THE UNITED STATES VIRGIN ISLANDS
OFFICE OF THE GOVERNOR
GOVERNMENT HOUSE
Charlotte Amalie, V.I. 00802
340-774-0001

EXECUTIVE ORDER NO. 477-2016

GOVERNOR OF THE VIRGIN ISLANDS OF THE UNITED STATES

WHEREAS, under VIRGIN ISLANDS CODE tit. 31 §§ 231-251, the Legislature of the Virgin Islands ("Legislature") enacted a detailed statutory scheme governing procurement contracts. The Legislature enacted this statutory scheme to ensure that government procurement is supervised by high-level officials and is carried out in an efficient, fair, and consistent manner.

WHEREAS, pursuant to VIRGIN ISLANDS CODE tit. 31 § 231, the Commissioner of Property and Procurement, in accordance with law, shall provide for an economic and efficient system for the procurement and supply of all property and non-personal services, and all related functions and establishing forms and procedures therefor.

WHEREAS, that the Commissioner of Property and Procurement in exercising his duties and responsibilities in VIRGIN ISLANDS CODE tit. 31 § 232 shall "purchase or contract for all supplies, materials, equipment and contractual services, in the manner described in this chapter, required by any and all departments, offices, boards, institutions, and other agencies of the Government of the Virgin Islands, except the Legislature and the Superior Court."

WHEREAS, section 233 of Title 31 of the Virgin Islands Code requires that all contracts or open market purchases must have certification that there is to the credit of the department, office, board, institution or other agency concerned a sufficient unencumbered apportionment of its appropriation balance, in excess of all unpaid obligations, to defray the amount of such order or contract.

WHEREAS, pursuant to VIRGIN ISLANDS CODE tit. 31 § 234, subsections (b) and (c), any person who violates these provisions ***"shall be personally liable for the purchase price of articles purchased and shall be summarily dismissed from employment without regard to the provisions of chapter 25 of Title 3.*** Subsection (c) further provides that whoever makes a purchase for any agency of the Government without an order, as required under Subsection (a) of this section, shall be fined not more than $200.

WHEREAS, VIRGIN ISLANDS CODE tit. 33 § 3101 which provides:

No officer or employee of the Virgin Islands shall make or authorize an expenditure from, or create or authorize an obligation under, any appropriation or fund in excess of the amount available therein; nor shall any such officer or employee involve the government in any contract or obligation for the payment of money for any purpose, in advance of appropriations made for such purpose, unless such contract or obligation is authorized by law.

Section 3101 makes is mandatory that contracts must have full appropriation before they can be valid because a government contract which is not executed in conformity with a legislative appropriation of funds, as required by § 3101, is void under 31 V.I.C. § 249.

WHEREAS, unless delineated by a legal exception, all contracts for purchase or sale shall be competitively bid under VIRGIN ISLANDS CODE tit. 31 § 235 and the Rules and Regulations of the Department of Property and Procurement.

WHEREAS, VIRGIN ISLANDS CODE tit. 31 § 236 addresses the process to be undertaken in the competitive bidding and contracting process for the Government of the Virgin Islands, except as provided in § 239. Failure to abide by these provisions may result in termination of employment and/or imprisonment and fines.

WHEREAS, VIRGIN ISLANDS CODE tit. 31 § 236 sets forth further duties and responsibilities of the Commissioner of Property and Procurement in the bidding process. Section 236 (f) requires the Commissioner to file and report prior to the 15th day of each month, a report with the Governor and the Finance Committee of the Legislature listing the (1) names and addresses of all persons, firms or corporations making sales of supplies, materials, equipment or services by competitive bid under this section, (2) a description of the purchase made or services provided, and (3) the amount of the contract award. Section 236(g) mandates the Commissioner to require all prospective bidders when submitting a bid to include a certification in writing from the Lieutenant Governor that the prospective bidder (1) is registered within the Office of the Lieutenant Governor, (2) maintains a business office in the Virgin Islands, (3) has been licensed for at least one year by the Department of Licensing and Consumer Affairs to do business in the Virgin Islands, and (4) at the time of the submission of the bid has no outstanding tax liability. And finally, section 236(h) mandates that the Commissioner require all bidders for contracts in excess of five hundred thousand dollars ($500,000.00) to agree in writing to employ at least two individuals from the Welfare to Work Program, administered by the Department of Labor and the Department of Human Services.

WHEREAS, pursuant to VIRGIN ISLANDS CODE tit. 31 § 239, Open Market Purchases, certain purchases and contracts may be excused compliance with certain provisions of 31 V.I.C. § 236.

WHEREAS, each Department, Agency, Board or Commission of the Government of the Virgin Islands is required to follow the procurement laws as set forth in the Virgin Islands Code.

WHEREAS, each Department, Agency, Board or Commission of the Government of the Virgin Islands has the responsibility to prepare any contracts for services or purchases in consultation with the Department of Property and Procurement.

WHEREAS, all supporting documents including the full funding source shall be submitted by the user Department, Agency, Board or Commission's contract to the Department of Property and Procurement for review and compliance with the statutory provisions of VIRGIN ISLANDS CODE tit. 31 §§ 231-251.

WHEREAS, after Property and Procurement's review and compliance with the statutory provisions of VIRGIN ISLANDS CODE tit. 31 §§ 231-251, the contract shall be submitted to the Virgin Islands Department of Justice for review for legal sufficiency pursuant to VIRGIN ISLANDS CODE tit. 3 § 114.

WHEREAS, if a contract is determined to be legally sufficient, the contract is then transmitted to the Governor of the Virgin Islands for execution.

WHEREAS, once the contract is executed by the Governor of the Virgin Islands, the signed contract will be transmitted to the Department of Property and Procurement for further processing and transmission to the user Department, Agency, Board or Commission for implementation, oversight and discharge of the performance of the contract.

WHEREAS, there is a substantial and unreasonable delay in the processing of contracts in the Territory;

WHEREAS, there is a need to ensure that business of the Government of the Virgin Islands is not unreasonably delayed by bureaucracy;

NOW, THEREFORE, pursuant to the authority vested in me by Section 11 of the Revised Organic Act of 1954, as amended, it is hereby **ORDERED**

Section 1. Duty to Strictly Comply with the Virgin Islands Procurement Laws.

All Executive Departments, Agencies, Boards, and Commissions shall take all necessary steps to strictly comply with the procurement process pursuant to Title 31, Virgin Islands Code, §§231-251.

Section 2. Duty to Strictly Comply with Procurement Process in Executive Order.

All Executive Departments, Agencies, Boards, and Commissions shall strictly follow the procurement process in this Executive Order subject to the procurement laws codified in 31 V.I.C. §§ 231-251.

Section 3. Initiating Process.

a. The user Department, Agency, Board or Commission shall prepare a Letter of Justification, requisition or request setting forth the basis for the contract;

b. Upon receipt of the Letter of Justification, requisition or request, the Commissioner of Property and Procurement shall verify that funds are available to fulfil the contract's financial obligations. If the Commissioner finds that there are insufficient funds, then the procurement process shall cease.

c. Upon verification from the Commissioner of Property and Procurement that there are available funds to fulfil the contract's financial obligations, the Commissioner shall immediately assign the appropriate division to review the user Department, Agency, Board or Commissions request. This review shall be completed within five (5) business days unless an extension for good cause is granted by the Commissioner of Property and Procurement or his designee not to exceed an additional five (5) business days.

d. Upon completion of the review and the identification of the funding source, the Department of Property and Procurement shall follow its statutory obligations under 31 V.I.C. §§ 231-251.

Section 4. Preparation of Contractual Documents.

a. Within five (5) business days of the completion of the process set forth in Section 3 of this Executive Order, the Department of Property and Procurement shall assist by advising the user Department, Agency, Board or Commission of the form(s) and manner of the procurement document(s) necessary to accomplish the user Department's, Agency's, Board's or Commission's objectives;

b. Within ten (10) business days of the completion of Section 4(a), the user Department, Agency, Board or Commission shall prepare the required contractual documents and procurement package for submission to the Department of Property and Procurement for review;

c. Unless an exception exists under to 31 V.I.C. § 239, the user Department, Agency, Board or Commission shall ensure that prospective bidders submit in their bids written certification from the Lieutenant Governor of the Virgin Islands of the United States that the prospective bidder is (1) Registered in the Office of the Lieutenant Governor; (2) maintains a business office in the U.S. Virgin Islands; (3) has been licensed for at least one (1) year by the Virgin Islands Department of Licensing and Consumer Affairs to do business in the U.S. Virgin Islands; and (4) at the time of the bid submission, the bidder has no outstanding tax liability;

d. The Commissioner shall require all bidders for contracts with the Government of the Virgin Islands in excess of five hundred thousand dollars ($500,000.00) to agree in

writing to employ at least two (2) individuals from the Welfare to Work Program administered by the Department of Labor and the Department of Human Services;

e. The user Department, Agency, Board or Commission shall submit the following contractual documents in compliance with Section 4(b):

1. A current Business License;
2. Written and certified Proof of a full funding source;
3. Proof of Liability Insurance;
4. If the successful bidder is a corporation the following additional documents shall be submitted: Articles of Incorporation, Corporate Resolution of Signatory's authority to enter in the contract with the Government of the Virgin Islands, and certificate of good standing. If any other corporate entity, i.e an LLC, then the equivalent of the documents must accompany the contract.

f. Any other documents as required by law for submission such as a professional license.

Section 5. Execution of Contractual Documents.

a. The Department of Property and Procurement shall review the user Department's, Agency's, Board's, or Commission's contractual documents within five (5) business days of receipt not including the day the contractual documents are received, and upon completion of the review, shall notify the user Department, Agency, Board or Commission to have the Contractor and the authorized signatory for the user Department, Agency, Board or Commission sign the contractual documents;

b. The user Department, Agency, Board or Commission shall notify the Contractor that the contract must be signed and returned to the user Department, Agency, Board or Commission within ten (10) days from receipt of the Contract;

c. Upon the receipt of the Contract signed by the Contractor, the user Department, Agency, Board or Commission shall forward within three (3) business days the contract to the Department of Property and Procurement;

d. Upon receipt of the contract referred to in Section 5(c), the Department of Property and Procurement shall within five (5) business days execute the contract and forward to the Virgin Islands Department of Justice for review for legal sufficiency;

e. Upon receipt of the contract referred to in Section 5(c) and (d), the Virgin Islands Department of Justice shall review the contract for legal sufficiency, pursuant to its authority under 3 V.I.C. § 114 and, if the contract is legally sufficient, shall forward a legal sufficiency memorandum to the Governor of

the Virgin Islands through the Office of Legal Counsel for the Governor of the Virgin Islands; however, if the contract is deemed legally insufficient by the Department of Justice, the contract shall be returned to the Department of Property and Procurement detailing the deficiencies and providing a reasonable time to cure any deficiencies.

Section 6. V.I. Department of Justice Legal Sufficiency Memorandum.

a. In preparing for submission to the Governor of the Virgin Islands, the Virgin Islands Department of Justice shall prepare a memorandum on the Legal Sufficiency of the Contract submitted for the Governor's review. The memorandum shall include the following:

1. The name of the user Department, Agency, Board or Commission;
2. The name of the Contractor;
3. The Project and Scope of Work for the Contract;
4. The Term of the Contract;
5. The Compensation for the Term of the Contract and reference to the funding source, including compliance with 33 V.I.C. § 3101;
6. Reference to compliance with Section 4(c) and (e) and listing of the support documents to the Contract so included; and
7. Notice of any special circumstances regarding the Contract.

Section 7. Prohibition on Contractors Performing and Being Paid for Services before Contracts have been Fully Executed.

a. Notwithstanding any law to the contrary, no Contractor shall be permitted to perform any scope of work on a contract or be paid for services prior to the full execution and approval of the Contract.

b. To the extent that a Contract has renewable options, but has not yet been renewed prior to the termination of the Contract, payment for services and service may continue until the renewal contract is approved.

Section 8. Prohibition of Excessive Purchase Order Amounts.

a. Purchase Orders encumbering funds for Contracts shall not exceed the value of the contract.

b. Notwithstanding Section 8(a), the Commissioner of Property and Procurement may authorize a Purchase Order value which does not exceed ten percent (10%) of the contract value.

Section 9. Duty to Monitor Contract Performance, Payments, and Renewals.

a. The Contracting Officer or Contracting Officer Representative designated by the user Department, Agency, Board or Commission shall monitor all Contracts for performance, payments made on behalf of the Government of the Virgin Islands, and Renewals of Contracts.

b. If a user Department, Agency, Board or Commission intends to renew a contract, the Contracting Officer or Contracting Officer Representative designated by the user Department, Agency, Board or Commission shall initiate the process of renewal no later than 60 days prior to the expiration of the Contract or in accordance with the terms of the contract.

c. In monitoring the performance of a contractor subject to the contract, the Contracting Officer or Contracting Officer Representative designated by the user Department, Agency, Board or Commission shall take immediate steps to protect the Government of the Virgin Islands from any non-performance or sub-standard performance of the contractor subject to the contract.

Section 10. Retired Persons Returning to Government of the Virgin Islands Workforce

1. Prior to entering into a contractual relationship for compensation with a retired employee of the Government of the Virgin Islands who is currently receiving a service retirement annuity, the contracting Department/Agency shall confirm whether the retired employee was a Tier I employee or a Tier II employee. If the retired employee was a Tier I employee, then the procedure outlined in Section 10 paragraph 2 shall be followed.

2. If the returning retired employee was a Tier I employee, then the Department/Agency shall comply with the following:

    a. The Department/Agency contracting with the retired employee shall inform the retired employee that he or she cannot work for compensation for more than six hundred (600) hours in one year and that his or her contract shall not exceed two (2) years;

    b. The Department/Agency contracting with the retired employee shall inform such employee about the financial implications of exceeding the maximum compensated hours worked and years permitted for retired employees returning to government service by appointment or contract;

    c. The Department/Agency, as a condition of employment by the retired employee, shall require the retired employee working for compensation while receiving a service retirement annuity that such retired employee certify that

he/she has been advised of the restrictions to employment pursuant to 3 V.I.C. § 306 and 3 V.I.C. § 724, and that he/she understands the legal implications of violating such laws;

d. The Department/Agency who employs/contracts with a retired employee working for compensation while receiving a service retirement annuity shall maintain a listing and record of all Tier I retired persons it rehires or contracts for services; and

e. The Department/Agency, in addition to subparagraph Section 10(2)(d), shall provide the GERS with a copy of the retired employee's Notice of Personnel Action ("NOPA") and contract for employment or appointment letter.

f. The Department/Agency shall comply with the limitation on compensation of a Tier I retired contractual employee pursuant to 3 V.I.C. § 706a.

3. If it is determined that the employee is a retired Tier II employee, the provisions of 3 V.I.C. § 755(c) shall govern.

4. The Department/Agency shall comply with the limitation on compensation of a Tier II contractual employee pursuant to 3 V.I.C. § 755a.

Section 11. Effective Date of Executive Order

This Executive Order shall take **IMMEDIATE EFFECT.**

Section 12. All Prior Executive Orders on Procurement Processes.

All prior Executive Orders on the Virgin Islands Procurement Processes are hereby **RESCINDED** to the extent that it does not conflict with local law or any provision of this Executive Order.

Done and So ORDERED this 2nd day of March, 2016.

Kenneth E. Mapp
Governor

ATTEST:

Osbert E. Potter
Lieutenant Governor