery, service, past performance, and reliability.
20. "Services" means any rental or lease involving real estate, including but not limited to facilities such as storage space, office space or parking lot services; remodeling, renovations or new construction of buildings or facilities; the printing of stationery, forms and journals; or rental, lease, repair or maintenance of equipment, machinery or other personal property. Services do not include contracts with interns, law clerks, attorneys, marriage counselors, therapists, psychiatrists, psychologists, interpreters or services related to legal research.
21. "Single Source Procurement" is a decision whereby purchases are directed to one source because of standardization, warranty or other factors, even though other competitive sources may be available. Sole source Procurement should not be confused with single sourcing Procurement.
22. "Small Purchases" means any procurement not exceeding Fifty Thousand Dollars \$50,000.00 or threshold established by the Judiciary.
23. "Sole Source Procurement" is a Procurement method where only one supplier possesses the unique ability or capability to meet the particular requirements of a solicitation
24. "Supplies" means any item or article, except the purchase of real estate, which is furnished to or used by the Judiciary including, but not limited to, stationery, forms and journals; reproduction or publications and binding; repair and maintenance items; fuel, furnishings and consumable items; and all materials and equipment.
25. "Recurring Expenses" are those ordinary and regular monthly expenses necessary to conduct day-to-day operations of the judicial branch including but not limited to utilities, telephone, cellular phone, etc.

26. “Responsible Bidder or Offeror” means a person or business, entity who has the capability in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance.
27. “Responsive Bidder or Offeror” means a person who has submitted a bid or proposal which conforms in all material respects to the solicitation.

SECTION 1. PURPOSE AND SCOPE

The purpose of these regulations is to provide uniform and standard Procurement policies and procedures for the entire Judiciary of the U.S. Virgin Islands (“Judiciary”).

These policies shall not apply to the hiring of interns, law clerks, attorneys, therapists, mediators, psychiatrists, psychologists, interpreters, court reporters or Judicial Officers of the Superior Court and Designated Justices of the Supreme Court; to the contracting of services related to legal research, services from the National Center for State Courts or to expenditures pursuant to court order in matters before the Supreme Court of the Virgin Islands.

SECTION 2. AUTHORITY OF THE JUDICIAL BRANCH ADMINISTRATIVE OFFICE

The Judicial Branch Administrative Office has authority over all matters relating to the Procurement of supplies, services, professional services and construction. It is the policy of the Judicial Branch to procure supplies and services from the lowest bidder or best qualified offeror, consistent with quality and service, and to conduct Procurement activities in the manner that will best serve the public interest.

SECTION 3. AUTHORITY OF THE ADMINISTRATOR OF COURTS

The Administrator of Courts (AOC) has the authority to adopt and publish procedures to govern Procurement by the judicial branch of supplies, services, professional services, and construction. These procedures are based on competitive principles and are adapted to the special needs of the judicial branch. In the event of unusual or extenuating circumstances, the AOC may issue a declaration of exigent circumstances, and may suspend or otherwise waive the application of some or all of these rules in order to facilitate or otherwise expedite the procurement process and the business of the Courts. The declaration of exigency must be in writing and made part of the procurement record.

(A) ADMINISTRATION OF PROCUREMENT PROCESS

Responsibility for the Procurement of supplies, services, and construction is delegated by the Administrator of Courts to the Procurement Division of the Judicial Branch Administrative Office. The Procurement Division will:

- a. prescribe the time, and manner of making purchase requests for supplies and services;

- b. process requests for Procurement;
- c. review specifications for accuracy, clarity, and suitability to the Procurement;
- d. after consultation with requestors, determine which of the Procurement methods specified in these guidelines will be followed;
- e. procure supplies, services, and professional services needed by the Judiciary of the Virgin Islands;
- f. exercise general supervision and control over all inventories of the supplies that has been delivered, inspected, stored, inventoried, marked, and distributed;
- g. maintain a property inventory and control system;
- h. ensure vendor performance, including enforcement of warranties and guarantees;
- i. manage the sale, trade or transfer of excess supplies between courts and local government departments, or otherwise dispose of surplus, obsolete, or used supplies;
- j. maintain all records pertaining to Procurement by the Judiciary of the Virgin Islands, including copies of all bid documents, contracts and amendments;
- k. to prescribe standard forms for bids and contracts;
- l. establish and maintain procedures for inspection, testing, and acceptance of supplies and services and the testing of samples submitted with bids;
- m. provide for other matters that the Procurement Division determines may be necessary to carry out the Procurement function.

SECTION 4. LOCAL PROCUREMENT PREFERENCE

Procurement of supplies and services will to the maximum extent possible, be made from among businesses licensed to do business in the Virgin Islands and that maintain an office or other facility in the Virgin Islands. Procurement of supplies and services from outside the Virgin Islands may be made, if no business for such supplies or services may be found in the Virgin Islands or the Procurement is for supplies or services to be acquired directly from the manufacturer or their authorized dealer or supplier or from or through a federal agency or a GSA approved company when costs are known to be lower than the prevailing market prices or if the total cost of F.O.B. job site, unloaded, from outside the Virgin Islands is no greater than 85% of the total cost

F.O.B. job site, unloaded, of the same supplies or services when procured from a business licensed to do business in the Virgin Islands that maintains an office or other facility in the Virgin Islands.

SECTION 5. PURCHASE ORDER APPROVAL PROCESS

(A) PROCEDURES.

The following procedures shall govern the purchase request approval process:

- (1) Request for supplies, services or equipment purchases must be submitted to the Division of Procurement once authorized by the Division's manager.

Purchase requests shall include:

- a. clear and concise description of supplies, services or equipment needed; and,
 - b. a full explanation (justification memo) of need for the purchase; and,
 - c. required quotation(s) information; and,
 - d. any other information that may prove helpful in the Procurement process.
- (2) Purchase requests should be prepared with sufficient lead time to avoid creating an emergency and allow competitive pricing. Prices must be found fair and reasonable. A member of the Procurement Division will contact the Division manager if the purchase request is incomplete; if any changes are made to the purchase request; or if the purchase request cannot be processed.
 - (3) The Procurement Division will review the purchase request for compliance in accordance with the procedures set forth in this policy and verify the availability of funding through the Financial Services Division for the purchase request.
 - (4) The purchase request will be forwarded to the Administrator of Courts for review and approval.
 - (5) Upon approval of a purchase order, the Procurement Division will forward a copy of the purchase order to the Division manager and to the vendor.
 - (6) If the purchase request is denied by the Administrator of Courts, the Procurement Division will notify the Division manager in writing.
 - (7) All purchase requests must be dealt with in a timely manner. Purchase requests must be processed within three (3) days of receipt unless they are being held for further research and clarifications. If the hold exceeds four (4) days, the requester must be notified of the delay.

Certain purchases such as utilities, rent and other recurring invoices made by the Judiciary are considered appropriate for direct payment, and are therefore excluded from the Procurement processes set forth in these guidelines.

SECTION 6. SMALL PURCHASES

(A). SMALL PURCHASE PROCEDURES

Procurement for small purchases is authorized when the cost is less than Fifty Thousand Dollars (\$50,000.00), subject to the following.

- (1) **Less Than One Thousand Dollars (\$1,000.00).** When the total cost of a purchase request is less than One Thousand Dollars (\$1,000.00), Procurement may be made by solicitation of one informal written quotation on the open market or, if the cost is less than Forty Dollars(\$40.00), through petty cash.
- (2) **One Thousand Dollars (\$1,000.00) or More, But Less Than Five Thousand Dollars (\$5,000.00).** When the total cost of a purchase request is **One Thousand Dollars (\$1,000.00)** or more, but less than **Five Thousand Dollars (\$5,000.00)**, procurement shall be made by solicitation of not less than two (2) informal written quotations on the open market. Should less than two vendors respond with written quotes, additional vendors must be contacted.
- (3) **Five Thousand Dollars (\$5,000.00) or More, But Less Than Fifteen Thousand Dollars (\$15,000.00).** When the cost is Five Thousand Dollars (\$5,000.00) or more, but less than Fifteen Thousand Dollars (\$15,000.00), Procurement shall be made by solicitation of not less than three (3) informal written quotations on the open market of which a written record shall be kept. Should less than three vendors respond with written quotations, additional vendors must be contacted, except that the Procurement Division may dispense with such quotations and negotiate directly with a vendor when, in the opinion of the Procurement Division, it is deemed more advantageous to the Judiciary.
- (4) **Fifteen Thousand Dollars \$15,000 or More, But Less Than Fifty Thousand Dollars (\$50,000).**
 - A. When the cost is Fifteen Thousand Dollars (\$15,000) or more but less than Fifty Thousand Dollars (\$50,000), the Procurement Division will obtain written quotes from at least three (3) vendors by issuing an informal Request for Quotations.

- B. The requesting division is responsible for providing clear and concise specification detail for the item or service required and submit evidence of market research price or a comparison with recent prices for similar goods and services to determine reasonableness of the proposed contract price.
- C. The Procurement Division will prepare descriptions; quantities of commodities and specifications as would be prepared for a formal competitive sealed bid.
- D. Requests for written quotes shall be posted on the Court's web site to maximize competition.
- F. Vendors will be allowed to submit quotes in electronic format or by fax.
- G. Quotations received will not be publicly read.
- H. Evaluation of a price quote is accomplished using the same criteria as for a formal bid procedure outlined in (Section 7). A tabulation sheet is not required but may be used if multiple responses are received.
- I. After a determination of the lowest responsive and responsible bidder is made, the results are shared with the requesting division.
- J. The requesting division will prepare a purchase request for approval and the approved Purchase Order will be issued to the vendor.
- L. All price quote responses and related documentation, including the procurement history, are filed with the resulting purchase order or contract.
- M. Tie Bids. If more than one quote is received with the same price quote and all other requirements are being met, the Procurement Division shall have the authority to award the bid to one (1) of the tie bidders by drawing lots or conduct a coin flip with a witness to determine to winning bid. Procurement staff will document the determination to award the contract.
- N. Single Bid. In the event that only one bid is received, the Procurement staff will conduct a price analysis to determine the reasonableness of the proposed bid.

(B) EXCEPTIONS.

Exceptions to the Purchasing and Contracting Procedures are as follows:

- (1) Where the total cost is Fifty Thousand Dollars (\$50,000.00) or more, exception to the requirements of this Section 6 is authorized only where at least one (1) of the following conditions exist, and the Procurement Division certifies this exception in writing, which action shall not be delegated nor assigned:
 - (a) an exigent or emergency situation affecting the essential operations of the Judiciary or the General Public has been declared by the Chief Justice, or in the event of a declaration of a state of emergency for the Territory, the Governor, and, which will not allow the normal delay attendant to the sealed bid procedures;
 - (b) the Procurement is for supplies or services for which it is impractical or impossible to secure competition;
 - (c) where the compatibility of equipment, accessories, or replacement parts is the paramount consideration;
 - (d) the Procurement is for supplies or services to be acquired from or through a federal agency when costs are known to be lower than the prevailing market prices; or
 - (e) the Procurement is for supplies which are offered through bargain sales, bankruptcy or receivership sales, or other dispositions of property at lower than prevailing market prices.
- (2) **Exception to Requirement to Procure from Local Suppliers.** Whenever it is determined that the local franchised dealer or distributor is not able to furnish the required service or supply from shelf stock, the Procurement Division may authorize Procurement direct from a manufacturer or supply distributor when the Procurement is for supplies or equipment needed to meet an emergency or disaster, and the Procurement Division certifies this exception in writing to the Administrator of Courts
- (3) It is the policy of the Judicial Branch that all agreements for the purchase of supplies, equipment and services be evidenced in writing and that all purchases of \$50,000.00 or more be memorialized on a standard Judicial Branch contract, which has been prepared and approved for legal sufficiency by the Office of the General Counsel.

NOTE: WITH THE EXECPTION OF RECURRING EXPENSES, NO ITEM OR SERVICE IS TO BE ORDERED, RECEIVED OR PAID FOR WITHOUT A PURCHASE ORDER.

(C) **BLANKET PURCHASE AGREEMENTS.**

A Blanket Purchase Agreement is a simplified method of filling anticipated repetitive needs for supplies or services by establishing “charge accounts” with qualified sources of supply and is to be used only if the services or supplies cannot be properly identified as to the quantity and the type of services or supplies required. Blanket Purchase Agreements must be authorized and approved by the Administrator of Courts. All competitive sources should be given an equal opportunity to furnish supplies or services under Blanket Purchase Agreements to the extent practicable.

(1) **Establishment of Blanket Purchase Agreements.** The following are circumstances under which Blanket Purchase Agreements may be approved:

- (a) If there is a wide variety of items in a broad class of goods (e.g. hardware) that are generally purchased but the exact items, quantities, and delivery requirements are not known in advance and may vary considerably.
- (b) In any other case in which the writing of numerous purchase orders can be avoided through the use of this procedure.
- (c) Procuring supplies and services in the event of a natural disaster.
- (d) There are no existing requirements contracts for the same supply or services that the Judiciary is required to use.

(2) **Procedures for Blanket Purchase Agreements.** The following are procedures for the use of Blanket Purchase Agreement.

- (a) Blanket Purchase Agreement shall be used for small purchases in accordance with Section 6 of this policy.
- (b) Blanket Purchase Agreements shall expire on September 30th of each fiscal year.
- (c) The Procurement Division will maintain a log of expenditures made under the Blanket Purchase Order and shall not exceed the authorized limit of the Blanket Purchase Agreement.
- (d) The Blanket Purchase Agreement shall include the following:
 - 1. General description of the supplies or services requested by an authorized representative during a specified period and within a stipulated aggregate

- amount; and,
 - 2. A statement that the Judiciary is obligated only to the extent of authorized purchase actually made under the BPA; and,
 - 3. A statement that specifies the dollar limitation for each individual purchase under the BPA; and,
 - 4. Individuals authorized to purchase under the BPA. A statement that a list of individuals authorized to purchase under the BPA, identified either by title of position or by name of individual; and,
 - 5. Billing instructions, vendor Tax I.D. No., and all other information that is required to be shown on a normal purchase order.
- (e) An itemized invoice shall be submitted at time of delivery for all orders made during the term of the BPA.
 - (f) All Blanket Purchase Agreements shall be issued a contract number.

SECTION 7. PROCUREMENT AND CONTRACTING PROCEDURES

The following procedures shall govern the purchase of supplies and services over Fifty Thousand (\$50,000.00).

- (A) **COMPETITIVE SEALED BIDS OR INVITATION FOR BID.** Procurement by competitive sealed bids or invitation for bid is optional for any purchase at the discretion of the Procurement Division, but it is mandatory where the total cost is Fifty Thousand Dollars (\$50,000.00) or more, except as otherwise provided. The competitive sealed bids or invitation for bid is used to initiate a competitive sealed bid Procurement.
 - (1) **Procedure.** The procedures to be observed when procuring by sealed bids are as follows:
 - (a) **Notice.** A public notice requesting sealed bids may be published in a newspaper of general circulation in the Virgin Islands at the time of bid issuance. A final notice shall be published at least five (5) business days before the final date for submission of bids. The Procurement Division may also solicit bids by posting on the Judiciary's website or by sending invitations by fax, e-mail, regular mail or messenger to prospective bidders. Public notice shall include a general description of supplies or

services to be procured, and shall state where Invitation to Bid forms and specifications are available, and the time and place for submission and opening of bids. The Procurement Division may require payment of a fee or a deposit for supplying the Invitation for Bid forms and specifications.

- (b) **Invitation for Bids.** The Invitation for Bids shall include instructions including place, time and date for submission and opening of bids, purchase description, evaluation factors, delivery or performance schedule, contract terms including warranty and bonding, and any other pertinent information. The Invitation to Bid shall include a form wherein a bidder shall insert the bid price.
- (c) **Pre-Bid Conference.** A pre-bid conference may be conducted at the discretion of the Procurement Division to explain Procurement requirements. Notice of a pre-bid conference may be included in the Invitation to Bid or sent to all prospective bidders known to have obtained an Invitation to Bid.
- (d) **Amendments to Invitations to Bid.** Amendments to Invitations to Bid shall be identified as such and shall require that the bidder acknowledge receipt of all amendments issued. Amendments shall be sent to all prospective bidders known to have received an Invitation to Bid. Amendments shall be distributed within a reasonable time to allow prospective bidders to consider them in preparing their bids.
- (e) **Modification or Withdrawal of Bids.** Bids may be modified or withdrawn by bidders by written notice submitted prior to the date and time set for bid opening. Bidders must correct mistakes in their bids by submitting a timely modification or withdrawing and resubmitting bids. Late modifications or withdrawals will not be considered.
- (f) **Submission of Bids.** Bids shall be submitted to the Procurement Division on the date and time set for submission of bids, and each bid shall be identified as a bid on its envelope in such manner as the Procurement Division may prescribe.
- (g) **Opening of Bids, Public Inspection, Proprietary Information.** Bids and modifications will be publicly opened in the presence of at least two witnesses from the Judiciary at the time, date and place designated in the invitation for bid. The name of the bidder, the bid price and other information that is deemed appropriate by the Procurement Division will be read aloud or otherwise

made available and recorded. The opened bids shall be available for public inspection during normal business hours except those parts of each bid that have been designated as trade secrets or proprietary data. Such trade secrets or proprietary data must be clearly designated and readily separable from the bid. Prices and contractual terms shall not be deemed secret or proprietary and shall be available for public inspection at times convenient to the Court.

- (h) **Award of Contract.** The contract shall be awarded to the lowest responsible and responsive bidder. All bidders shall be informed in writing of the selection of the lowest responsible and responsive bidder as soon as practicable.

A standard Judicial Branch contract form shall be used to formalize all agreements and shall include all references and provisions required by law.

- (i) **Tie Bids.** If bids are for the same unit price or total amount, in whole or in part, the Procurement Division shall have authority to award the bid to one (1) of the tie bidders by drawing lots in public, or to reject all such bids.

- (2) **Determining Lowest Responsible and Responsive Bidder.** In determining the lowest responsible and responsive bidder, the Procurement Division shall be guided by the following:

- (a) compliance by the bidder with necessary licensing requirements;
- (b) ability and sufficiency of financial resources of the bidder to perform promptly, or within the time specified, without delay or interference;
- (c) quality of performance of the bidder with regard to awards previously made to the bidder;
- (d) record of the bidder with respect to compliance with laws and regulations relating to Procurement;
- (e) quality and availability of the supplies or services offered by the bidder, and adaptability to the particular use required;
- (f) ability of the bidder to provide future maintenance and service for the use of the subject of the award; and
- (g) number and scope of conditions attached to the bid.

(B) **COMPETITIVE SEALED PROPOSALS.** Procurement by competitive sealed proposals is optional at the discretion of the Procurement Division, but it is mandatory where the total cost is Fifty Thousand Dollars (\$50,000.00) or more and Procurement by competitive sealed bids is not practicable, except as otherwise provided. The Request for Proposal is used to initiate a competitive sealed bid Procurement.

(1) **General Discussion.** Procurement by competitive sealed bids is the preferred method of Procurement, except that the preferred method of Procurement for any rental or lease involving real estate, including but not limited to facilities such as storage space, office space or parking lot services, shall be by competitive sealed proposal. Furthermore, if Procurement by competitive sealed bids is not practicable for Procurement of other than the rental or lease involving real estate, including but not limited to facilities such as storage space, office space or parking lot services, competitive sealed proposals should be used. The competitive sealed proposal method differs from the competitive sealed bids method in two important ways:

- (a) it permits discussions with competing offerors and changes in their proposals, including price if price is identified as an evaluation factor in the particular Procurement; and
- (b) it allows comparative judgmental evaluations to be made when selecting among acceptable proposals for award of the contract.

(2) **Procedures.** The procedures to be observed when procuring by competitive sealed proposals are as follows:

- (a) **The Request for Proposals (“RFP”).** The RFP shall be prepared in the same manner as provided for preparation of an Invitation for Bid provided that it shall also include a statement that discussions may be conducted with, and comparative judgmental evaluations may be made regarding, offerors who submit proposals determined to be reasonably susceptible of being selected for award, although proposals may be accepted without such discussions.
- (b) **Notice.** Public notice of the RFP shall be given in the same manner as provided for notice of an Invitation to Bid.
- (c) **Pre-Proposal Conferences.** Pre-proposal conferences may be conducted in accordance with Pre-Bid Conferences. Any such conference should be held prior to submission of initial proposals.

- (d) **Amendments to Request for Proposals.** Amendments to Request for Proposals may be made in accordance with Amendments to Invitations to Bid.
- (e) **Modification or Withdrawal of Proposals.** Proposals may be modified or withdrawn at any time prior to the conclusion of discussions.
- (f) **Receipt and Handling of Proposals.** Proposals and modifications shall be time-stamped upon receipt and held in a secure place until the established due date. Proposals shall not be opened publicly nor disclosed to unauthorized persons, but shall be opened in the presence of two or more Procurement officials. A Register of Proposals shall be established which shall include, for all proposals, the name of each offeror, the number of modifications received, if any, and a description sufficient to identify the services offered. The Register of Proposals shall be opened to public inspection only after award of the contract. Proposals of offerors who are not awarded the contract shall not be opened to public inspection.
- (g) **Evaluation Criteria.** Proposals shall be evaluated only on the basis of evaluation factors stated in the RFP. The following factors may be appropriate to use in conducting the evaluation if services are being procured, although the relative importance of these and other factors will vary according to the services being procured. The minimum factors are:
 - 1. the plan for performing the required services;
 - 2. ability to perform the services as reflected by technical training and education, general experience, specific experience in providing the required services, and the qualifications and abilities of personnel proposed to be assigned to perform the services;
 - 3. the personnel, equipment, and facilities to perform the services currently available or demonstrated to be made available at the time of contracting; and
 - 4. a record of past performance of similar work.
- (h) **Requests for Nondisclosure of Data.** If the offeror selected for award has requested in writing the nondisclosure of trade secrets and other proprietary data so identified, the Procurement Division shall examine the request in the proposal to determine its validity

prior to entering negotiations. If the parties do not agree as to the disclosure of data in the contract, the Director of Procurement shall inform the offeror in writing what portion of the proposal will be disclosed and that, unless the offeror withdraws the proposals or protests, the proposal will be so disclosed.

1. **Discussion.** The Procurement Division shall evaluate all proposals submitted and may conduct discussions with any offeror. The purposes of such discussions may include but are not limited to:

- i. determining in greater detail such offeror's qualifications; and
- ii. exploring with the offeror the scope and nature of the required services if services are being procured, the offeror's proposed method of performance, and the relative utility of alternative methods of approach.

2. **No Disclosure of Information.** During discussions with offerors, information obtained in discussions or from proposals by other offerors shall not be disclosed. The proposal of the offeror awarded the contract shall be opened to public inspection except as otherwise provided in these rules.

- (i) **Selection of the Best Qualified Offerors.** After evaluation of proposals and discussions with offerors, the Procurement Division shall select, in the order of their respective qualification ranking, no fewer than three acceptable offerors (or such lesser number if less than three acceptable proposals were received) deemed to be the best qualified to provide the required services.
- (j) **Submission of Cost or Pricing Data.** The offeror determined to be best qualified shall be required to submit cost or pricing data to the Procurement Division prior to the commencement of negotiations.
- (k) **Negotiation.** The Procurement Division shall negotiate a contract with the best qualified offeror at the compensation determined in writing to be fair and reasonable. Contract negotiations shall be directed toward:

1. making certain that the offeror has a clear understanding of the scope of work, and specifically, if services are being procured, the essential requirements involved in providing the required services;
2. if services are being procured, determining that the offeror will make available the necessary personnel and facilities to perform the services within the required time; and
3. agreeing upon compensation which is fair and reasonable, and, if services are being procured, doing so while taking into account the estimated value of the required services, and the scope, complexity, and nature of such services.

(l) **Award of Contract.** If compensation, contract requirements, and contract documents can be agreed upon with the best qualified offeror, the contract shall be awarded to that offeror upon the approval of the Chief Justice.

(m) **Failure to Negotiate Contract With Best Qualified Offeror.** If compensation, contract requirements, or contract documents cannot be agreed upon with the best qualified offeror, a written record stating the reasons therefore shall be placed in the file and the Procurement Division shall advise such offeror of the termination of negotiations which shall be confirmed by written notice within three (3) business days. Upon failure to negotiate a contract with the best qualified offeror, and upon the approval of the Administrator of Courts, the Procurement Division may enter into negotiations with the next most qualified offeror. If compensation, contract requirements, and contract documents can be agreed upon, then the contract shall be awarded to that offeror. If negotiations again fail, negotiations shall be terminated as provided above and negotiations may commence with the next most qualified offeror.

(n) **Notice of Award.** Written notice of award shall be public information and made a part of the contract file.

(o) **Failure to Award Contract.** Should the Procurement Division be unable to negotiate a contract with any of the offerors initially selected as the best qualified offerors, offers may be resolicited or additional offerors may be selected based on their original,

acceptable submissions in the order of their respective qualification ranking and negotiations may continue in accordance with these rules until an agreement is reached and the contract awarded.

- (p) **Memorandum of Evaluation and Negotiation.** At the conclusion of negotiations resulting in the award of a contract, the Procurement Division shall prepare a memorandum setting forth the bases of the award including application of the evaluation factors in selecting the best qualified offerors and the principal elements of the negotiations including the significant considerations relating to price and the other terms of the contract. All memoranda shall be included in the contract file and be available for public inspection subject to the AOC's approval.

- (C) **REQUEST FOR INFORMATION.** A request for Information (RFI) is a process whose purpose is to collect written information from suppliers about a product or service. This process assists with educating staff about the range of offerings in the market place prior to developing specification and can also identify sources that provide the desired products or services. In such cases, the Procurement Department will work with the user division to develop a Request for Information (RFI) before the (RFP) is developed.

The RFI will be sent to potential vendors or other responsible prospective suppliers. The RFI requests information on the specific goods or services sought or the desired results of a project if the specific process has not been determined. Minimum qualifications for proposers may be included in the RFI along with a general time line or other pertinent information. Additionally, request for estimated pricing elements may be included in the RFI, however, the vendors must be advised that the solicitation is for informational purposes only and no contract will be awarded as a result of their participation.

The following are guidelines for information the Procurement Division will require from the division to develop a RFI:

1. Background information
2. Purpose (Introduction and purpose of RFI)
3. Current process
4. General requirements and desired features
5. Information or documentation requirements from vendors

- (D) **REQUEST FOR PROPOSALS FOR PROFESSIONAL SERVICES.** The provisions of this Section apply to the procurement of professional services except as otherwise provided by law. Procurement of professional services by Request for Proposals ("RFP") is optional at the discretion of the Procurement Division,

but it is mandatory where the total cost is Fifty Thousand Dollars (\$50,000.00) or more, except as otherwise provided.

- (1) **Determination Required Prior to Use of RFPs.** For the purposes of procuring professional services, the Procurement Division shall determine in writing, prior to issuing an RFP, that the Judiciary does not have the personnel or resources to perform the services required under the proposed contract. This determination shall not be delegated nor assigned by the Procurement Division.
- (2) **Statement of Qualifications.** When professional services are needed on a recurring basis, the Procurement Division shall actively solicit persons engaged in providing such services to submit annual statements of qualifications in a prescribed format which shall include the following information:
 - (a) technical education and training;
 - (b) general or special experience, certifications, licenses, and membership in professional associations, societies or boards;
 - (c) an expression of interest in providing the specific service; and
 - (d) any other pertinent information requested by the Procurement Division, provided that a person may amend a statement of qualifications at any time by filing a new statement.
- (3) **Procedure.** The procedures for Procurement of professional services by RFP are as follows:
 - (a) **Notice.** Public notice of the RFP shall be given in the same manner as provided for notice of Invitation to Bid.
 - (b) **Content of Request for Proposals.** An RFP shall be in the form specified by the Procurement Division and shall contain at least the following information:
 1. the type of services required;
 2. description of the work involved;
 3. an estimate of when and for how long the services will be required;
 4. the type of contract to be used;

5. a date by which proposals for the performance of the services shall be submitted;
6. a statement that the proposals shall be in writing;
7. a statement that offerors may designate those portions of the proposals which contain trade secrets or other proprietary data which may remain confidential;
8. the factors to be used in the evaluation and selection process and their importance; and
9. a statement of the minimum information that the proposal shall contain, to include:
 - i. the name of the offeror, the location of the offeror's principal place of business and, if different, the place of performance of the proposed contract;
 - ii. if deemed relevant by the Procurement Division, the age of the offeror's business and average number of employees over a previous period of time, as specified in the RFP;
 - iii. the abilities, qualifications, and experience of all persons who would be assigned to provide the required services;
 - iv. a listing of other contracts under which services similar in scope, size, or discipline to the required services were performed or undertaken within a period of time, as specified in the RFP; and
 - v. a plan giving as much detail as is practical explaining how the services will be performed.

(c) **Evaluation Criteria.** Proposals shall be evaluated only on the basis of evaluation factors stated in the RFP. The following factors may be appropriate to use in conducting the evaluation. The relative importance of these and other factors will vary according to the type of professional services being procured. The minimum factors are:

1. the plan for performing the required services;
2. ability to perform the services as reflected by technical training and education, general

experience, specific experience in providing the required services, and the qualifications and abilities of personnel proposed to be assigned to perform the services;

3. the personnel, equipment, and facilities to perform the services currently available or demonstrated to be made available at the time of contracting; and
 4. a record of past performance of similar work.
- (d) **Pre-Proposal Conference.** A pre-proposal conference may be conducted at the discretion of the Procurement Division to answer any questions, clarify any ambiguities, and respond to general issues in order to establish a common basis for understanding all of the requirements of the solicitation prior to the date set for submission of proposals. Notice of a pre-proposal conference may be included in the RFP or sent to the known prospective proposers.
- (e) **Receipt and Handling of Proposals.** Proposals and modifications shall be time-stamped upon receipt and held in a secure place until the established due date. Proposals shall not be opened publicly nor disclosed to unauthorized persons, but shall be opened in the presence of two or more Procurement officials. A Register of Proposals shall be established which shall include, for all proposals, the name of each offeror, the number of modifications received, if any, and a description sufficient to identify the services offered. The Register of Proposals shall be opened to public inspection only after award of the contract. Proposals of offerors who are not awarded the contract shall not be opened to public inspection.
- (f) **Requests for Nondisclosure of Data.** If the offeror selected for award has requested in writing the nondisclosure of trade secrets and other proprietary data so identified, the Procurement Division shall examine the request in the proposal to determine its validity prior to entering negotiations. If the parties do not agree as to the disclosure of data in the contract, the Procurement Division shall inform the offeror in writing what portion of the proposal will be disclosed and that, unless the offeror withdraws the proposals or protests, the proposal will be so disclosed.
- (g) **Evaluation Committee/Team.** The Procurement Division shall appoint a minimum of three (3) but no more than five (5) Judicial

Branch employees including employees from the Procurement Division who have the necessary technical or program experience for the services/product being acquired. The evaluation committee shall evaluate all proposals submitted and may conduct discussions with any offeror during the evaluation of bids and/or proposals. The purposes of such discussions shall include, but are not limited to:

1. determining in greater detail such offeror's qualifications; and,
 2. exploring with the offeror the scope and nature of the required services, the offeror's proposed method of performance, and the relative utility of alternative methods of approach.
- (i) **No Disclosure of Information.** During discussions with offerors, information obtained in discussions or from proposals by other offerors shall not be disclosed. The proposal of the offeror awarded the contract shall be opened to public inspection except as otherwise provided in these rules.
- (j) **Modification or Withdrawal of Proposals.** Proposals may be modified or withdrawn at any time prior to the conclusion of discussions.
- (k) **Selection of the Best Qualified Offerors.** After evaluation of proposals and discussions with offerors, the Procurement Division shall select, in the order of their respective qualification ranking, no fewer than three acceptable offerors (or such lesser number if less than three acceptable proposals were received) deemed to be the best qualified to provide the required services.
- (l) **Submission of Cost or Pricing Data.** The offeror determined to be best qualified shall be required to submit cost or pricing data to the Procurement Division prior to the commencement of negotiations.
- (m) **Negotiation.** The Procurement Division conducting the Procurement or a designee of such officer shall negotiate a contract with the best qualified offeror for the required services at the compensation determined in writing to be fair and reasonable. Contract negotiations shall be directed toward:
1. making certain that the offeror has a clear understanding of the scope of work, specifically, the essential requirements involved in providing the required services;

2. determining that the offeror will make available the necessary personnel and facilities to perform the services within the required time; and
 3. agreeing upon compensation which is fair and reasonable, taking into account the estimated value of the required services, and the scope, complexity, and nature of such services.
- (n) **Award of Contract.** If compensation, contract requirements, and contract documents can be agreed upon with the best qualified offeror, the contract shall be awarded to that offeror.
- (o) **Failure to Negotiate Contract With Best Qualified Offeror.** If compensation, contract requirements, or contract documents cannot be agreed upon with the best qualified offeror, a written record stating the reasons therefor shall be placed in the file and the Procurement Division shall advise such offeror of the termination of negotiations which shall be confirmed by written notice within three (3) business days. Upon failure to negotiate a contract with the best qualified offeror, the Procurement Division may enter into negotiations with the next most qualified offeror. If compensation, contract requirements, and contract documents can be agreed upon, then the contract shall be awarded to that offeror. If negotiations again fail, negotiations shall be terminated as provided above and negotiations may commence with the next qualified offeror.
- (p) **Notice of Award.** Written notice of award shall be public information and made a part of the contract file.
- (q) **Failure to Award Contract.** Should the Procurement Division be unable to negotiate a contract with any of the offerors initially selected as the best qualified offerors, offers may be resolicited or additional offerors may be selected based on their original, acceptable submissions in the order of their respective qualification ranking and negotiations may continue in accordance with these rules until an agreement is reached and the contract awarded.
- (r) **Memorandum of Evaluation and Negotiation.** At the conclusion of negotiations resulting in the award of a contract, the Procurement Division shall prepare a memorandum setting forth the bases of award including application of the evaluation factors in selecting the best qualified offerors and the principal elements

of the negotiations including the significant considerations relating to price and the other terms of the contract. All memoranda shall be included in the contract file and be available for public inspection subject to the Administrator of Courts' approval.

(E) **DESIGN-BUILD CONSTRUCTION CONTRACTS.** Contracts for the design-build of construction projects for the Judiciary of the Virgin Islands shall be awarded in accordance with the following procedures:

(1) **General design-build requirements.** The Procurement Division may conduct a design-build Procurement process only if the Procurement Division determines in writing that it is advantageous to the Judiciary of the Virgin Islands.

When a design-build Procurement process is used, the request for proposals must solicit a single price for both design and construction services. Nothing in this subsection prohibits a multi-step award process.

Design-build construction contracts must be procured in accordance with Section 7 (B) (Competitive Sealed Proposals).

(2) **Design-builders.** (a) A design-builder and all members of a joint venture must have a valid business license or licenses as required by Title 27 of the Virgin Islands Code and must have familiarized itself with the applicable provision of Title 27 of the Virgin Islands Code pertaining to professions and occupations.

(b) A design-builder may provide professional or construction services that the design-builder is not itself licensed or registered to provide, if those services are assigned or subcontracted to a person that:

is a member of the design-build team, has a valid business license as required by Title 27 of the Virgin Islands Code and is registered or licensed to provide the services in accordance Title 27 of the Virgin Islands Code.

(c) The Procurement Division shall evaluate a design-builder for at least the following qualification factors:

- (i) bonding capacity;
- (ii) financial strength and capabilities;
- (iii) experience and technical expertise with projects of similar size and scope;
- (iv) past performance;

- (v) qualifications and experience of key management and professional staff who will be assigned to the project;
 - (vi) the capacity to accomplish work in the required time; as part of the evaluation, the Procurement Division shall consider, and the design-builder must disclose, the design-builder's present workload;
 - (vii) quality control and quality assurance policies and programs;
 - (viii) the design-builder's safety record, to include safety and drug-testing policies and programs;
 - (ix) equipment, including technical resources and information technology;
 - (x) a subcontracting plan, including the qualifications and capabilities of any subcontractor required to be identified by the request for proposals.
- (d) The Procurement Division shall preclude or disqualify a design-builder or member of the design-build team from participation in a design-build construction contract if the Procurement Division determines that the design-builder or design-build team member has an unfair competitive advantage or a conflict of interest.
- (e) A consultant or sub-consultant to the Judiciary of the Virgin Islands may not be allowed to participate in a project in other than a consultant or sub-consultant capacity unless the Procurement Division determines that:
- (1) the role of the consultant or sub-consultant
 - (A) was limited to provision of preliminary design, reports, or similar low-level documents that will be incorporated in to the request for proposals; and;
 - (B) did not include assistance in the development of instructions to offerors, qualification factors, performance criteria, or other evaluation criteria; or;

- (2) each document or report that the consultant or sub-consultant delivered to the Procurement Division is made available to all offerors.
- (f) With or without a request from the Procurement Division, a design-builder, or a member of the design-build team, must promptly disclose to the Procurement Division, in writing, any factor that may provide an unfair competitive advantage or potential or actual conflict of interest for the design-builder or design-build team member.
- (3) **Development of performance criteria.** The Procurement Division shall establish the scope and level of detail required for performance criteria contained in a request for proposals. The performance criteria must be detailed enough to permit offerors to submit proposals in accordance with the request for proposals.
- (4) **Solicitation of proposals.**
 - (a) The Procurement Division shall prepare a request for proposals for each design-build construction contract. The request for proposals must contain, at a minimum, the following elements:
 - (1) the name and purpose of the project;
 - (2) a statement that the Judiciary is the entity that will award the design-build construction contract;
 - (3) a description of the method selected under this section as the basis for awarding the design-build construction contract;
 - (4) the procedures to be followed for submitting proposals, the criteria for evaluation of proposals and their relative weight, the procedures for making awards, and a statement that the requirements of this section are incorporated;
 - (5) the date on or before which the Procurement Division must receive proposals;
 - (6) provisions for the payment of a stipend, if any;
 - (7) provisions specifying ownership of design plans or concepts or of technical plans or concepts;
 - (8) the proposed contract form, terms, and conditions;

- (9) develop performance criteria, to include, as appropriate, capacity, durability, and production standards, ingress and egress requirements, and other criteria for the intended use of the project, expressed in performance-oriented drawings and specifications suitable to allow the design-builder to make a proposal;
- (10) a description of the drawings, specifications, or other required submittals, with guidance as to the form and level of completeness that will be acceptable; that description must include a description of the submittal review process;
- (11) a schedule for planned commencement and completion of the design-build construction contract, unless contract time is to be proposed by the design-builder and is one of the weighted proposal evaluation criteria;
- (12) budget limits, if any, for the design-build construction contract;
- (13) the qualifications the design-builder will be required to have;
- (14) detailed material quality standards;
- (15) the method for handling pre-proposal inquiries;
- (16) long-term maintenance provisions, if any;
- (17) a reference to the provisions of Section 4 (Local Procurement Preference);
- (18) a requirement that an offeror provide, in the offeror's proposal, information regarding actual or potential conflicts of interest;
- (19) requirements related to changes in design-build team members or changes in personnel within design-build teams;
- (20) each evaluation factor, including cost or price, and including each significant sub-factor, if any, that will affect the award of the design-build construction contract;
- (21) the relative importance of each evaluation factor and each sub-factor, if any, in determining the award of the design-build construction contract;

- (22) a requirement that the design-builder review the request for proposals to ascertain the project requirements, and a requirement that the design builder notify the Court in the event of any ambiguity or uncertainty;
 - (23) terms or conditions detailing incentives, disincentives, or liquidated damages, if any;
 - (24) warranty provisions; the request for proposals must include notice that in addition to warranting materials, workmanship, and construction, and providing any additional warranties that the Judiciary requires, a design-builder must warrant the design of the project;
 - (25) notice that the design-builder must provide, in a form an amount acceptable to the Judiciary, insurance coverage for a defined period after final payment for the cost of:
 - (A) correcting defects or deficiencies arising from or associated with design or construction negligence;
 - (B) errors or omissions; and
 - (C) legal defense and payment of indemnity;
 - (26) identification of the disciplines to be evaluated.
- (b) In a request for proposals, the Judiciary may require a cash deposit, letter of credit, or bond not to exceed One Hundred and Ten Percent (110%) of the maximum cost of the design-build construction contract, as established by the proposal.
- (5) **Preparation and submission of proposals.** (a) An offeror must submit its proposal to the Procurement Division at the specific place and at or before the specific time identified in the request for proposals.
- (b) An offeror must complete any form required in the request for proposals and provided by the Procurement Division. The offeror must include with its proposal each completed form and any necessary attachment or additional information.
 - (c) Proposals shall be sealed and may not be opened until expiration of the time set in the request for proposals for submitting proposals.

- (d) If the request for proposals requires a cash deposit or bond, the deposit or bond is subject to forfeiture if the proposal is accepted but the offeror fails to execute the design-build construction contract.
 - (e) For each discipline that the Procurement Division identifies in the request for proposals, proposals must identify each person within that discipline to whom the offeror proposes to subcontract obligations under the design-build construction contract. A person that the offeror identifies may not be replaced without the approval of the Procurement Division.
- (6) **Evaluation and award of design-build contracts.** (a) The Procurement Division shall use one or a combination of the following methods as a basis for award:
- (1) the best value method, in which the Procurement Division gives numerical scores to technical proposals, and then uses those numerical scores and the bid price to establish a best value in accordance with a formula published in the request for proposals;
 - (2) the two-step method, in which the Procurement Division
 - (A) first, uses a request for qualifications and the qualification factors listed in the solicitation to short-list offerors; the request for qualifications must contain, at a minimum, the following elements:
 - (i) the date on or before which the Procurement Division must receive qualifications submissions;
 - (ii) the qualifications the offerors will be required to have;
 - (iii) a description of the project in enough detail to let offerors determine if they wish to compete and to form the basis for their qualification submissions;
 - (iv) qualification factors and their relative weights;
 - (v) identification of the maximum number of offerors that will be permitted, at the second step described in (B) of this

paragraph, to submit price and technical proposals; the maximum number may not exceed five offerors, unless the Procurement Division determines that a maximum number greater than five is in the best interest of the Judiciary of the Virgin Islands; and

- (B) second, uses a request for proposals to evaluate price and technical proposals from the offerors that are short-listed;
- (3) the low-bid method, in which
 - (A) an offeror must submit a technically qualified proposal in order for the Procurement Division to consider the bid; and
 - (B) the Procurement Division awards the design-build construction contract to the offeror that submits a proposal that is technically qualified and lowest price.
- (b) If the Procurement Division uses a request for qualifications to short-list offerors, then it shall issue a Public notice of the request for qualifications.
- (c) To evaluate either submissions made in response to a request for qualifications or submissions made in response to a request for proposals, the Procurement Division may form evaluation committees. To assist in the evaluation process, an evaluation committee may retain the services of non-voting members, including consultants or sub-consultants.
- (d) The Procurement Division is not required to award a design-build construction contract as a result of a request for proposals. The Procurement Division may reject a proposal.
- (e) The Procurement Division shall issue a Notice of Intent to award a design-build construction contract. The notice of intent to award does not constitute a formal award of a contract.
- (f) The award of a design-build construction contract, if any, shall be made to the vendor that was found to be most advantageous to the Judiciary based on the factors set forth in the request for proposals.

- (g) If the Procurement Division awards a design-build construction contract, it shall execute the contract and issue the successful offeror a written notice to proceed.
- (h) At the time of award of a design-build construction contract, the Procurement Division may negotiate minor changes with the selected offeror for the purpose of clarifying the design criteria and work to be done, if the negotiated changes do not affect the ranking of the proposals based on their adjusted scores.
- (i) In this section,
 - (1) "short-list" means to narrow the field of offerors through the selection of the most qualified offerors who have responded to a request for qualifications;
 - (2) "technical proposal" means the portion of a proposal that contains design solutions and other qualitative factors that are provided in response to the request for proposals.

Protests and claims. Protests and claims arising from the Procurement process shall be reviewed in accordance with Section 10 (Protest) and Section 11 (Contract Disputes) of this policy.

- (F) **BEST VALUE PROCUREMENT.** Best value bidding is a combination of competitive procedures designed to obtain the benefits of sealed bidding as well as to establish evaluation selection criteria by using a combination of evaluation factors and approaches. Unless other factors require the use of sealed bidding, a sealed Best Value Bid ("BVB") may be used when low bid is not the sole factor.

This type of Procurement involves the submission of sealed priced bids by interested bidders. These sealed priced Best Value Bids are then evaluated by the evaluation committee with a minimum of three members.

The evaluation committee then evaluates the bidders using definitive criteria other than the lowest price. The objective in this step is to determine the acceptability of the supplies or services offered and the bidders' experience, qualifications, and expertise.

The Best Value Bid Process. The Best Value Bid ("BVB") process is a sealed bidding process; all sealed bidding procedures are to be used when procuring sealed bids and proposals. In addition, the BVB procedure includes:

1. A description of the supplies or services required;
2. Contract general terms and conditions;

3. Evaluation criteria, which may include all or some of the following: cost; reputation of the bidder and of the bidder's goods or services; quality of the bidder's goods or services; the extent to which the bidder's goods and services meet the Judiciary's needs; bidders' past relationship and references; the total long term cost to the Judiciary; and other relevant criteria specifically listed in the scope of work/specifications;
4. The location, date and hour, by which the BVB must be received.

Upon receipt of the best value bids, the Procurement Division shall:

1. Safeguard the BVB against disclosure to unauthorized persons other than the evaluation committee;
2. Conduct BVB responsiveness verification to ensure all required information was provided with the BVB; and
3. Remove any references to price or cost.

The Procurement Division shall establish a time period for evaluating the BVB. Evaluations shall be based on the criteria in the BVB. The Procurement Division will categorize each Best Value Bid as "acceptable"; "reasonably susceptible of being made acceptable"; or "unacceptable". Any bid that modifies or fails to conform to the essential requirements or specifications of the solicitation shall be considered nonresponsive and categorized as unacceptable.

The Procurement Division may proceed with step two if there are sufficient acceptable BVBs to ensure adequate competition. If there are not, the Procurement Division shall request bidders whose BVBs may be made acceptable to submit additional clarifying or supplementing information. The Procurement Division shall identify the nature of the deficiencies in the BVB or the nature of the additional information required.

In initiating requests for clarification or additional information, the Procurement Division shall schedule an appropriate time for bidders to submit all additional information, and incorporate such additional information as part of their BVBs submitted. Such time may be extended at the discretion of the Procurement Division. If the additional information incorporated as part of a BVB within the final time fixed by the Procurement Division establishes that the BVB is acceptable, it shall be so categorized. Otherwise, it shall be categorized as unacceptable.

When a BVB is found unacceptable (either initially or after clarification) the Procurement Division shall score the evaluation criteria of that BVB with zero or minimal points.

Evaluation of Best Value Bids. The best value criteria, factors, basis for consideration, and process for consideration shall be documented and stated in the solicitation. Some items that may typically be considered under best value include:

- a) Installation costs;
- b) Life cycle costs;
- c) The quality and reliability of the goods and services;
- d) Delivery terms;
- e) Past performance;
- f) Proposer's financial resources;
- g) Ability to perform;
- h) Proposer's experience;
- i) Demonstrated responsibility;
- j) Proposer's ability to provide reliable maintenance agreements and support;
- k) The cost of any employee training associated with a purchase;
- l) The effect of a purchase on department productivity;
- m) Other factors relevant to determining the best value for the Judiciary, in the context of any particular purchase.

Award of Best Value Bid Contract. The Procurement Division shall compile total scores based on the individual evaluation committee members' final score matrixes. Based on these scores, the BVB evaluation committee selects the highest ranked bidder as the best respondent to the BVB.

The evaluation committee may make written recommendations to reject all Best Value Bids received in response to a given solicitation, if doing so is in the best interest of the Judiciary.

(G) **SURETY BONDS AND INSURANCE.** Bonds are assurance that the vendor will perform accordingly, as specified in the bid or contract. Bonds shall conform to the minimum standards as set forth in this section of the policy. A personal check or a company check of a bidder shall not be deemed a valid bid security.

(1). **Bid bonds.** The Procurement Division may require submission of a bid bond or other security for the bid and may specify the amount and the form of the bond. If a bid bond is required, it must be provided by a surety company registered in the U.S. Virgin Islands, a U.S. money order, certified check or Letter of Credit in an amount equal to five percent (5%) of the amount of the bid. A condition of the bond must be that the bidder will enter into a contract with the Judiciary of the Virgin Islands if the bidder

receives the award. Bid securities of the unsuccessful bidders will be returned after award of the contract.

- (2) **Performance Bonds.** Performance bond is a contract of guarantee, executed subsequent to award by a successful bidder/proposer, to protect the Judiciary from loss due to the bidder's inability to complete the contract as agreed. The Procurement Division may require that any person or business awarded a contract furnish a performance bond. Performance bond must be in the amount of at least one hundred percent (100%) of the contract price. If a performance bond is required, it must be provided by a surety company registered in the U.S. Virgin Islands, a U.S. money order, certified check or Letter of Credit.
- (3) **Payment Bonds.** Payment bond assures the payment of sub-contractors and materials suppliers. The Procurement Division may require that any person or business awarded a contract furnish a payment bond. Payment bonds must be in the amount of at least one hundred percent (100%) of the contract price. If a performance bond is required, it must be provided by a surety company registered in the U.S. Virgin Islands, a U.S. money order, certified check or Letter of Credit.
- (4) **Construction contracts.** Bid, payment, and performance bonds or other security are required for all construction contracts. The payment and performance bonds must guarantee the full and faithful performance of all contract obligations and the payment for all labor and materials to be used under the contract.
- (5) In construction and other contracts, worker's compensation, property damage, liability, and automotive property damage and liability insurance are required to protect the Judiciary against liability, property damage and contractual risks. Additional coverage may be required, depending upon the nature of the project.

Requirements for bid, payment and performance bonds must be stated (or included) in every solicitation, even if waived.

- (H) **COOPERATIVE PURCHASING AGREEMENTS.** The Judiciary of the Virgin Islands may participate in a cooperative purchasing program with the local government, the National Association for State Procurement Officials (NASPO), or with the National Institute of Government Purchasing (NIGP), or other procurement organizations provided the Judiciary purchases goods and services in accordance with the cooperative purchasing requirements described below.

When the Judiciary is participating in a cooperative purchasing program with another branch of the Government of the Virgin Islands or cooperative purchasing organization, the Judiciary is required to:

- (A) Make payments to the other participating local government or cooperative organization or directly to a vendor under a contract made under the Cooperative Purchasing Program, as provided in the agreement between the participating local governments or between a cooperative organization; and,
- (B) Be responsible for a vendor's compliance with provisions relating to the quality of items and terms of delivery, to the extent provided in the agreement between the participating local governments or between the cooperative organization.

Procedure for Purchasing using Cooperative Purchase Agreements. Divisions that wish to make purchases through a cooperative agreement should adhere to the following procedures:

- 1. The Division identifies the goods or services to be purchased from the cooperative organization.
 - 2. The Division contacts the Procurement Division to ensure that it is buying the good or service at the lowest possible price and determine whether a cooperative agreement exists between the Judiciary and a cooperative organization through which those goods or services may be purchased.
 - 3. If a cooperative agreement already exists, the Procurement Division may issue a purchase order if the goods or services to be purchased are below \$50,000.00. For purchases of more than \$50,000, in accordance with Section 7 of this policy, approval by the Administrator of Courts is required. The Procurement Division shall reference the applicable cooperative agreement in its request to the Administrator of Courts.
- (I) **EMERGENCY PROCUREMENT.** An emergency shall be defined as an unforeseen or unanticipated urgent and immediate need for equipment, supplies or services where protection of life, health, safety or welfare of community or the preservation of public properties would not be possible using normal purchasing procedures. *Lack of planning or funding surpluses do not constitute an emergency.*

Emergency Purchase Procedures

- a. Emergency purchases require a letter of justification approved by the Administrator of Courts or his/her designee documenting the emergency and at a minimum addressing the following:
 - The nature of the emergency such as hazard to life, health, safety, welfare or property or to avoid undue

additional cost to the Judiciary, and what caused the emergency; and

- The estimate impact or damage, financial or otherwise, that will occur by following normal Procurement practices

- b. Under emergency situations, goods or services may be procured without competitive sealed bidding or competitive negotiations or other required informal bidding (negotiating) procedures; however, such Procurement shall be made with such competition as is practicable under the circumstances.
- c. A record of all emergency purchase shall be maintained in the Procurement Division

(J) **SOLE SOURCE PURCHASES.** Sole Source Purchase is a procurement method where only one supplier possesses the unique ability or capability to meet the particular requirements of the solicitation. The Procurement Division may require a justification from the requesting department explaining why this is the only source for the requirement.

Divisions recommending sole source purchases must adhere to the following procedures:

- (1) The Division must first determine whether any functionally equivalent goods or services are exclusively available from only one source by contacting the manufacturer/supplier and conducting thorough independent market research to determine whether other qualified sources capable of satisfying the Division's needs exist.
- (2) If the Division's research confirms that there is no functionally equivalent item, then the responsible person shall write a memo documenting the research conducted and the conclusion reached. In addition, a letter must be requested from the manufacturer/supplier, stating that the item/service is exclusively available from only one source.
- (3) The Division shall complete a sole-source certification form and obtain approval from the Procurement Division or designee.
- (4) Once the Procurement Division confirms that the item/service is a sole source purchase, the Division shall prepare the purchase requests and attach the manufacturer's/supplier's letter and a completed sole-source certification form for approval of a purchase order authorizing the purchase from the sole source vendor.

SECTION 8. CANCELLATION OF SOLICITATIONS; REJECTION OF BIDS AND PROPOSALS

The provisions of this section shall govern the cancellation of any solicitations whether issued by the Judiciary under Invitation to Bid, Request for Proposals, small purchases, or any other selection method, and rejection of bids or proposals in whole or in part.

- (A) **POLICY.** Solicitations should only be issued when there is a valid Procurement need unless the solicitation states that it is for informational purposes only. The solicitation shall give the status of funding for the Procurement. Preparing and distributing a solicitation requires the expenditure of government time and funds. Businesses likewise incur expenses in examining and responding to solicitations. Therefore, although issuance of a solicitation does not compel award of a contract, a solicitation is to be cancelled only when there are cogent and compelling reasons to believe that the cancellation of the solicitation is in the Judicial Branch's best interest.
- (B) **NOTICE:** Each solicitation issued by the Judiciary shall state that the solicitation may be cancelled as provided in these Policies and Procedures.
- (C) **CANCELLATION OF SOLICITATION; REJECTION OF ALL BIDS OR PROPOSALS.**
 - (1) **Prior to Opening.**
 - (a) As used in this Section, opening means the date set for opening of bids, or receipt of proposals in requests for proposals.
 - (b) Prior to opening, a solicitation may be cancelled in whole or in part when the Procurement Division determines in writing that such action is in the Judiciary's best interest for reasons including, but not limited to:
 - 1. the Judiciary no longer requires the supplies, services, or construction;
 - 2. the Judiciary no longer can reasonably expect to fund the Procurement; or
 - 3. proposed amendments to the solicitation would be of such magnitude that a new solicitation is desirable.
 - (c) When a solicitation is cancelled prior to opening, notice of cancellation shall be sent to all businesses solicited.

- (d) The notice of cancellation shall:
1. identify the solicitation;
 2. briefly explain the reason for cancellation; and
 3. where appropriate, explain that an opportunity will be given to compete on any re-solicitation or any future Procurement of similar supplies, services, or construction.

(2) **After Opening.**

- (a) After opening, but prior to award, all bids or proposals may be rejected in whole or in part when the Procurement Division determines in writing that such action is in the Judiciary's best interest for reasons including, but not limited to:
1. the supplies, services, or construction being procured are no longer required;
 2. ambiguous or otherwise inadequate specifications were part of the solicitation;
 3. the solicitation did not provide for consideration of all factors of significance to the Judiciary;
 4. prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;
 5. all otherwise acceptable bids or proposals received are at clearly unreasonable prices; or
 6. there is reason to believe that the bids or proposals may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith.
- (b) A notice of rejection shall be sent to all businesses that submitted bids or proposals.

Documentation. The reasons for cancellation or rejection shall be made part of the Procurement file and shall be available for public inspection.

- (D) REJECTION OF INDIVIDUAL BIDS OR PROPOSALS.
- (1) **General.** This section applies to rejection of individual bids or proposals in whole or in part.
 - (2) **Notice in Solicitation.** Each solicitation issued by the Judiciary shall provide that any bid or proposal may be rejected in whole or in part when in the best interest of the Judiciary as provided in these, Policies and Procedures.
 - (3) **Reasons for Rejection.** Reasons for rejecting a bid or proposal include, but are not limited to:
 - (a) untimeliness;
 - (b) the bid or proposal is not responsive, that is, it does not provide the information requested in the Invitation to Bid or Request for Proposals; or
 - (c) the supply, service, or construction item offered in the bid or proposal is unacceptable by reason of its failure to meet the requirements of the specifications or permissible alternates or other acceptability criteria set forth in the Invitation to Bid or Request for Proposals.
 - (4) **Notice of Rejection.** Upon written request, unsuccessful bidders or offerors shall be advised of the reasons therefore.
- (E) “ALL OR NONE” BIDS OR PROPOSALS. Only when provided by the solicitation may a bid or proposal limit acceptance to the entire bid or proposal offering. Otherwise, such bids or proposals shall be deemed to be nonresponsive. If the bid or proposal is properly so limited, the Judicial Branch shall not reject part of such bid or proposal and award on the remainder.
- (F) DISPOSITION OF BIDS OR PROPOSALS. When bids or proposals are rejected, or a solicitation cancelled after bids or proposals are received, the bids or proposals which have been opened shall be retained in the Procurement file, or if unopened, returned to the bidders or offerors upon request, or otherwise disposed of.
- (G) SINGLE BID. In the event that only one bid is received, Procurement and the Project Manager will collaborate on developing a price or cost analysis of the bid, or both.

(H) **DECISION TO RE-BID.** A re-bid can be initiated, before or after bid opening, for the following reasons:

- a) Inadequate or ambiguous specifications.
- b) Specifications have been revised substantially.
- c) Change in the Judiciary's requirements.
- d) All bids are deemed unreasonable or for other reason(s) unacceptable.
- e) Bids were not independently arrived at or were submitted in bad faith.
- f) A determination is made that all necessary requirements of the bid process have not been fulfilled.
- g) Insufficient competition.
- h) Any other reason deemed to be in the best interest of the Judiciary.

When it has been determined by the Procurement Division and/or the requesting division that a re-bid is necessary, the Procurement Division prepares and issues the new solicitation. All previously discussed policy and procedures must be followed.

SECTION 9. CONFLICTS OF INTEREST

All employees of the Judiciary of the Virgin Islands, but particularly Procurement personnel, must comply with the Judiciary of the Virgin Islands Code of Conduct in the Personnel Regulations.

- (A) No Procurement of supplies or services shall be made except in accordance with these regulations, and where authorized herein, with conditions and requirements prescribed by the Procurement Division. Except as may be authorized by the Procurement Division, no member or employee of the Judiciary is authorized to procure supplies or services, or enter into a contract or agreement to purchase, sell, exchange or trade or tender thereof, on behalf of the Judiciary or any unit thereof. Neither the Procurement Division, the Procurement Division's designee, nor any Procurement personnel or other employees or officers of the Judiciary may encumber or charge the funds of the Judiciary, except in accordance with these regulations, absent prior written authorization from the Administrator of Courts. Where there has been an unauthorized procurement, the Administrator of Courts reserves the right, without liability, to rescind the procurement and to reject any delivery or tender of such supplies or services.
- (B) Neither the Procurement Division, the Procurement Division's designee, Evaluation Committee members, nor any Procurement personnel of the Judiciary shall be financially interested, directly or indirectly, in any Procurement for supplies or services for any unit of the Judiciary. Neither the Procurement Division, the Procurement Division's designee, nor any Procurement personnel of the Judiciary shall accept or receive, directly or

indirectly, from any supplier, either before or after, any Procurement, whether by sealed bid or open market procedures, any compensation, gift, commission, reward, rebate or other benefit, either in money or anything of value, or any promise, obligation or contract for any such future benefit or employment. The Procurement Division, designee or other Judiciary employee who so violates this provision shall be subject to disciplinary action including dismissal.

SECTION 10. PROTESTS

- (A)** Any party who may be aggrieved in connection with the method of source selection, solicitation or award of a contract, and who wishes to pursue a protest shall file a written protest with the Procurement Division. The protest shall be submitted in writing within five (5) days after such person knew or should have known of the facts giving rise to the protest.
- (B)** The Administrator of Courts shall have the authority to settle and resolve a protest.
- (C)** If the protest is not resolved by mutual agreement, the Administrator of Courts shall issue a decision in writing within thirty (30) business days of receipt of the protest. If no written decision has been issued by the Administrator of Courts at the expiration of the thirty (30) day period, such shall be considered an adverse decision.
- (D)** Upon the issuance of an adverse decision by the Administrator of Courts, or upon the expiration of the thirty (30) business day period after filing of the complaint, the aggrieved party may file an action in the Superior Court of the Virgin Islands for appropriate relief within thirty (30) days of such adverse decision or expiration of time.

SECTION 11. CONTRACT DISPUTES

- (A)** Any contractor claiming to have been aggrieved shall file a written complaint explaining the contract dispute with particularity with the Administrator of Courts who shall have the authority to resolve such contract disputes.
- (B)** The written contract dispute complaint must be filed with the Administrator of Courts within five (5) business days of when the complaining contractor knew or should have known of the facts giving rise to the complaint.
- (C)** The Administrator of Courts shall make good faith efforts to resolve the complaint. If the Administrator of Courts determines that no resolution can be reached, an adverse decision shall be issued in writing regarding the complaint.

If no resolution is reached within thirty (30) business days of the date the complaint was filed and no adverse decision has yet been issued in writing, the complaining party may proceed as if an adverse decision was issued in writing by the Administrator of Courts on the final day of the thirty (30) day period.

- (a) Upon the issuance of an adverse decision by the Administrator of Courts regarding the complaint, or upon the expiration of the thirty (30) day period after filing of the complaint, an action may be filed in the Superior Court of the Virgin Islands for appropriate relief within thirty (30) days of such adverse decision or expiration of time.

SECTION 12. DEBARMENT OF VENDORS FROM CONSIDERATION FOR CONTRACTS

Authority to debar. After reasonable notification and opportunity for the vendor and/or vendor's principal involved to be heard, the Procurement Division, after consultation with general counsel and approval of the Administrative of Courts, may debar a person for cause from consideration for award of contracts. The debarment may not be for a period of more than three years.

Causes for debarment. Causes for debarment include the following:

- (a) conviction of a criminal offense in connection with obtaining or attempting to obtain a public or private contract or subcontract or in the performance of the contract or subcontract;
- (b) conviction under territorial, state or federal statutes of fraud, embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property or other offense indicating a lack of business integrity or business honesty;
- (c) conviction or civil judgment finding a violation under territorial, state or federal antitrust statutes;
- (d) violation of any contract provisions that is regarded by the Procurement Division to be so serious as to justify debarment action, such as:
 - (1.) failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
 - (2.) failure to perform or unsatisfactory performance in accordance with the terms of one or more contracts, except that failure to perform or unsatisfactory performance caused

by acts beyond the control of the contractor shall not be considered to be a basis for debarment;

- (e) violation of the ethical standards set out in law or regulation; and
- (f) any other cause the Procurement Division determines to be so serious and compelling as to affect responsibility as a Judiciary contractor, including debarment by another governmental entity.

Notice of proposed debarment. Written notice of a proposed debarment action must be sent by certified mail, return receipt requested, to the last known address of the contractor or prospective contractor. This notice must:

- (a) state that debarment is being considered;
- (b) set out the reasons for the action; and
- (c) state that the contractor or prospective contractor has a right to a hearing and may be represented by counsel.

Written request. A person who has received a notice of proposed debarment is entitled to a hearing if the person files a written request for hearing within ten calendar days of issuance of the notice of proposed debarment. The request must set out specific grounds for the hearing.

Written decision. (a) The Administrative of Courts, upon recommendation of the Procurement Division, shall issue a written decision to debar. The decision must:

- (1) state the reasons for the action taken; and
 - (2) inform the debarred person of his or her rights to judicial appeal.
- (b) A copy of the decision must be mailed or otherwise furnished immediately to the debarred person and any intervening party.

Written statement. A debarred person may request reinstatement by submitting a written statement to the Procurement Division showing that the cause for the debarment no longer exists or has been substantially mitigated.

Determination by Administrator of Courts. The Administrative of Courts may, at any time after a final decision to debar a person from consideration for award of contracts, reinstate the person after determining that the cause for which the person was debarred no longer exists or has been substantially mitigated.

Hearing. The Procurement Division may require a hearing on the request for reinstatement. A written decision by the Administrator of Courts on the request will be

made within ten calendar days of the submission of the request or within ten calendar days of the hearing. The decision must specify the factors on which it is based.

Limited participation. The Procurement Division may permit a debarred person to participate in a contract on a limited basis during the debarment period if the Administrator of Courts determines in writing that the participation is advantageous to the Judiciary of the Virgin Islands. The determination shall specify the factors on which it is based and the limits imposed on the debarred person.

List of persons debarred. The Procurement Division shall maintain a current list of all persons debarred from consideration for award of contracts.

SECTION 13. RETENTION AND CONTENT OF PROCUREMENT RECORDS

The Procurement Division shall retain Procurement files for **ten years (10)** from the date of award. The Procurement files will contain the following, as applicable:

- (1) a copy of the executed contract; and
- (2) the register of bids or proposals and a copy of each submitted; and
- (3) the written determination/memorandum to award the contract notice of award; and
- (4) award documents (winning bids/proposal, contract, changes, best and final offer); and,
- (5) copy of the solicitation (original, addenda); and,
- (6) planning documents (market research, source selection plan); and,
- (7) documentation of inspection and acceptance; and,
- (8) documentation of contract closeout
- (9) purchase orders

SECTION 14. SURPLUS STOCK

Whenever necessary, the Procurement Division or his or her designee shall prepare reports for the Administrator of Courts showing stocks of all supplies, materials and equipment which are no longer used or which have become obsolete, worn out or scrapped. The Administrator of Courts, subject to the authority of the Chief Justice, may transfer such stock to another section or any branch of the government which has need for the item, or to a registered non-profit organization in the Virgin Islands, or discard such stock if it cannot otherwise be disposed of.

With the approval of the Chief Justice or the Administrator of the Courts, departing or retiring employees, may be permitted to purchase equipment other than vehicles, which was assigned to their sole use during the period of their employment from the Judicial Branch for sentimental or commemorative purposes at a cost determined equitable by the Procurement Division through depreciation and the age and condition of such equipment, provided that such item is not subject to be sold only by auction or other means pursuant to Virgin Islands law.